

other member, and the liability of the Exchange being limited to the payment of the dollar amount described in Section 3 of this Article, or such part thereof as may be collected, after it shall have been collected from the members, and not otherwise. Nevertheless, prior to the collection from the members of the amount of any gratuity payable under the provisions of this Article, the trustees may, in their discretion, advance out of the Gratuity Fund (either capital or accumulated income) to the person or persons entitled thereto, the whole or any part of such gratuity; and, in every such case, the amount so advanced shall be repaid to the Gratuity Fund from the payments by the members when collected.

Sec. 6. *No Estate In Esse*. Nothing herein shall be construed as constituting any estate in esse which can be mortgaged or pledged for the payment of any debts; but it shall be construed as the solemn agreement of every member of the Exchange to make a contribution to the family of each deceased member, and of the Exchange, to the best of its ability, to collect and pay over to such family the said contribution.

Sec. 7. *Payments of Excess Net Worth*. As of the close of each quarter in each year, the trustees of the Gratuity Fund shall, provided the net worth of the Gratuity Fund has been determined (as hereinafter provided) to be in excess of the sum of one million five hundred thousand dollars, pay to the Treasurer of the Exchange out of the Gratuity Fund (either capital or accumulated income) a sum equal in amount to such portion, if any, of such excess as shall be the highest whole number multiple of \$102,375; if there shall be no whole number multiple of \$102,375 in such excess, no such sum shall be paid by the trustees of the Gratuity Fund to the Treasurer of the Exchange with respect to such quarter. As and when such sums are received by the Treasurer of the Exchange they shall be credited proportionately against the first amount then or thereafter payable by members pursuant to Section 2 of this Article.

The "net worth" of the Gratuity Fund shall be determined by the trustees at a meeting in the last month of each quarter and shall be that amount by which, as of the close of the month preceding, the total assets (including cash, accounts receivable and investments stated at their market values but exclusive of accrued interest and accrued dividends) exceeded all known liabilities.

Sec. 8. *Deceased, Expelled and Suspended Members*. The provisions of Sections 2, 3, 4, 5 and 6 of this Article shall not extend to the family of any

deceased former member whose connection with the Exchange shall have been severed prior to his or her death by the transfer of his or her membership whether such transfer shall have been made by the member or his or her legal representatives or by the Board pursuant to this Constitution, or who has been expelled, but shall extend to the family of a deceased member who was suspended at the time of his or her death.

Sec. 9. *Management of Gratuity Fund*. The management and distribution of the Gratuity Fund shall be under the charge of a board of trustees, acting as agent for the Exchange, to be known as the "trustees of the Gratuity Fund," and shall consist of six regular members of the Exchange who are not lessor members and are elected by the membership. In case of a vacancy among the trustees, the Board, at its next regular meeting thereafter, shall proceed to fill the same until the next annual election of the Exchange. Prior to filling such vacancy, the Board shall request the Nominating Committee to submit to the Board the name of the person recommended by the Nominating Committee to fill such vacancy.

Sec. 10. *Investments*. The Gratuity Fund may be retained by the trustees partially or wholly in the form of cash or, in the discretion of the trustees, may be invested in securities which are legal investments for trust funds under the laws of the State of New York. Any securities held by the trustees which cease to be such legal investments may, nevertheless, in the discretion of the trustees, be retained by them.

Securities held by the trustees may be in coupon or registered form. Securities held in registered form shall be registered in the name of the "trustees of the Gratuity Fund of the New York Stock Exchange, Inc.," but without specifying the individual names of such trustees, and may be disposed of and assigned by any four of such trustees.

Sec. 11. *Policies and Procedures of Trustees*. The trustees may adopt such policies and procedures and appoint such officers as they deem appropriate to the discharge of their duties. The trustees shall have power at their discretion to consult and employ legal counsel and they shall be authorized to make disbursements out of the Gratuity Fund to defray necessary and related expenses.

Sec. 12. *Inspection*. The Board shall, at all times, have the right to direct the production before it of the securities belonging to the Gratuity Fund, and all books and records relating to the Gratuity Fund.

Article XVI

2003-04 Transition

The terms of this Article XVI shall apply during the period commencing on the date this amended and restated Constitution is approved by members and ending on the date of the next annual meeting (the "Transition Period"). Upon expiration of the Transition Period, this Article shall be of no further force or effect.

Sec. 1. *Initial Board*. The initial board elected concurrently with the approval by the members of this amended and restated Constitution shall be deemed duly nominated, qualified and elected for all purposes.

Sec. 2. *Term of Office*. The term of each director elected at the special meeting at which this amended and restated Constitution is approved by the members continues until the next annual meeting of members and until his or her successor is elected and qualified.

Sec. 3. *Organizational Meeting*. The Board shall hold its initial organizational meeting as soon as practicable following the special meeting at which this amended and restated Constitution is approved by the members. At its initial organizational meeting, or as soon thereafter as practicable, the Board, by the affirmative vote of a majority of the entire Board, shall, among such other organizational actions as may be appropriate, appoint the members of the Board of Executives and of the Committees. The terms of the members of the Board of Executives and of the Committees continues until their successors are appointed and qualified.

Sec. 4. *Committees*. To assure continuity, during the Transition Period, the Regulation, Enforcement & Listing Standards Committee may include prior members of the Committee for Review who are neither directors nor members of the Board of Executives. Such prior members shall be deemed to be members of the Board of Executives for the purpose of Committee voting. In addition, notwithstanding the provisions of Article IV, Section 12(a), the Standing Committees described therein may include as a member the individual serving as Chairman and Chief Executive Officer on the date this amended and restated Constitution is approved by the members.

Sec. 5. *Ratification*. The extraordinary circumstances under which this restated and amended Constitution was proposed and the initial Board of Directors was constituted caused the Exchange to dispense, in whole or in part, with certain requirements,