

a guaranty, the guaranty will be returned to the guarantor Member Organization.

The proposed By-laws will also provide in Section 12–9(b) that following the Demutualization, Members, Member Organizations and holders of FCO participations will have to pledge in writing to abide by the proposed Certificate of Incorporation, the proposed By-laws, the proposed Rules and any other rules and regulations of the Exchange.

Voting Rights

After the Demutualization, holders of permits will not have any voting rights. Member Organizations will have the right to:

- Designate the five On-Floor Governors for election to the Board in accordance with Section 3–12 of the proposed By-laws;
- Remove the On-Floor Governors in accordance with Sections 3–2(c) and 3–3 of the proposed By-laws (together with the right to designate the On-Floor Governors, the “Designation Rights”); and
- Designate the On-Floor Vice-Chair in a contested election as described below.

Each permit will carry one vote. As discussed above, the vote may be exercised only by the qualified Member Organization Representative of a Member Organization designated by a holder of a permit as its primary affiliation.

The Designation Rights will be exercised in accordance with the following procedure:

- Based on input from the membership or others, the Nominating and Elections Committee will propose a slate of qualified On-Floor Governors;
- In addition, the Member Organization Representatives, representing at least 50 permits, will be permitted to propose qualified alternative candidates;
- The Member Organization Representatives, at an annual meeting of Members and Member Organizations, will then elect the designated On-Floor Governors from among the Nominating and Elections Committee’s slate and any qualified individuals nominated by Member Organization Representatives in accordance with the nomination procedures.

The winners of this election will then be eligible for designation as On-Floor Governors. In compliance with Delaware corporate law, the designated On-Floor Governors will be formally elected by the Trust that holds the single outstanding share of Series A Preferred Stock in accordance with

Article FOURTH(a)(iii) of the proposed Certificate of Incorporation.

Contested Election of the On-Floor Vice Chairman

With respect to the election of the On-Floor Vice Chairman, Section 4–2 of proposed By-laws will provide that, if there is a contest for the position of On-Floor Vice Chairman of the Board, the On-Floor Vice Chairman of the Board may be selected from the On-Floor Governors by a vote of the Member Organization Representatives, as promptly as possible after the annual meeting of stockholders at a special meeting of Members and Member Organizations called for that purpose.

Voting Concentration Limits

In order to prevent any group of Members of Member Organizations from dominating elections of the Member Organization Representatives, the proposed By-laws will provide in Section 3–12(c) that if any Member Organization, directly or indirectly, possesses the right to vote more than 20% of the then outstanding permits, that Member Organization will not have any right to vote, or to give any consent or proxy with respect to, any permits exceeding the 20%, and the excess permits will not be considered present for the purposes of determining whether a quorum is present at any meeting or vote of the Members or Member Organizations, and will not be entitled to vote in determining the number of permits required for a quorum or to be voted for approval of or to give consent with respect to any matter presented to the Members or the Member Organizations.

Member and Member Organization Meetings and Actions

Pursuant to Section 3–2 of the proposed By-laws, annual meetings of Members and Member Organizations will be held on the second Monday in March of each year to designate nominees for On-Floor Governors. Except as described above with respect to a special meeting called for the purpose of removing an On-Floor Governor, special meetings of Members or the Member Organization Representatives may be called at any time only by the Chairman of the Board or by a majority of the Board.

At all meetings of Members and Member Organizations, each Member Organization Representative may cast his vote in person or by proxy, provided that no action will become effective unless there shall have been voted a majority of the number of permits outstanding at such time, not including

any Excess Permits, as defined in Section 3–12(c) of the proposed By-laws. Each Member Organization Representative may cast the number of votes equal to the number of permits held by Members having designated the Member Organization Representative’s Member Organization as its primary affiliation (subject to the voting restrictions described above).

Section 3–11 of the proposed By-laws will provide that notice of any meeting of Members and Member Organizations must be given to each Member Organization Representative entitled to vote at such meeting not less than 10 days nor more than 50 days before the date of the meeting.

Term and Termination of Permits

Pursuant to proposed Rule 908(e), the holder of a permit will be allowed to terminate the permit at any time upon written notice to the Exchange. The Exchange will be allowed to terminate any individual permit in accordance with the By-laws and Rules of the Exchange only upon:

- The non-payment of any dues, foreign currency options users’ fees, fees, fines, penalties, other charges, and/or other monies due and owed the Exchange;
- The insolvency of a Member or Member Organization (or if the Business Conduct Committee has determined the Member or Member Organization to be financially unsafe to continue trading); or
- The Exchange’s imposition of a disciplinary sanction.³³

The terminating permit holder and each Member Organization with which the holder is associated will remain responsible for all obligations of the terminating Member, including, without limitation, all applicable dues, fees, charges, fines, penalties and other obligations arising from the holding or use of a permit before its termination.

Pursuant to proposed Rule 908(f), the Exchange will be able to terminate the entire series of Series A–1 Permits on no less than 60 days’ notice to the permit holders. If, however, within six months after any such termination of the entire series of Series A–1 Permits, the Exchange issues any other class or series of permit with respect to any securities product previously covered by the Series A–1 Permit, any permit holder of a terminated Series A–1 Permit, who meets the applicable eligibility requirements with respect to such new class or series of permit, will be entitled to receive on terms no less favorable

³³ See Section 14–1 and Articles XVII and XVIII of the proposed By-laws.