

### 3. Constitution and By-Laws of the New York Insurance Exchange, Inc.

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**GUIDENOTE:** The Constitution and By-Laws of the New York Insurance Exchange was originally adopted as Section 425-a(2) of the New York Insurance Law. To avoid the question of whether legislative action would be necessary for any amendment of the Constitution and By-Laws, they were removed from the Insurance Law in March, 1982. Any amendments, however, are still subject to approval of the Superintendent of Insurance.

On April 11, 1988, the members approved amendments to the Constitution enabling the exchange to carry out its plan for the decentralization of its Central Processing Facility in winding down its operations. These amendments are shown by *italics* for new material and brackets [ ] for deletions in order for this volume to show the Constitution on both an operating and run-off basis. (See page III—NY—1).

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- 1. (No caption)
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**ARTICLE I**

**TITLE — OBJECTS — DEFINITIONS**

**§ 1. Title**

The name of this Corporation is the "New York Insurance Exchange, Inc.". The Corporation is hereinafter sometimes referred to as the "Exchange". The Exchange has been incorporated pursuant to Section 201 of the New York Not-For-Profit Corporation Law.

**§ 2. Objects**

The objects and purposes of the Exchange shall be:

- (a) to provide a facility for the underwriting of:
  - (i) reinsurance of all kinds of insurance;
  - (ii) direct insurance of all kinds on risks located entirely outside the United States;
  - (iii) direct insurance of all kinds on risks located in the United States other than in this state, provided that such risk qualifies for placement pursuant to the excess and surplus lines requirements of the jurisdiction in which the risk is located;
  - (iv) risks which shall have been submitted to and certified as having been rejected by a committee representative of insurers licensed by the superintendent under Section 168-d of the Insurance Law, subject to conditions imposed by the Superintendent pursuant to regulation.
- (b) to manage such facility as authorized by Section 425-a(1)(b) of the New York Insurance Law in accordance with regulations promulgated by the Superintendent of the New York Insurance Department.
- (c) to maintain high standards of commercial honor and integrity

among its members and to promote just and equitable principles of trade and business; and

(d) to conduct any activities incidental to the foregoing which may be lawfully conducted under Section 425-a of the New York Insurance Law and under the New York Not-For-Profit Corporation Law.

### § 3. Severability

If any provision of this Constitution and By-Laws or the application thereof to any person or circumstance, is held invalid under the Laws of the United States or any of the several states, the remainder of this Constitution, or the application of such provision to other persons or circumstances shall not be affected thereby.

### § 4. Definitions

Unless the context requires otherwise, as used in this Constitution and By-Laws:

- (a) "Exchange" means the New York Insurance Exchange, Inc.
- (b) "Governor" means a member of the Board of Governors of the Exchange as defined in Article III.
  - (i) "Underwriting Governor" means a Governor elected pursuant to Article VI, Section 2(b).
  - (ii) "Broker Governor" means a Governor elected pursuant to Article VI, Section 2(c).
  - (iii) "Public Governor" means a Governor elected pursuant to Article VI, Section 2(d).
- (c) "Board" means the Board of Governors of the Exchange then in office.
- (d) "Chairman" means the Chairman of the Board of Governors.
- (e) "Superintendent" means the Superintendent of Insurance of the State of New York.
- (f) "Member" means both an Underwriting Member and a Broker Member of the Exchange as defined in Article VII, Sections 1(a) and 1(b) respectively.
- (g) "Associate Broker" means a broker authorized to place business

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on the Exchange as defined in Article VII, Section 2 or who has placed business on the Exchange as defined in Article VII, § 2.

(h) "Subscriber" means a person with limited privileges at the Exchange as defined in Article VII, Section 3.

(i) "Insurance Law" means the Insurance Law of the State of New York.

(j) "Affiliated person" means:

(i) any person who is not a member of the Exchange but is a general partner, director, officer, or beneficial owner of 10% or more of the voting stock of a Member or Associate Broker;

(ii) any firm, corporation, or other entity which is not a member of the Exchange but which has the power to direct the management, control, or activities of a member or associate broker through a management contract or beneficial ownership of 10% or more of the voting stock of a Member or Associate Broker, or

(iii) an underwriting manager of a member as defined in Article IX, Section 3.

(k) "Constitution" means the Constitution and By-Laws of the Exchange.

(l) "Principal Office" means an office located within the State of New York for the purpose of transacting business on the Exchange. Such office shall be a place where officers and qualified personnel who are engaged in administration, underwriting, claims, policyholders services, marketing, accounting, record keeping, and other supportive services are located.

(m) "Policyholder" means a person or entity insured under a contract of insurance or reinsurance issued through the Exchange and designated an "Exchange contract" under Article IX, Section 1.

(n) "Impaired" means a financial condition in which the further conduct of business by a member or associate broker on the Exchange may jeopardize the interests of other Members, Associate Brokers, or policyholders, or a finding, based upon a financial statement made by, or a report on examination of, such a Member or Associate Broker that the assets of the Member or Associate Broker are less than the sum of that party's liabilities and, in the case of an Underwriting Member, the minimum required capital and surplus.



(o) "Insolvent" means *the financial condition of a member as defined in Section 1309 of the New York Insurance Law* [a financial condition in which the conduct of business by a Member or Associate Broker on the Exchange may jeopardize the interests of other Members, Associate Brokers or of policyholders due to a finding, based upon a financial statement made by, or a report on examination of, such a Member or Associate Broker, that the Member or Associate Broker is unable to pay its outstanding lawful obligations as they mature in the regular course of business].

(p) "Article" and "Section" refer to the articles or sections of this Constitution.

(q) "Secretary" means Secretary of the Exchange as defined in Article V, Section 3.

(r) "Treasurer" means Treasurer of the Exchange as defined in Article V, Section 2.

(s) "President" means President of the Exchange as defined in Article V, Section 1.

(t) "Underwriting Syndicate" means a person, firm, corporation or other entity authorized by the Board to insure or reinsure risks *or who has insured or reinsured risks on the Exchange.*

## ARTICLE II POWERS OF THE BOARD

### § 1. Duties and powers of the Board of Governors

The government and management of the Exchange shall be vested in a Board of Governors which shall have all the powers necessary for the government of the Exchange, the regulation of the business conducted through the Exchange and the promotion of the welfare, objects and purposes of the Exchange.

The Board shall also have all necessary powers to borrow money, to levy and collect dues and fees, and collect taxes from the Members and Associate Brokers. The Board shall have the authority to make all necessary assessments and surcharges on the Members and Associate Brokers for the operating purposes of the Exchange.

Upon the depletion of the Aggregate Fund as defined in Article XIII, Section 2, the Board shall have the power to assess an amount

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not to exceed \$500,000 per Underwriting Member for purposes related to an insolvent Underwriting Member. During the term of membership, an Underwriting Member's total liability for all such assessments shall not exceed \$500,000.

In the exercise of such powers, the Board may adopt such rules, issue such orders and directions, and make such decisions as it may deem appropriate.

**§ 2. Supervisory powers**

The Board of Governors shall have general supervision over Members, Associate Brokers, Subscribers, affiliated persons, underwriting managers, and all other persons, firms, corporations, and other entities in connection with the conduct of their business on the Exchange or with members of the Exchange.

**§ 3. Interpretation of Constitution and Rules**

The Board of Governors shall have power to interpret the Constitution of the Exchange and all rules adopted pursuant thereto. Any interpretation made by it shall be final and conclusive.

**§ 4. Fees and compensation**

(a) The Board of Governors shall have control of the property finances of the Exchange and shall be responsible for safeguarding the interests of the members of the Exchange in such property. The Board may sell, mortgage or lease the real property of the Exchange when authorized by the vote of a majority of the Governors in office.

(b) By the affirmative vote of a majority of the Governors then in office, the Board may fix the fees and compensation to be paid to the Governors, the members of such committees as it may from time to time authorize, the Chairman of the Board, other officers of the Exchange, and Arbitrators.

**§ 5. Contracts of employment**

By the affirmative vote of a majority of the Governors then in office, the Board of Governors may authorize any officer, on behalf of the Exchange, to enter into a contract of employment with any person for such period of time and upon such other terms and conditions as may be set forth in a written agreement.

**§ 6. Appropriations**

The Board shall annually appropriate the amounts to be expended in the administration of the Exchange in the ensuing year and may make such appropriations in such detail as it may deem desirable. It may at any time make additional appropriations and may increase or decrease any appropriation theretofore made. No expenditure in excess of the amount appropriated therefor shall be made without the prior approval of the Board.

**§ 7. Examination of accounts**

The Board may make or cause to be made an examination of the accounts and operations of the Exchange and of its Members and Associate Brokers as often as the Board deems necessary for the protection of the interest of those persons utilizing the Exchange for the securing of insurance and reinsurance, for the protection of the Members of the Exchange, and for the general welfare of the Exchange as a whole. The Board may employ auditors or accountants for this purpose and may accept their report as its examination. The refusal of a Member or Associate Broker to cooperate with an examination shall be sufficient grounds for suspension by the Board. A Member or Associate Broker so examined shall be given a reasonable opportunity to review and comment on any examination report and appeal its findings to the Board. An examination by the Board of a Member or Associate Broker shall be limited to the accounts and operations relating to transactions on the Exchange.

**§ 8. Indemnification of Governors, officers and employees**

The Exchange shall indemnify and hold harmless each present or former Governor, officer or employee of the Exchange against any and all costs and expenses, including attorneys' fees, actually and necessarily incurred by or imposed on him in connection with or resulting from any claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, or any appeal therein, which he may be or become involved or with which he may be threatened, as a party or otherwise by reason of his now or hereafter being or having heretofore been a Governor, officer or employee of the Exchange, or of another corporation at the request of the Exchange, or by reason of his alleged acts or omissions as a Governor, officer or employee as aforesaid, whether or not he continues to be such at the time such costs and expenses shall have been incurred, to the fullest

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extent permitted under Sections 721 to 726 of the New York Not-For-Profit Corporation Law, as amended from time to time, and may exercise those powers provided in Section 727 of said law.

The rights of indemnification provided in this Article shall inure to the benefit of the heirs, executors, administrators, or legal representatives of the persons covered thereby.

**§ 9. Delegation of powers of the Board of Governors**

The Board may delegate such of its powers as it may from time to time determine, subject to the provisions of the Constitution and applicable law, to such officers and employees of the Exchange, and to such committees, composed either of Governors or otherwise, as the Board may from time to time authorize; provided, however, that a Member or affiliated person affected by an action of any officer, employee or committee acting under powers delegated by the Board may request a review by the Board of such action, by filing with the Secretary a written demand therefor. No action taken by any officer, employee, agent or committee acting under power delegated by the Board shall be stayed except by consent of a majority of the Board.

**§ 10. Accounts and records**

The Board shall require each Member and Associate Broker to maintain in its principal office the records and accounts of its activities relating to the Exchange.

**§ 11. Annual statements**

The Board shall require each [Member and Associate Broker] *Underwriting Member* to file with the Exchange on an annual basis a financial statement by an independent certified public accountant and an operational report verified under oath by the principal officer or a general partner of the Member, or Associate Broker in a form and within such time period as the Board may specify. A Member or Associate Broker may be suspended for failure to comply with this section. The Board may vary the form and content of the financial statement and operational report as necessary based upon the type of business activities conducted by the Member or Associate Broker.

**§ 12. Additional statements or reports**

The Board may require a Member to submit in addition to those

reports required under Section 11 of this Article, additional reports or statements or respond to a questionnaire regarding its financial and operational activities. The form and content of such additional reports and statements shall be in the discretion of the Board.

### § 13. Impairment or insolvency

[Based upon an audit or examination of a Member or Associate Broker, the Board may determine that a Member or Associate Broker is impaired or insolvent. Upon a finding by the Board that a Member or Associate Broker is impaired or insolvent, the Board may adopt and the Member or Associate Broker must comply with restrictions and restraints on the business activities of the Member or Associate Broker, including but not limited to:]

[a. Restricting sales by type of risk, policy or contract limits, premium levels, policy or contract provisions;]

[b. Increasing surplus or capital requirements or requiring security deposits;]

[c. Issuing cease and desist orders;]

[d. Suspending or restricting a Member's or Associate Broker's authority to transact business on the Exchange;]

[e. Placing an Underwriting Member under conservatorship or rehabilitation under the supervision of the Board including the right to require an Underwriting Member to reinsure or assign all or part of its accounts;]

[f. Declaring an Underwriting Member insolvent and petitioning the Superintendent to seek an order of liquidation.]

*Based upon an audit or examination of an Underwriting Member by the Exchange or the Superintendent, or a financial statement filed by such Underwriting Member, the Board may find a Member to be impaired or insolvent. Upon such a finding, the Board may:*

*(a) declare such Underwriting Member impaired and petition the Superintendent to seek either an Order of Rehabilitation or an Order of Liquidation under the Insurance Law;*

*(b) declare such Underwriting Member insolvent and petition the Superintendent to seek an Order of Liquidation under the Insurance Law;*

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*(c) order such Underwriting Member to increase its capital to eliminate the impairment or insolvency; or*

*(d) take such other action as the Board shall deem appropriate under the circumstances.*

**§ 14. Liquidation**

In addition to its power to suspend a Member or Associate Broker under Section 13, The Board of Governors, upon a filing of a petition for an order of liquidation by the Superintendent, or the filing of a petition in bankruptcy by or against a member, shall place the member in an involuntary withdrawal. If at any time a Court order of liquidation is entered against an Underwriting Member or the Board petitions the superintendent to liquidate an Underwriting Member, the Board shall declare that Member insolvent. The Liquidator shall satisfy the outstanding debts, policy and contract obligations of said Underwriting Member from the following assets and in the following order:

a. Capital and surplus balances of the Insolvent Underwriting Member including the Insolvent Underwriting Member's initial deposit as required in Article XIII Section 4.

b. Other assets of Underwriting Member.

c. Any security deposits held by the Exchange for the Underwriting Member's account.

All outstanding insurance and reinsurance policies or contract obligations of an Underwriting Member declared insolvent under Section 14 remaining after the application of the above assets shall be certified by the Superintendent as unpaid contractual obligations for the purpose of Article XIII.

**§ 15. Reciprocity**

When by the laws of any foreign jurisdiction, or the customs, rules or regulations of any corporation, trade association or other organization, any licensing requirement or other obligation, prohibition or restriction concerning investment or participation in any such corporation, trade association or organization is imposed upon a Member or any investor in said Member, which is in excess of the licensing requirement, or other obligation, prohibition or restriction imposed upon an entity of such foreign jurisdiction doing business on the

Exchange, the same licensing requirement or other obligation, prohibition or restriction of whatever kind concerning investment or participation in the Exchange may be imposed by the Board upon the entity of the foreign jurisdiction doing business on the Exchange.

ARTICLE III  
BOARD OF GOVERNORS

§ 1. Composition of the Board

(a) Each member of the Board of Governors shall be a natural person, a citizen of the United States and at least twenty-one (21) years of age.

[(b) Except for the Board of Governors appointed pursuant to Article XVII, the Board of Governors shall consist of 12 persons elected at annual meetings of the members of the Exchange pursuant to Article VI. The twelve Governors of the Board shall be as follows:]

[(1) Six (6) Governors shall be nominated by the Underwriting Members of the Exchange and elected in accordance with Article VI; and]

[(2) Two (2) Governors shall be nominated by the Broker Members of the Exchange and elected in accordance with Article VI; and]

[(3) Four (4) Governors shall be representatives of the public and shall be nominated and elected in accordance with Article VI.]

[(c) The number of Governors on the Board may be increased or decreased by Amendment to the Constitution, but in no event shall the authorized number of Governors be less than 6 or more than 13, and at least one third of the Governors of the Exchange shall be public representatives.]

*(b) The Board shall consist of either 6 or 12 persons elected at the annual meeting pursuant to Article VI. One-third of the Governors shall be Public Governors, one-half shall be Underwriting Governors, and one-sixth shall be Broker Governors.*

§ 2. Terms of office

(a) Governors shall hold office until the expiration of the term for which they are elected and until their successors have been elected and qualified. The term of office of each Governor shall be three (3)

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years; except as provided in Article XVII. [No one who has been elected a Governor for 2 consecutive three (3) year terms shall serve as Governor except after an interval of at least three (3) years.]

(b) The term of office of the persons elected as Governors at each annual meeting shall commence on the seventh day after the date of their election.

**§ 3. Vacancies on the Board of Governor**

[(a) A vacancy among the Underwriting Governors shall, within sixty days, be filled by a majority vote of the Underwriting Governors remaining in the office.]

*(a) Any vacancy on the Board shall be filled by majority vote of the Governor's remaining in office.*

[(b) A vacancy among the Broker Governors shall, within sixty days, be filled by the Broker Governor remaining in office.]

*(b) Any person elected to the Board to fill a vacancy as described in Section 3(a) above shall serve until the next annual meeting of the Members. At that meeting the Members shall vote to determine who will fill the remainder of the term.*

(c) A vacancy among the Public Governors shall, within sixty days, be filled by a two-thirds vote of all the Governors remaining in office.

(d) Any person elected to fill a vacancy as set forth above shall serve until the next annual meeting of the Members. At that meeting, a successor to fill the remainder of the unexpired term shall be elected and qualified.

**§ 4. Election of Chairman and Vice Chairman**

At its annual meeting, the Board of Governors shall elect one of the Governors to be the Chairman of the Board and one of the Governors to be the Vice Chairman of the Board. Both persons shall be elected by an affirmative vote of a majority of the Governors then in office and shall serve until the next annual meeting of the Board and until their successors have been elected and taken office.

**§ 5. Meetings of the Board of Governor**

(a) An annual meeting of the Board of Governors shall be held each year immediately following the close of business on the Exchange on



the second Thursday after the annual meeting of the Members of the Exchange or, if the Exchange is not open for business on that day, on the next succeeding business day, and adequate notice of such meeting shall be given. Regular meetings of the Board of Governors shall be held at such times as the Board may designate by resolutions, and adequate notice of such meeting shall be given. Special meetings of the Board shall be held on the call of the Chairman of the Board, or pursuant to the written request of three (3) Governors, upon notice as prescribed below, but no notice need be given to any Governor who has submitted a signed waiver thereof. All meetings shall be held at the Exchange, unless another place is fixed by the Board for any regular meeting or by the person or persons calling a special meeting specified in the notice thereof.

(b) Notice of a special meeting of the Board of Governors shall be given by the Secretary of the Exchange or by a person calling the meeting to each Governor other than any who have duly waived notice (1) by written notice mailed, first class postage prepaid, not later than the fifth day before the meeting, or (2) by either written or oral notice given personally or by telephone or other means of electronic communication, in which case the meeting may be held as soon after such notice is given as a quorum shall be assembled at the place of the meeting, unless another time shall be specified in the notice. Any notice shall be sufficient if addressed to a Governor at his office or at such other address to which he shall have requested the Secretary of the Exchange to direct notices to him, and if stating the purpose, time and place for such special meeting.

(c) Notice of any adjourned meeting of the Board specifying the time and place of the next meeting, shall be given to the Governors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to other Governors. The attendance of a Governor at any meeting shall dispense with notice to that Governor of the meeting.

(d) The Board of Governors, except as otherwise specifically provided in the Constitution, may consider and take action upon any matter at its annual or any regular meeting or at any special meeting, even though such matter has not been referred to in a notice, or waiver of notice of such meeting.

(e) Each member of the Board of Governors shall have one vote on all matters.

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**§ 6. Quorum of Governors**

Except as otherwise specifically required by the Constitution, a

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majority of the Governors then in office shall be sufficient to constitute a quorum for any meeting of the Board of Governors, and any action taken pursuant to the vote of a majority of the Governors present at such meeting shall be deemed to be the action of the Board of Governors.

**§ 7. Procedure at Board meetings**

The Board of Governors shall determine the manner and form by which its proceedings shall be conducted.

**§ 8. Unanimous action without meeting**

Any action required or permitted to be taken by the Board of Governors or any committee thereof may be taken without a meeting if all members of the Board or the committee unanimously consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or Committee. A consent document may be executed in multiple copies none of which need contain all of the required written consents if the aggregate of all such copies contains all the consents.

**§ 9. Participation in proceedings**

No Governor shall be disqualified from participating in any meeting, action or proceeding of the Board of Governors by reason of being or having been a member of a committee which has made prior inquiry, examination or investigation of the subject under consideration.

**§ 10. Resignation of Governors**

Any Governor may resign at any time. Such resignation shall be made in writing, and shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the Chairman of the Board or Secretary of the Exchange. The acceptance of a resignation shall not be necessary to make it effective, but no resignation shall discharge any accrued obligation or duty of a Governor.

**§ 11. Removal of Governors by Members**

Any Governor of the Exchange may be removed, with or without cause, by a two-thirds vote of all the Members of the Exchange who

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are entitled to vote for the election of Governors of the Exchange. Any Governor removed pursuant to this section shall immediately cease to be a Governor and the position held by him shall thereupon become vacant.

**§ 12. Removal of Governors for absence**

If any Governor shall have been absent from three consecutive regular meetings of the Board of Governors without having been excused by the Board, the Board may, by the two-thirds vote of a majority of the entire Board, remove such Governor and declare the position theretofore held by him to be vacant.

**§ 13. Removal of Governors for change status**

If the Board shall determine by a vote of two-thirds of the entire Board that any Governor has lost any qualification needed for his office then, in such event, that person shall cease to be a Governor and the position held by him shall thereupon become vacant.

**§ 14. Disclosure of interest in certain transactions**

Any Governor of the Exchange shall not, in the absence of fraud, be disqualified from his or her office for dealing or contracting with the Exchange, nor in the absence of fraud shall, insofar as permitted by statute, any transaction or contract of the Exchange be void or voidable or affected by reason of the fact that any Governor, or any firm of which any Governor is an officer, director, or shareholder, is in any way interested in such transaction or contract: provided that, at the next regular meeting of the Board of Governors the interest of such Governor, firm, or corporation is disclosed or made known, and there shall be present a quorum of the Board of Governors and such contract or transaction shall be approved by a majority of such quorum, which majority shall consist of Governors not so interested or connected.

If the interests of a Governor referred to above is not disclosed to the Board, then the Board shall have the authority in its discretion, to void the contract or transaction.

ARTICLE IV  
CHAIRMAN AND VICE CHAIRMAN OF THE BOARD OF GOVERNORS

**§ 1. Chairman**

The Chairman of the Board shall be the official representative of the Exchange in all matters. By his acceptance of the office of Chairman of the Board he shall be deemed to have agreed to uphold the Constitution of the Exchange. He shall, during his incumbency, be a member and the presiding officer of the Board of Governors and ex officio a member of any committee authorized by the Board of Governors. He shall preside at meetings of the Members of the Exchange.

**§ 2. Absence of the Chairman**

In case of the absence or inability to act of the Chairman, the Vice-Chairman of the Board of Governors shall assume all the functions and discharge all the duties of the Chairman.

**§ 3. Acting Chairman**

In case of the absence or inability to act of both the Chairman and the Vice-Chairman the remaining members of the Board shall elect one of their members to serve as acting Chairman.

**§ 4. Vacancy in Office of Chairman or Vice-Chairman**

In case a vacancy shall occur in the office of the Chairman or Vice-Chairman of the Board, the Board, by the affirmative vote of a majority of the Governors then in office, shall fill such vacancy.

**§ 5. Special Meeting**

The Chairman or Acting Chairman of the Board may call special meetings of the Board. The Chairman or Acting Chairman shall call a special meeting of the Board upon the written request of three Governors.

**§ 6. Appointment of President**

Subject to the Approval of the Board of Governors, the Chairman shall appoint a President, and shall fix the duties, responsibilities, terms and conditions of employment of the President. The President shall serve at the pleasure of and be responsible to the Board for the proper performance of his duties.

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**§ 7. Fiscal estimates**

The Chairman, or his designee shall prepare and present to the Board at its first regular meeting in December of each year an estimate of the income of the Exchange for the succeeding calendar year and recommendations as to appropriations for expenses for said period. He may at any time recommend additional appropriations for the increase or decrease of any appropriations made by the Board and shall make reports and recommendations to the Board as to the financial policy of the Exchange.

**ARTICLE V  
OFFICERS**

**§ 1. President**

The President shall be the chief executive officer of the Exchange, and shall not be a Governor. Subject to the supervision of the Board, he shall manage the day to day affairs of the Exchange and perform such other duties as may be assigned to him from time to time by the Board. The President shall have authority to execute contracts, bonds, reports, and other instruments and documents in the name of the Exchange.

Subject to the approval or ratification by the Board, the President shall appoint one or more Vice-Presidents, a Treasurer, a Secretary, and such other officers as may be required. The President shall appoint such employees of the Exchange as are required for the efficient management and operation of the Exchange and shall fix the duties, responsibilities, terms and conditions of employment of all such persons.

**§ 2. Treasurer**

The Treasurer, appointed by the President, shall receive and have custody of the funds and securities for the Exchange and shall keep or cause to be kept full and accurate accounts of receipts and disbursements of such funds and securities in books belonging to the Exchange. He shall deposit or cause to be deposited all monies in the name of and to the credit of the Exchange, in such depositories as may be designated by the Board of Governors, or in the case of the Security Fund in such depositories as may be designated by the Board of Directors of the Fund. The Treasurer shall disburse or cause to be disbursed the funds of the Exchange in accordance with

the instructions of the Board of Governors or the President, or in the case of the Security Fund, at the direction of the Directors of that Fund, taking proper vouchers for such disbursements, and rendering reports of all such transactions. The treasurer shall also report on the financial condition of the Exchange at the annual meeting and whenever called upon by the Board or the President. At the expiration of his term of office, the Treasurer shall surrender all monies, books, records, and other property of the Exchange to the successor in office, when qualified, or to such other persons as the Board may designate.

### § 3. Secretary

The Secretary shall keep or cause to be kept in safe custody the official records and corporate seal of the Exchange, and shall affix such seal to any instrument requiring it, attesting to it by his signature when required.

The Secretary shall keep minutes of the meetings of members and of the Board and send out all notices. The Secretary shall perform such other duties as the Board or President may assign to him from time to time.

## ARTICLE VI MEETING OF MEMBERS

### § 1. Annual meetings

A meeting of the Members of the Exchange shall be held annually for the election of Governors of the Exchange and the election of Nominating Committees, all as provided in this Article, and for the transaction of any other proper business. The annual meeting shall be held on the second Monday in April of each year or, if the Exchange is not open for business on that day, on the next business day. The meeting shall be held at the Exchange or at such other place as may be fixed in advance by the Board of Governors, and shall begin at the close of business of the Exchange on such day. At such annual meeting, there shall be elected by the members:

- (a) persons to serve regular terms as Governors;
- (b) persons to fill any unexpired terms in the Board of Governors pursuant to Article III, Section 3; and

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(c) two Nominating Committees of five (5) persons each to serve for the term of one (1) year, which shall have the required composition provided in Section 2 of this Article. Any person who has served for two (2) consecutive one year terms on a Nominating Committee shall be precluded from serving on either Nominating Committee for a period of one year.

**§ 2. Nominating Committees**

(a) There shall be two Nominating Committees, the Underwriting Nominating Committee, composed of five (5) persons elected by the Underwriting Members and the Broker Nominating Committee, composed of five (5) persons elected by the Broker Members.

(b) The Underwriting Nominating Committee shall propose and the members shall elect persons to serve regular terms and fill vacancies and unexpired terms among the [six (6)] positions on the Board held by the Underwriting Governors.

(c) The Broker Nominating Committee shall propose and the Members shall elect persons to serve regular terms and fill vacancies and unexpired terms among the [two (2)] positions on the Board held by Broker Governors. Each such nominee and each such person so elected shall be a licensed New York Insurance Broker.

(d) The Underwriting Nominating Committee and the Broker Nominating Committee shall meet jointly and shall propose and the Members shall elect persons to serve regular terms and fill unexpired terms among the [four] positions on the Board held by Public Governors. Such Public Governors shall not be employed by or otherwise affiliated with members, Associate Brokers, insurers, insurance agents, brokers and producers, or other entities of the Insurance Industry.

**§ 3. Meetings of Nominating Committee**

Each Nominating Committee shall hold one or more meetings, to which all members of the Exchange shall be invited to suggest nominees for the positions on the Board of Governors or Nominating Committee to be filled at the annual meeting of the Exchange. Each Nominating Committee shall report to the Secretary on the second Monday in February, nominees for positions on the Board of Governors and the Nominating Committee. Nominees shall be persons who have consented in writing to be nominees and who, in the opinion of



the Nominating Committee, are eligible for election to the position for which they are nominated. The Secretary shall, on receipt of the report of the Nominating Committee, notify the members of the names of such nominees.

#### **§ 4. Nominees by petition and arrangement of ballot**

Members may by petition, propose nominees for the positions on the Board of Governors and the Nominating Committees to be filled at the annual meeting prescribed by this Article. Any such nominee for an underwriting Governor or a position on the Underwriting Nominating Committee must be endorsed by not less than five percent (5%) of the Underwriting Members, and in the case of a nominee for a Broker Governor or a position on the Broker Nominating Committee, such nominee must be endorsed by 5% of the Broker Members. Any such nominee for a Public Governor must be endorsed by not less than 5% of the members. No member shall endorse more than one (1) nominee for each vacant position on the Board. The petition shall be filed with the Secretary in sealed envelopes within two (2) weeks after the date fixed for the report of the Nominating Committee. The Secretary shall open such envelopes and shall report to the Board of Governors the names of the persons nominated by petition who, if found eligible and, have consented in writing, shall be deemed nominees for such positions.

#### **§ 5. Death, withdrawal or disqualification of nominee**

The death, withdrawal, disqualification, or failure to qualify of a nominee, shall not delay the election of persons to fill all other vacant positions of the Board.

#### **§ 6. Election procedure and proxies**

Promptly after the names of all the nominees for election at the annual meeting of the members have been reported to the Secretary, he shall mail notice of the annual meeting to each member as provided in Section 11 of this Article. With the notice, the Secretary shall furnish a form of proxy, on which the member may designate a person authorized to act thereunder at the annual meeting. The proxy shall list the names of all nominees for election at the annual meeting and shall provide, by boxes or otherwise, means by which a member can designate the nominees for whom votes shall be cast under the proxy. Each proxy shall be signed by the member giving it,

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shall be valid only for a specified meeting and any adjournment of such meeting, shall be revocable at the pleasure of the member executing it and shall be delivered to the Secretary at or before the meeting for which it is given.

**§ 7. Voting rights of Members**

At any meeting of the members of the Exchange, each Broker Member shall be entitled to one vote. The Underwriting Members of the Exchange shall collectively be entitled to a number of votes equal to the total number of votes for the Broker Members. The collective number of votes for the Underwriting Members shall be divided equally among the Underwriting Members.

**§ 8. Voting for Nominating Committee**

Each Broker Member shall be entitled to vote for five (5) persons to be elected to the Broker Nominating Committee and each Underwriting Member shall be entitled to vote for five (5) persons to be elected to the Underwriting Nominating Committee.

**§ 9. Votes required to elect**

(a) The nominees for positions as Underwriting Governors and the Underwriting Nominating Committee shall be declared elected in the order of the highest number of votes received by such nominees.

(b) The nominees for positions as Broker Governors and the Broker nominating committee shall be declared elected in the order of the highest number of votes received by such nominees.

(c) The nominees for positions as Public Governors shall be declared elected in the order of the highest number of votes received by such nominees.

(d) In the case of a tie vote, the names of the nominees involved shall be referred to the existing Board of Governors who shall make a selection by majority vote of the Governors, excluding any Governor involved in the tie.

**§ 10. Quorum of Members**

Members representing, in person or by proxy, a majority of the votes entitled to be cast by all members shall constitute a quorum at any meeting of the members for transaction of any business, but the

members represented may adjourn any meeting despite the absence of a quorum.

### § 11. Special meeting of the Members of the Exchange

(a) A special meeting of the Members may be called at the request of three (3) members of the Board, or by a petition filed with the Board by ten percent (10%) of the Underwriting Members, or ten percent (10%) of the Broker Members.

(b) Written notice of any special meeting shall be given, stating the place, date and hour of the meeting and shall indicate that it is being issued at the discretion of a person or persons calling the meeting. Notice of a special meeting, (including any such meeting to be held in conjunction with the annual meeting) shall also state the purpose or purposes for which it is called. The Secretary shall mail a copy of the notice of any meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting to each person who is a Member on the day the notice is mailed and shall deliver a copy to each person, firm, corporation, or other entity becoming a Member thereafter, but prior to the meeting or any adjournment thereof.

(c) When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and, at the adjourned meeting, any business may be transacted that might have been transacted on the original date of the meeting.

### § 12. Presiding officer

At any meeting of the Members, the Chairman of the Board shall serve as presiding officer. If neither the Chairman, nor any other person authorized to act for the Chairman is present, the Members present at such meeting, in person and by proxy, shall appoint a Presiding Officer for the meeting.

### § 13. Annual report

At the annual meeting of the Members in each year, the Board of Governors shall present a report on the operations to the Exchange for the preceding fiscal year. The annual report shall be filed with the records of the Exchange and either a copy or an abstract thereof shall

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be entered in the minutes of the proceedings of the annual meeting of the Members.

**ARTICLE VII  
MEMBERSHIPS**

**§ 1. The Membership of the Exchange shall consist of Underwriting Members and Broker Members**

(a) Underwriting Member. An Underwriting Member shall be an underwriting syndicate authorized by the Board to insure or reinsure risks as the "member" of the Exchange contemplated by Section 425-a of the New York Insurance Law and related provisions of the laws of the State of New York *or an Underwriting Syndicate which has placed risks on the Exchange*. Each Underwriting Member shall agree as a condition of membership to underwrite risks utilizing only Exchange Contracts as set forth in Article IX Section 1.

(b) Broker Member. A Broker Member shall be a person, firm, corporation, or other entity who or which is: (A) an insurance agent, licensed as such pursuant to the provisions of Section 113 or Section 115 of the New York Insurance Law; (B) an insurance broker, licensed as such pursuant to the provisions of Section 119 of such law; or (C) a reinsurance intermediary, licensed as such pursuant to the provisions of Section 122-a of the New York Insurance Law. In addition to these licensing requirements, a Broker Member licensed as a natural person under any of the above provisions or, in the case of a firm, corporation, or other entity, a sublicensee under Sections 113, 115 or 119, or a natural person authorized to set as a reinsurance intermediary under Section 122-a shall have been actively engaged in the insurance or reinsurance business as a principal occupation for no less than three years preceding the date of application for membership.

**§ 2. Associate Broker**

An Associate Broker shall be a person, firm, corporation, or other entity who or which is: (A) an insurance agent, licensed as such pursuant to the provisions of Section 113 or Section 115 of the New York Insurance Law; (B) an insurance broker, licensed as such pursuant to the provisions of Section 119 of such law; or (C) a reinsurance intermediary, licensed as such pursuant to the provisions of Section 122-a of the New York Insurance Law. In addition to these

licensing requirements, an Associate Broker licensed as a natural person under any of the above provisions or, in the case of a firm, corporation, or other entity, a sublicensee under Sections 113, 115, or 119, or a natural person authorized to act as a reinsurance intermediary under Section 122-a shall have been actively engaged in the

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insurance or reinsurance business as a principal occupation for no less than three years preceding the date of application. An Association Broker shall be permitted to transact business on the Exchange through a Broker Member or, upon certification to the Board that the placement is solely for his own account, may place business directly with an Underwriting Member. The form and content of the certification shall be determined by the Board.

An Associate Broker shall not be a member of the Exchange and shall not be entitled to vote on any matter.

### **§ 3. Subscriber**

Any person, firm, corporation or other organization may become a subscriber of the Exchange provided that the applicant is approved by the Board and pays such initiation fees and annual dues as determined by the Board.

Subscribers shall not be Members of the Exchange and shall not be entitled to vote, initiate transactions or otherwise do business on the Exchange. As determined by the Board, Subscribers shall be permitted on the floor of the Exchange and shall be entitled to other privileges.

### **§ 4. Application Committees**

The Board of Governors shall establish two committees, one to rule on applications for Underwriting Memberships and one to rule on applications for Broker Memberships, Associate Brokers, and Subscribers. The appropriate Committee shall receive and review all applications and forward them, together with its recommendation, to the Board. In passing upon the proposed applications, each committee shall consider the financial condition, the trustworthiness, the professional and character qualifications of the applicant and the source of funds and assets of the applicant.

### **§ 5. Qualification to be Broker Member or Associate Broker**

Each Broker Member or Associate Broker shall meet the requirements set forth in Section 1(b) of this Article, and shall complete such forms and meet such standards, including reporting requirements, and other qualifications as the Board or the membership committee may prescribe. Each Broker Member or Associate Broker shall maintain a principal office in New York State, and shall only be allowed to place on the Exchange the same kind or kinds of business that the

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Broker Member or Associate Broker is licensed to place pursuant to the New York Insurance Law.

All Broker Members and Associate Brokers shall demonstrate their financial responsibility by either furnishing a bond in an amount to be determined by the Board or providing a financial statement acceptable to the Board.

Each Broker Member and Associate Broker shall agree to pay a share of the expenses of operating the Exchange, including the costs of the Exchange's facilities, as may be assessed to that Broker Member and Associate Broker from time to time by the Board. The initiation fee for a Broker Member shall be \$10,000 and the annual dues shall be such amounts as are specified from time to time by the Board. The annual dues for an Associate Broker shall be \$1,000.

**§ 6. Qualifications to be an Underwriting Member**

Any Underwriting Member approved for membership prior to July 1, 1985 shall provide an initial paid in capital and surplus of \$3,550,000 and thereafter maintain a minimum policyholder surplus of \$2,200,000 in order to be permitted to write all kinds of insurance other than Life Insurance and Annuities or alternatively Life Insurance Annuities and Accident and Health Insurance. Any Underwriting Member approved for membership on or after July 1, 1985 shall provide an initial paid in capital and surplus of \$5,000,000 and thereafter maintain a minimum policyholder surplus of \$3,000,000 in order to be permitted to write all kinds of insurance other than Life Insurance and Annuities or alternatively Life Insurance Annuities and Accident and Health Insurance.

Any Underwriting Member approved for membership prior to July 1, 1985 shall provide an initial paid in capital and surplus of \$6,550,000 and thereafter maintain a minimum policyholder surplus of \$3,300,000 in order to be permitted to write all kinds of insurance. Any Underwriting Member approved for membership on or after July 1, 1985 shall provide an initial paid in capital and surplus of \$10,000,000 and thereafter maintain a minimum policyholder surplus of \$6,000,000 in order to be permitted to write all kinds of insurance. Except for that portion of the paid in capital and surplus which shall be maintained for the Security Fund pursuant to Article XIII, Section 4, the paid in capital and surplus shall be invested by the Underwriting Member, in a manner consistent with the New

York Insurance Law for the kinds of insurance and reinsurance written by the Underwriting Member. Each Underwriting Member shall maintain in New York State, a principal office for the transaction of business on the Exchange.

Each Underwriting Member shall agree to pay a share of the expenses of operating the Exchange, including the costs of the Exchange's facilities, as may be assessed to that member from time to time by the Board. The initiation fee shall be \$10,000 and the annual dues shall be such amounts as are specified from time to time by the Board.

### **§ 7. Approval by the Board**

The Board must approve any applicant in order for that applicant to become an Exchange Member, Associate Broker or Subscriber. The Board of Governors may refuse to approve such application for membership if, in its judgment, the applicant or any affiliated person is not trustworthy.

The Board may reinstate any Member, Associate Broker or Subscriber on such terms and conditions as the Board may specify.

### **§ 8. Non-payment of fees and dues**

If a Member, Associate Broker or subscriber does not pay the required dues, fees, assessments, and surcharges imposed by the Board of Governors, the Board may suspend or expel that Member, Associate Broker, or Subscriber from the Exchange.

### **§ 9. Signing Constitution**

No person, firm, corporation, or other entity approved as a Member, Associate Broker or Subscriber on the Exchange shall be entitled to the rights and privileges thereof until the individual, or an authorized representative of the Member, Associate Broker, or Subscriber has signed the Constitution. By such signature the Member, Associate Broker, and the Subscriber agrees to abide by the Constitution as amended from time to time, and by all Rules adopted pursuant to the constitution.

In like manner, each person elected to the Board of Governors shall sign the Constitution and thereby agree to abide by the Constitution, as amended from time to time, and by all Rules adopted pursuant to the Constitution.



**ARTICLE VIII  
WITHDRAWAL, DISSOLUTION AND REHABILITATION**

**§ 1. Voluntary withdrawal**

At any time a Member may petition the Board for a voluntary withdrawal. The petition shall include a plan which provides for the assumption or satisfaction of all claims and outstanding obligations incurred as a Member of the Exchange. No withdrawal from the Exchange shall be effective until the petition is granted by the Board. Pending approval of the petition by the Board, the Member shall continue to be responsible for the conduct of business as a Member.

**§ 2. Involuntary withdrawal or rehabilitation**

Upon petition by any member or on its own petition, the Board may, upon a vote of two-thirds of the governors in office, order the involuntary withdrawal or rehabilitation of any Member on such terms and conditions, as the Board may specify upon a showing that such Member:

- (a) is impaired or insolvent;
- (b) has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the Board;
- (c) has failed or refused to comply, within the time designated, with an order of Board issued pursuant to Section 2 of Article XI;
- (d) has, by contract of reinsurance or otherwise, transferred substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or in the property or business of any other individual, firm, corporation or entity, without having first obtained the written approval of the Board;
- (e) is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to the public;
- (f) has willfully violated this Constitution, Rules of the Exchange or any law of New York;
- (g) has an officer or principal who has refused to be examined under oath concerning its affairs;

(h) has become the subject of any procedure for liquidation, or bankruptcy;

(i) has failed to qualify or maintain its qualification as a Member.

### **§ 3. Rights upon withdrawal or rehabilitation**

(a) Upon the granting of a petition for voluntary withdrawal or an order for involuntary withdrawal by the Board, a Member shall no longer have the right to vote nor, absent prior approval by the Board, conduct any business on the Exchange.

Upon an order for rehabilitation by the Board, a Member shall, absent prior approval by the Board, no longer have the right to vote nor to conduct any business on the Exchange.

### **§ 4. Investigation**

The Board shall have the power to conduct an investigation of the accounts and operations of any Member who is in the process of a voluntary withdrawal, involuntary withdrawal, or rehabilitation. Any Member subject to such an investigation or any affiliated person of such Member shall submit to the Board all books, records, and accounts relating to the Exchange as requested by the Board. The Board may require further that a Member, its employees, or affiliated persons appear and testify in connection with any investigation conducted pursuant to this Section.

### **§ 5. Funds for rehabilitation**

The Board's power to borrow money under Article II, Section 1 shall include but not be limited to the power to borrow for the purpose of rehabilitation of a Member.

### **§ 6. Certificate of fitness**

Upon a showing that an impairment has been corrected or a rehabilitation completed, the Board shall direct the return of the Member to its own management; and issue a certificate of fitness.

### **§ 7. Liquidation**

At any time the Board may petition the Superintendent to liquidate a member in accordance with Article XVI of the New York Insurance Law. The liquidator shall dispose of all of the assets of the member in

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accordance with Article II, Section 14, before certifying the appropriate claims for payment by the Exchange's Security Fund. In the event of the liquidation of any Broker Member, Underwriting Member or the Exchange itself, the provisions of Article XVI of the New York Insurance Law shall apply and the Superintendent shall act as liquidator.

**ARTICLE IX  
PLACEMENT OF BUSINESS**

**§ 1. Exchange contracts**

(a) An Exchange contract shall:

(i) provide only for the kinds of direct insurance and reinsurance permitted under Section 425-a (1) (a) (*i-iv*) of the New York Insurance Law;

(ii) be issued in the name and for the account of those Underwriting Members which have subscribed to the risk being insured or reinsured; and

(iii) be subject to this Constitution and rules promulgated hereunder by the Board.

(b) The terms and conditions of Exchange contracts shall be determined by the Underwriting Member or Members which are subscribing to insure or reinsure the risk covered by the contract.

(c) An Exchange contract shall be in a form established by the Board.

(d) In no event shall the Exchange be a party to an Exchange contract or have any liability thereunder.

**§ 2. Restraints on certain transactions**

No member shall place or insure any risk exempted from filing requirements under Section 168-d of the New York Insurance Law until the risk covered by such transaction has been lawfully certified as rejected business by the Committee of insurers licensed under that Section.

**§ 3. Underwriting Manager**

Each Underwriting Member shall designate an Underwriting Manager who shall accept risks on behalf of the Underwriting Member

and have sole binding authority for said Underwriting Member. The designation of an Underwriting Manager shall be filed with the New York Insurance Exchange in a Register of Approved Underwriting Managers. The binding of a policy of insurance or reinsurance shall be evidenced by the signature of a natural person to whom such binding authority has been delegated by the Underwriting Manager. The designation of the Underwriting Manager of those natural persons granted binding authority shall be filed with the New York Insurance Exchange in a Register of Approved Deputies. An Underwriting Manager, and its deputies, may act in such capacity for more than one Underwriting Member. The Underwriting Manager and the natural person to whom binding authority has been delegated by the Underwriting Manager must have their principal offices for the purpose of conducting business on the Exchange in New York State. The Board of Governors shall promulgate Rules governing the standards for including Underwriting Managers and Deputies in their respective registers.

#### § 4. Placement through Brokers

All placement of business on the Exchange must be made through a Broker Member or an Associate Broker, except transactions between Underwriting Members and retrocessions off the Exchange by Underwriting Members.

### ARTICLE X CENTRAL PROCESSING FACILITY

#### § 1. Central Processing Facility established

[The Board of Governors shall establish a Facility within the Exchange for the centralized receipt and distribution of all monies due to Underwriting Members on contracts of insurance and reinsurance issued by such Members. The Facility shall provide recordkeeping, data collection, and statistical compilation of all insurance and reinsurance transactions involving a Member or Associate Broker. It is the purpose of this Facility to provide an administrative and ministerial function.]

*The Board shall determine, in its sole discretion, the processing facilities it will provide, the records it will keep, and the monies it will process.*

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**§ 2. Receipt of premiums and reporting of transactions**

(a) *Unless otherwise directed by the Board*, the Underwriting Members agree, as a condition of membership, that all monies due on contracts of insurance and reinsurance issued by such Members of the Exchange, shall be payable to the Exchange and disbursed directly to the Facility for recording and distribution.

(b) *Unless otherwise directed by the Board*, the Broker Members agree as a condition of membership and the Associate Brokers agree as a condition of transacting business on the Exchange that all monies due Underwriting Members with respect to contracts of insurance or reinsurance shall be remitted to the Facility not of commissions and other charges.

(c) *Unless otherwise directed by the Board*, the Members agree as a condition of membership and the Associate Brokers agree as a condition of transacting business on the Exchange that all transactions of business on the Exchange will be reported concurrently to the Facility.

**§ 3. Management of the Facility**

*Unless otherwise directed by the Board*, the Treasurer shall be responsible for the management and operation of the Facility pursuant to rules adopted by the Board of Governors. All monies received by the Facility shall be immediately transferred to and held in a Premium Trust Account. The Premium Trust Account shall be an interest bearing account and shall be segregated from all other funds of the Exchange.

*Unless otherwise directed by the Board*, the Treasurer, as manager of the Facility, shall keep full and accurate accounts and records of receipts and disbursements of the funds being processed by the Facility and maintain accounting records of all transactions of each Member and Associate Broker. The Treasurer shall file with the President and Board on a monthly basis reports stating the receipts and disbursements of the Facility. The President and the Board may also require any other report from the Treasurer that they deem necessary.

**§ 4. Distribution of premiums**

*Unless otherwise directed by the Board*, immediately upon completion

of recording and processing, the Treasurer shall cause monies due an Underwriting Member and interest earned thereon to be distributed from the premium account to all such members due sums arising from a transaction. The Treasurer shall record the amounts necessary to make such distribution and the basis for the transaction. The Treasurer shall deduct from such distribution the amounts due the Exchange from an Underwriting Member for the Security Fund surcharges levied pursuant to Article XIII and premium taxes due under Section 425-a(4) of the New York Insurance Law.

**§ 5. Rights to audit for compliance**

[The Board shall have authority to audit a Member's or Associate Broker's records and accounts to verify compliance with the reporting and premium transfer requirements of this Article.]

*The Board shall have the authority to audit a Member's or Associate Broker's records.*

**ARTICLE XI  
PROHIBITED CONDUCT**

**§ 1. Acts constituting prohibited conduct**

The following acts by a Member, Associate Broker or affiliated person shall constitute prohibited conduct:

- (a) Fraud.
- (b) Fraudulent or dishonest acts committed by a Member or Associate Broker prior to admission, if the facts and circumstances were not disclosed to the Exchange upon application to become a member or Associate Broker.
- (c) Violation of the Constitution, Rules or Resolutions of the Board of Governors.
- (d) Conduct detrimental to the welfare of the Exchange.
- (e) Unethical practices or conduct inconsistent with just and equitable principles of trade.
- (f) Failure to use due diligence to ascertain the insurance needs of a client or a principal.

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(g) Misstatements made under oath or upon an application for membership on the Exchange.

(h) Failure to testify or produce documents when requested by the Board of Governors under this Constitution.

**§ 2. Penalties**

(a) Any Member or Associate Broker found in a proceeding under Article XII to have engaged in prohibited conduct shall be subject to involuntary withdrawal under Article VIII Section 2, or in addition thereto may be subject to suspension, reprimand, censure and/or fine.

(b) Any Member which has an affiliated person who is found in a proceeding under Article XII to have engaged in prohibited conduct shall be subject to involuntary withdrawal under Article VIII Section 2, or in addition thereto may be subject to suspension, reprimand, censure and/or fine.

(c) Notice shall be given to the Secretary of any penalty imposed under this Article.

(d) Any such suspension, reprimand, censure or fine may be remitted or reduced on such terms and conditions as shall be deemed fair and equitable.

**§ 3. Suspension**

Any Member or Associate Broker suspended under Section 2 of this Article shall be deprived, during the period of suspension, of all rights and privileges of membership or of an Associate Broker, but may be proceeded against by the Board for any offense committed either before or after the date of suspension.

The suspension of any Member or Associate Broker shall create a vacancy in any position held by such Member, Associate Broker or affiliated persons thereof; if such position is created or authorized to be created under this Constitution.

**§ 4. Reinstatement**

Any Member or Associate Broker suspended under this Article may be reinstated at any time on such terms and conditions as the Board may specify.

**§ 5. Remitting of fines**

Fines imposed under this Article shall be remitted to the Treasurer and shall be applied to the general expenses of the Exchange.

**§ 6. Failure to pay fines**

The Treasurer shall report to the Chairman when a Member or Associated Broker has failed to pay a fine for fifteen days after it becomes payable, and such Member shall be suspended, unless the Board shall have granted an extension of time to pay such fine.

**§ 7. Limitation of risk, in general**

Except as otherwise provided in the insurance law, no insurer doing business in this state shall expose itself to any loss on any one

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risk in an amount exceeding ten percent of its surplus to policyholders. Any risk or portion of any risk which shall have been reinsured in an assuming insurer authorized to do such business in this state shall be deducted in determining the limitation of risk prescribed in this section. This section shall not apply to the insurance of marine risks, or marine protection and indemnity risks, or workers' compensation or employer's liability risks, or risks insured for any dollar level of first party benefits provided pursuant to article eighteen of the insurance law, or to certificates of title or guaranties of title or policies of title insurance. For the purpose of determining the limitation of risk under any provision of the insurance law, "surplus to policyholders" shall (a) be deemed to include any voluntary reserves, or any part thereof, which are not required by or pursuant to law, and (b) be determined from the last sworn statement of such insurer on file with the superintendent of insurance pursuant to law, or by the last report on examination filed by the superintendent of insurance whichever is more recent at the time of assumption of such risk. In applying the limitation of risk under any provision of the insurance law to alien insurers, such provision shall be deemed to refer to the exposure to risk and to the surplus to policyholders of the United States branch of such alien insurer.

ARTICLE XII  
AUTHORITY OF BOARD TO CONDUCT DISCIPLINARY  
PROCEEDINGS AND IMPOSE PENALTIES

**§ 1. Authority to adopt rules of procedure**

The Board shall adopt such rules for the handling of complaints, the conduct of and procedure for disciplinary hearings and reviews thereof as it deems necessary and appropriate and may from time to time amend, alter or repeal any rules so adopted. The Board shall have the power to compel testimony and the production of documents in connection with disciplinary matters.

**§ 2. Delegation of powers to hearing panels**

In disciplinary proceedings in which charges are brought against a Member, Associate Broker, or Affiliated Person, the Board may appoint a hearing panel composed of persons who shall not be Governors, with authority to conduct disciplinary proceedings and shall designate a presiding member of any such panel.

**§ 3. Adjournment of hearings and participation in final decision**

Any hearing under this Article may be adjourned, from time to time, by the Board of hearing panel in its discretion.

**§ 4. Disciplinary Procedure**

(a) An accusation, charging a Member, Associate Broker or affiliated person with having engaged in prohibited conduct shall be in writing, it shall specify the charge or charges against such Member, Associate Broker or affiliated person with reasonable detail, it shall be signed by a Member, Associate Broker or Governor making the charge or charges, and filed with the Secretary of the Exchange.

(b) A copy of such charge or charges, together with a copy of any transcript of testimony or other documents which the person or persons making the charge or charges intends to furnish to the Board or committee prior to the hearing of such charge or charges, shall be served upon the accused member or approved person either

(i) personally, or

(ii) by leaving the same during business hours at the office address of such Member, Associate Broker or affiliated person, or

(iii) by mailing such charge or charges to an individual designated by such Member or Associated Broker at the office address of such Member or Associate Broker or,

(iv) in the case of a Member, Associate Broker, or affiliated person who is an individual by mailing it to him at his place of residence.

(c) The accused shall have twenty days from the date of such service to answer the same, or such further time as the Exchange may deem proper. The answer shall be in writing, signed by or on behalf of the accused and filed with the Secretary of the Exchange. The answer shall indicate specifically which statements of alleged fact contained in the charge or charges are denied and which are admitted. Any such statements in the charge or charges not specifically denied shall be deemed to be admitted. The answer shall also contain in reasonable detail any affirmative defense which the accused wishes to submit and shall include any documents which the accused intends to submit in support of the answer.

(d) Upon the answer being filed, or if the accused shall refuse or neglect to make answer as provided in subsection (c), the hearing panel shall, at a hearing called for that purpose, proceed to consider

the charge or charges. Notice of such hearing shall be sent to the accused, who shall be entitled to be personally present thereat if an individual, and if other than an individual, by a designee.

(e) The presiding hearing panel member shall determine the specific facts put into issue by the charge or charges and the answer, and with respect to those facts only, the person or persons making the charge or charges may produce witnesses and other evidence and the accused may examine and cross-examine any witnesses so produced; the accused may also present such testimony or other evidence with respect to the facts so designated by the presiding hearing panel member as well as such testimony, defense or explanation as the accused may deem proper with respect to the charge or charges. Any witnesses produced by the accused shall be subject to cross-examination.

(f) After hearing all the witnesses and the accused, if the accused desires to be heard, the Board or Committee shall determine whether the accused has engaged in prohibited conduct. If a majority of the hearing panel shall determine that the accused has engaged in prohibited conduct, the panel shall fix and impose the penalty and a written notice of the result shall be served upon the accused in the manner provided in the subsection (b).

(g) The determination of the hearing panel and any penalty imposed shall become final and conclusive twenty days after notification thereof to the accused, provided, however, that if a request for review of such determination or penalty, or both, is filed as provided in Section 5 the penalty shall be stayed pending the outcome of such review.

#### § 5. Review procedure

(a) Any party to a proceeding under this Article or any Governor may request a review by the Board of any determination or penalty, or both when made or imposed by a hearing panel.

(b) A request for review shall be made by filing with the Secretary a written request therefor, within twenty days after after notification of the determination and penalty, if any, is given to the accused.

(c) Upon review, the Board, by the affirmative vote of a majority of the Governors then in office, may sustain any determination or penalty imposed, by a hearing panel, may modify or reverse any such penalty, or impose any penalty permitted under the provisions of this

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Article, as it deems appropriate. The determination and penalty, if any, of the Board after review shall be final and conclusive.

**§ 6. Summary procedure**

The Board may impose the penalty of suspension of a Member or Associate Broker for not more than five (5) days or a fine of not exceeding \$25,000.00 dollars or such lesser penalty as the Board may determine, in a proceeding in which the Member or Associate Broker has been summoned before the Board, informed of the nature of the accusation, and afforded an opportunity for explanation. In such a case the procedure required by Section 4 shall not apply.

**§ 7. Stipulation and consent to penalty**

(a) The Board may adopt rules and procedures for determining whether on the basis of a written stipulation of facts and consent to a specified penalty any Member, Associate Broker, or affiliated person has committed prohibited conduct. In any such case, the Board may fix and impose the penalty agreed to in such stipulation and consent or any lesser penalty, or reject such consent, and a written notice of the result shall be served upon the member, Associate Broker or affiliated person in the manner provided in Section 4(b). The determination of the Board and any penalty imposed shall become final and conclusive twenty days after notification thereof to the Member, Associate Broker or affiliated person.

(b) If the Board rejects the stipulation and consent to a specified penalty, the matter shall proceed as if the stipulation and consent shall be disregarded in any subsequent proceeding. A written notice of such rejection by the Board shall be served upon the Member in the manner provided for in Section 4(b).

**§ 8. Professional counsel**

A Member, Associated Broker, or affiliated person shall have the right to be represented by legal or other counsel in any hearing and review thereof held pursuant to the provisions of this Article and in any investigation before any hearing panel, committee, officer or employee of the Exchange authorized by the Board.

**§ 9. Retention of jurisdiction**

(a) If, during the period of one year immediately following the withdrawal of a Member or an Associate Broker, the Secretary of the

Exchange gives written notice to such former Member or Associate Broker that the Exchange is making inquiry into any specified matter or matters occurring prior to the termination of the withdrawal, the Board, or any committee, officer or employee of the Exchange authorized thereby, may thereafter require members or an Associate Broker to submit books, records and accounts including those of affiliated persons, relating to the matter or matters specified in such notice, or to furnish information, or appear and testify, with respect to any such matter.

(b) If, following the withdrawal of a Member or an Associate Broker, such notice is given, the former Member or Associate Broker may be charged with having refused or failed to comply with any such requirement or, as a result of the inquiry into the matter specified in such notice, may be charged with having committed, prior to the termination of status as a Member or Associate Broker, any other offense with which such former Member, Associate Broker might have been charged had the Member or an Associate Broker not withdrawn. Any charge against a former Member or Associate Broker may be brought and determined as provided in this Article in the case of a Member or Associate Broker.

(c) Whenever it is determined in accordance with the procedures specified in this Article that any such former Member or Associate Broker is guilty of the prohibited conduct, such former Member or Associate Broker may be fined not exceeding \$25,000.00 and may be barred from being a Member or Associate Broker:

(i) permanently, or

(ii) on such terms as the Board may determine.

#### **§ 10. Security Interest for fines and penalties**

The Exchange shall have a security interest in all funds, securities, and monies held by it on the account of a Member or Associate Broker, in the premium account or otherwise, to the extent of all fines and penalties imposed against such Member or Associate Broker under this Constitution. Such security interest shall be extinguished to the extent of the payment of the fine or penalty.

Upon termination of a membership or the authority of an Associate Broker, the funds, securities, and monies subject to such security interest shall be applied by the Exchange against outstanding fines

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and penalties which shall be deemed satisfied to the extent of such application.

The failure of an Underwriting Member to pay fines and penalties shall be deemed to be the failure of such Member to satisfy all obligations under Article XIII, Section 4B.

**ARTICLE XIII  
SECURITY FUND**

**§ 1. Creation, Title and Purpose**

The Exchange shall establish a not-for-profit corporation to be known as the NYIE Security Fund, Inc. ("Security Fund") or such other name as the Board of Governors may approve whose Certificate of Incorporation, By-Laws and Plan of Operations shall be consistent with this Article. The purpose of the Security Fund shall be to protect owners of policies issued by any Underwriting Member through the facilities of the Exchange in accordance with and subject to the limitations contained in this Article, to assist in the detection and prevention of insolvency of Members, and to carry out any other appropriate activities in aid of such purposes.

**§ 2. Definitions**

For purposes of this Article, except where the context otherwise requires:

A. "Security Fund" shall mean the "NYIE Security Fund, Inc." or such other Corporation as is established to carry out the objects of this Article.

B. "Deposit Fund" shall mean the aggregate of the Deposits of all Underwriting Members pursuant to Article XIII, Section 4, less disbursements and withdrawals therefrom.

C. "Surcharge Fund" shall mean the Aggregate of sums collected pursuant to Article XIII, Section 5, together with all investment income thereon and other additions thereto, less disbursements therefrom.

D. "Aggregate Fund" shall mean the total of the Deposit Fund and the Surcharge Fund.

E. "Insolvent Underwriting Member" shall mean an Underwriting

Member which is or has been duly authorized to underwrite insurance business on the Exchange, and which has been determined to be insolvent by the Board of Governors.

F. "Contractual Obligation" shall mean a claim, which arises out of and is within the coverage, and is not in excess of the applicable limits of a policy, but shall not include (i) claims for unearned premium, dividends, or retrospective rate credits, or (ii) punitive, exemplary or consequential damages. A Contractual Obligation shall be regarded as "Unpaid" if certified by the Superintendent as remaining unpaid after the application of the Insolvent Underwriting Member's capital surplus and other assets (including its Initial Deposit) in satisfaction of its outstanding Contractual Obligations pursuant to Article II, Section 14.

G. "Policy" shall mean an insurance policy or contract, a reinsurance policy or contract and endorsements providing insurance or reinsurance issued by an underwriting member through the facilities of the Exchange in accordance with Section 425(a) (1) of the New York Insurance Law, and the Constitution, By-Laws and Rules of the Exchange.

H. "Board of Directors" shall mean the Board established pursuant to Section 9 of this Article.

I. "Initial Deposit" shall mean the \$500,000 required by Section 4 of this Article.

### § 3. Membership

The membership of the Security Fund shall consist solely of the Underwriting Members. Each Underwriting Member shall become and remain a member of the Security Fund as a condition of its authority to transact business on the Exchange.

### § 4. Initial Deposit and Deposit Fund

A. Each Underwriting Member shall place on deposit with the Exchange, or a bank or trust company designated by the Board of Governors \$500,000 in cash or secured by bonds or other evidences of indebtedness of the United States of America or any of its agencies when such obligations are guaranteed as to principal and interest by the United States of America, having par and market value of at least \$500,000. Each such deposit shall be subject to this Article, the Plan of Operations of the Security Fund, and rules and resolutions of the

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Board of Directors and shall be applied by the fund only against contractual obligations. Except as it may be utilized pursuant to this Article, or called upon pursuant to any provision of this Constitution, each Underwriting Member's Initial Deposit, and income thereon shall be the property of such Underwriting Member, and shall be considered part of its capital and/or surplus. However, no Underwriting Member may pledge or encumber its Initial Deposit.

B. Except to the extent it may have been utilized, called upon or otherwise determined to be necessary or appropriate for payment of unpaid contractual obligations by the Security Fund, an Underwriting Member's Initial Deposit shall be released to the Underwriting Member if and when it withdraws from The Exchange, or its authority to conduct business is terminated by the Exchange, but only after the Security Fund is satisfied that all such Member's liabilities have expired and all its Contractual Obligations, including those for incurred but not reported claims, and all its other obligations, relating to the Exchange, have been duly discharged. The Board of Directors may accept, in lieu of proof of no remaining obligations, an agreement with other Underwriting Members or acceptable reinsurers to assume all outstanding obligations relating to the Exchange of the withdrawing Underwriting Member.

**§ 5. Premium surcharge and Surcharge Fund**

To provide further financial strength to achieve the objectives of the Security Fund, the Board of Governors shall levy a surcharge on premiums on policies written by the Underwriting Members through the facilities of the Exchange. The rate of premium surcharge shall be fixed from time to time by the Board of Governors of the Exchange at not more than five percent. No member of the Exchange shall have or may claim any right in the Surcharge Fund or its payments thereto. Pursuant to Article X, Section 4, the Board of Governors shall cause the amounts collected thereunder to be disbursed to the Security Fund.

**§ 6. Obligations of Security Fund**

*A. Payment or Other Protection.* Subject to the limitations of Sections 7 and 8 and to such reasonable terms and conditions as the Board of Directors may prescribe, the Security Fund shall make payment of the unpaid Contractual Obligations of the Insolvent Underwriting Member existing as at the determination of insolvency, or which arises thereafter until the earliest of (i) the expiration date of the



policy, (ii) the effective date of any replacement policy obtained by the policyholder, (iii) the effective date of cancellation of the policy, or (iv) 30 days after the determination of insolvency or such longer period as the Board of Directors may determine. The Board of Directors may in its discretion cause one or more policies of an Insolvent Underwriting Member to be guaranteed, assumed or reinsured, or replaced by substantially similar policies of other Underwriting Members or insurers or reinsurers acceptable to the Board of Directors.

*B. Cooperation.* Every insured or claimant seeking benefits from or protection of the Security Fund shall be required to cooperate fully with the Security Fund and its designees as a condition precedent to any obligation of the Security Fund to such insured or claimant.

*C. Assignment of Rights.* Any person or firm receiving benefits from the Security Fund shall be deemed to have assigned its rights under the policy to the Security Fund to the extent of the benefits received, whether the benefits are payments of Contractual Obligations or a continuation of coverage. The Security Fund may require an assignment to it of such rights as a condition precedent to any obligations on its part.

*D. Nonduplication of Recovery.* Any person or firm making a claim against the Security Fund and having the same claim against any insurer under any provision in any insurance policy or contract or reinsurance policy or contract, must first exhaust his right under such policy or contract. The amount payable on a covered Contractual Obligation by the Security Fund shall be reduced by the amount of any recovery under such policy or contract. Any person making a claim against the Security Fund and having the same claim on a primary policy which may be recovered under any other insurance guaranty fund of similar entity shall seek recovery first from said other guaranty fund or entity on the primary claim.

#### **§ 7. Use of funds and aggregate limitations on liability of Security Fund**

*A. Use of Funds.* Obligations of the Security Fund shall first be paid from the Surcharge Fund, to the fullest extent practicable. In the event that the Board of Directors determines that the Surcharge Fund is, or is likely to be, insufficient to satisfy the obligations of the Security Fund it shall notify the Exchange and the bank or trust company, if any, holding the Deposit Fund, to transfer from the Deposit Fund to the Security Fund (or such account as the Security

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Fund may cause to be established for that purpose) on an equal basis so much or all of the Deposit Fund, as it deems necessary or appropriate to reasonably assure that the Security Fund will be able to meet its obligations.

*B. Aggregate Limit.* Under no circumstances shall the Security Fund be obligated with respect to the Contractual Obligations of one or more Insolvent Underwriting Members in excess of the Aggregate Fund existing as at the date of a determination of insolvency by the Board of Governors. If there shall be one or more determination of insolvency within 90 days of another determination of insolvency, the Board of Directors shall endeavor to treat claimants on account of every Insolvent Underwriting Member determined to be insolvent within such 90 day period as if all insolvencies occurred at the same time. If the Board of Directors shall determine the assets of the Aggregate of the Security Fund are or are likely to be insufficient, the Board of Directors shall notify the Exchange and the Superintendent.

*C. Manner of Payment.* The Security Fund shall pay unpaid Contractual Obligations in whole or on a pro rata basis as the Board of Directors deem reasonable, including the payment of unpaid Contractual Obligations as received from the claimants or in groups or categories.

**§ 8. Other limitations**

*A. Contractual Obligations in Excess of Underwriting Limits.* Notwithstanding anything to the contrary in this Article, the Security Fund shall have no obligation and shall make no payment of any Contractual Obligation on any one risk to the extent it exceeds 10% of the Insolvent Underwriting Member's surplus to policyholders as reflected on the last sworn annual or quarterly statement of the Insolvent Underwriting Member filed with the Exchange prior to issuance of the policy.

*B. 10% Owners and Controlling Persons.* Notwithstanding anything to the contrary in this Article, under no circumstances shall the Security Fund have any obligation or make any payment on account of the Insolvent Underwriting Member either to, or which inures to the benefit of, any person or firm which at the time the policy was issued (or renewed) or within 90 days of the date the Insolvent Underwriting Member was determined to be insolvent, directly or indirectly

owned ten (10%) percent or more of or controlled such Insolvent Underwriting Member.

*C. Unreasonable Insurance Practices.* If the Security Fund shall find that at the time a policy was issued by the Insolvent Underwriting Member the premium or payment established for such policy was grossly disproportionate to the benefits provided thereunder, or any term or condition of such policy was grossly unsound, in each case based upon reasonable and customary insurance practices and assumptions, upon appropriate notice to the Board of Governors of the Exchange and the owners of or claimants under the policies proposed to be affected, the Security Fund may limit its obligations under this Article to those which the Security Fund has found would have been reasonable based upon the premium or payments made, or to what would have been reasonable and customary terms and conditions, subject to confirmation of such finding by a panel of arbitrators in accordance with Article XIV. The finding of the Security Fund shall be entitled to prima facie weight in such arbitration proceeding.

*D. Voidable Transactions.* Every transaction of an Insolvent Underwriting Member shall be voidable upon a showing that such transaction was made with intent to hinder, delay, or defraud either then existing or future claimants against the Insolvent Underwriting Member, or the Security Fund.

#### **§ 9. Board of Directors**

There shall be a Board of Directors of the Security Fund consisting of five persons elected by the members of the Security Fund. No person may serve at the same time as a Director of the Security Fund and as a member of the Board of Governors. The Directors of the Security Fund shall serve terms established by the By-Laws of the Security Fund. Vacancies on the Board of Directors shall be filled as provided in the By-Laws and Plan of Operations.

#### **§ 10. Indemnification of the Board of Directors**

The Board of Directors, officers, and agents of the Security Fund shall be indemnified and held harmless for any and all costs and expenses, including attorneys fees, actually and necessarily incurred by or imposed on them in connection with or resulting from any claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, or any appeal therein, in which they may be or

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become involved or with which they may be threatened, as a party or otherwise by reason of now or hereafter being or having heretofore been a Director of the Security Fund, or by reason of alleged acts or omissions as a Director, whether or not they continue to be such at the time such costs and expenses shall have been incurred, to the fullest extent permitted under Sections 721 to 726 of the New York Not-For-Profit Corporation Law, as amended from time to time, and may exercise those powers provided in Section 727 of said law. The expense of such indemnification shall be asserted against the Surcharge Fund. The rights of indemnification provided in this section shall inure to the benefit of the heirs, executors, administrators, or legal representatives of the persons covered thereby. Members of the Board of Directors shall be considered to be serving as Directors at the request of the Exchange.

**§ 11. Tax exemption**

The Security Fund shall do all things reasonable and necessary to qualify as exempt from payment of all taxes levied by the United States and the State of New York or any of its subdivisions, to the fullest extent practicable.

**§ 12. Powers of Security Fund**

In addition to the powers and duties otherwise provided for in this Article the Security Fund shall have and may exercise all other powers and authority available to it under the Not-For-Profit Corporation Law, including without limitation, power to:

1. Investigate claims brought against the Security Fund and adjust, compromise, settle and pay unpaid contractual obligations to the extent of the Security Fund's obligation, deny all other claims and review settlements, releases and judgments to which the Insolvent Underwriting Member or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested.

2. Handle claims through its agents or employees or through one or more persons or firms as it may designate, with the consent of such other person(s) or firm(s).

3. Reimburse each person or firm performing services for Security Fund.

4. Invest the Surcharge Fund.

5. Employ or retain such persons as are necessary to handle claims and perform other duties of the Security Fund.
6. Borrow funds as necessary to effect the purposes of the Security Fund in record with the By-Laws and Plan of Operations.
7. Sue or be sued.
8. Petition the Board of Governors to declare an Underwriting Member insolvent or impaired.
9. Recommend to the Board of Governors persons to be examining authorities for compliance with Article II, Section 7.
10. Negotiate and become a party to such contracts as are necessary to carry out the purpose and goal of the Security Fund.
11. Perform such other acts as are necessary or proper to effectuate the purpose and goal of the Security Fund.

### § 13. Plan of operations

The Board of Directors shall prepare a Plan of Operations, and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the Security Fund. The Plan of Operations and any amendments thereto shall become effective upon approval by the Board of Directors after members of the Security Fund shall comply with the Plan of Operations which, without limitation, shall:

1. Establish the procedures to implement the powers and duties of the Security Fund.
2. Establish procedures for handling and investing assets of the Security Fund in a manner limited to investments for Life Insurance companies under the Laws of the State of New York.
3. Establish the amount and method of compensating or reimbursing members of the Board of Directors.
4. Establish procedures by which claims may be filed with the Security Fund and establish acceptable forms for proof.
5. Establish procedures for records to be kept of all financial transactions of the Security Fund, its agents and the Board of Directors.
6. Provide for payments of the reasonable and necessary administrative expenses of managing the Security Fund and conducting its

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affairs from the assets of the Surcharge Fund, subject to review and approval by the Board of Directors.

7. Provide for borrowing of monies for the benefit of the Security Fund and evidence such borrowing by issuing bonds, notes, or other evidences of indebtedness; and to secure payment of the principal, interest, or premium on such indebtedness, may pledge all or part of the Surcharge Fund's assets on deposit on the date of such borrowing.

**ARTICLE XIV  
ARBITRATION**

**§ 1. Controversies arbitrated**

Any controversy between members or Associate Brokers and any controversy between a non-member and a Member or Associate Broker arising out of the Business of such Member or Associate Broker shall at the instance of such non-member, be submitted for arbitration in accordance with the provisions of the constitution and the arbitration rules of the Board.

**§ 2. Procedure and costs**

The Board shall adopt rules governing the procedure for arbitration through the facilities of the Exchange, which, among other matters, shall fix the maximum amount chargeable to the parties as costs to cover the expense of the hearings, shall include the fees of the Arbitrators, the initiation of proceedings, representation by attorneys, appointment of arbitrators, time and place of hearing, procedures at hearings, amendments to claim or counterclaims, adjournments, awards, notice and communications, and other related matters. The Board may from time to time amend, alter or repeal any rule so adopted.

**§ 3. Arbitration Director**

The Chairman of the Board, subject to the approval of the Board of Governors, shall designate one of the officers or other employees of the Exchange as Arbitration Director, and may also designate an employee of the Exchange as Assistant Arbitration Director, to act in the absence or inability to act of the Arbitration Director. The Arbitration Director shall be charged with the duty of performing all

ministerial duties in connection with matters submitted for arbitration pursuant to this Article.

#### § 4. Arbitrators

(a) *Board of Arbitration.* Promptly after the annual meeting of the Members, the Chairman of the Board shall appoint, subject to the approval by the Board, a Board of Arbitration to be composed of persons who are not Governors to serve at the pleasure of the Board or until the next annual meeting.

(b) *Selection of Arbitrators.* Each dispute shall be decided by a panel of three arbitrators. Each party to an arbitration under this Article shall select one arbitrator from the Board of Arbitration, and they in turn will select the third arbitrator from the Board of Arbitration to complete the panel.

(c) *Power to decline use of facilities.* The Board of governors may deny arbitration through the facilities of the Exchange in their discretion.

(d) *Dismissal of proceedings; assessment of costs.* The Arbitrators in any case may at any time during the proceedings, and shall upon the joint request of the parties thereto, dismiss the proceedings and refer the parties to their remedies at law. In any arbitration proceeding, whether involving a member controversy or a non-member controversy, the Arbitrators may determine, subject to the arbitration rules of the Board, the amount chargeable to the parties, as costs to cover the expense of the hearings, and, upon the determination of such controversy, shall determine by whom such costs shall be borne.

(e) *No right of appeal.* There shall be no appeal to the Board of Governors from a decision of the Arbitrators in any arbitration proceeding.

#### ARTICLE XV EMERGENCY BY-LAWS

#### § 1. Emergency Board

The provisions of this Article constitute emergency by-laws under Sub-division 17 of Section 12 of the New York State Defense Emergency Act,<sup>1</sup> as amended. In the event that an attack as defined under such Act occurs and the New York State Defense Council order the effectiveness of emergency by-laws of New York Corporations, then, notwithstanding any provision of any of the other Articles of the

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Constitution or of the Board, all the rights, powers and duties of the Board shall immediately vest in an Emergency Board of Governors and continue to be so vested until the New York State Defense Council declares the end of the period of attack.

**§ 2. Meetings**

In the event of such an attack, as a result of which no person otherwise empowered to call meetings of the Board is capable of acting, a meeting of the Board may be called by a governor or if no Governor is capable of setting, by any officer.

If it shall be impracticable or impossible to give notice of a meeting of the Board in the manner prescribed by this Constitution other than this Article, the person calling such a meeting may give notice thereof by making such reasonable efforts as circumstances may permit to notify each Governor of the time and place of the meeting, but need not specify the purposes thereof. Failure of any Governor to receive actual notice of a meeting shall not affect the power of the Governors present at such meeting to exercise the powers of an Emergency Board of Governors as prescribed herein. Thereafter, meetings of the Emergency Board of Governors shall be held at such time and places as the Emergency Board may designate by resolution and special meetings of the Emergency Board may be held on the call of any member of such Board. A member of the Emergency Board calling a meeting shall attempt to give notice thereof by making such reasonable efforts as circumstances may permit to notify each such Board member of the meeting. Such notification may be oral, written or by publication and may specify the purpose thereof. Failure of any member of the Emergency Board to receive actual notice of a meeting of the Emergency Board shall not affect the power of such Board members present at such meeting to exercise the powers of the Emergency Board.

**§ 3. Quorum**

If three or more Governors are present at any meeting of the Board duly convened during such period of attack, they shall constitute its Emergency Board of Governors which shall have the power by majority of those present, to take any and every action which may be necessary to enable the Exchange to meet the emergencies of the period of attack and conduct its business during such period. Any such action taken shall be deemed to be the action of the Emergency Board, even though the Constitution requires a specified vote by the



members of the Board of Governors had that action been taken by the Board.

#### **§ 4. Powers of the Board**

The powers of the Emergency Board of Governors shall include but not be limited to the following powers:

(a) Election of such acting Governors as it may deem necessary, without regard to the number of Governors which would otherwise be required, to serve in any positions on such Board which are vacant or in place of any Governors or acting Governors who are absent from such meeting but not to elect any Governor on a permanent basis.

(b) Election of such acting officers as it may deem necessary, without regard to the number of officers which would otherwise be required, to serve in any offices which are vacant or in place of officers or acting officers who fail to appear and assume their duties; to fix the compensation and determine the powers and duties of acting officers and to remove officers, but not to remove or fill any vacancy on a permanent basis, or to cause the organization to enter into any contract of employment for a term of over one year.

(c) Any other powers enumerated in the New York State Defense Emergency Act.

(d) If there are any vacancies of the Board of Governors on the date the Emergency Board's powers are to revert to the Board of Governors, the Emergency Board of Governors may make such provisions as it deems advisable for the election, by members of the Exchange, of persons to fill such vacancies, and may, in connection therewith, fix the time and place for a special meeting of the members of the Exchange for the purpose of such election.

#### **§ 5. Actions by the Board**

Any section by an Emergency Board of Governors, within the limits of its powers, shall be valid and binding as if taken by the Board of Governors if such Emergency Board certifies that it is the properly constituted Emergency Board even though it may subsequently develop that at the time of such action the Emergency Board was not a duly qualified Emergency Board.

**Art. XVI N.Y. INS. EXCHANGE CONSTITUTION & BY-LAWS**

**ARTICLE XVI  
AMENDMENT OF THE CONSTITUTION**

**§ 1. Procedure**

The provisions of this Constitution may be amended or replaced, and new provisions may be adopted, only by the members of the Exchange in accordance with the procedure specified in this Article.

**§ 2. Action by the Board**

(a) Amendments may be proposed in the following manner:

(i) by resolution of a majority of the Board setting forth in writing the proposed amendments, or

(ii) By signed petition of not less than 25% of the Underwriting Members or 25% of the Broker Members of the Exchange setting forth the proposed amendment.

(b) Every proposed amendment to the Constitution must be presented to the Secretary of the Exchange who shall promptly cause a copy thereof to be delivered to each Governor. Within a reasonable time, the Board of Governors shall submit the proposed amendment to a meeting of the membership accompanied by any changes that the Board deems necessary or appropriate to carry out the intention of such proposed amendment or to make it conform to other provisions of the Constitution or any applicable Federal or State Law.

**§ 3. Vote to amend**

In order for any proposed amendment to be adopted, the affirmative vote of two-thirds of the Underwriting Members and the affirmative vote of two-thirds of the Broker Members shall be required. Amendments adopted pursuant to this Article shall become effective immediately upon approval, by the Superintendent or any date thereafter as specified in the Amendment.

**ARTICLE XVII  
ORGANIZATION OF THE EXCHANGE**

**§ 1. Initial Board**

(a) The Initial Board of Governors of the Exchange shall consist of seven (7) members, appointed pursuant to Section 425-a(2) of the

New York Insurance Law, each of whom shall serve without compensation until the first meeting of members pursuant to this

(b) The Initial Board of Governors shall have only the power and authority specifically set forth in this Article.

(c) The Initial Board of Governors shall be the Incorporators of the Exchange pursuant to Article 4 of the Not-For-Profit Corporation Law of the State of New York.

(d) At its first meeting, the Initial Board of Governors shall adopt and approve this Constitution.

(e) The Initial Board of Governors shall be empowered to do the following:

(1) To do all things incidental to the Incorporation of the Exchange.

(2) Elect a Chairman from among its members who shall preside at all meetings of the Initial Board and at the first meeting of Members.

(3) Receive applications of persons, firms, corporation and other entities wishing to become Underwriting Members and Broker Members of the Exchange and approve for membership those applicants who meet the criteria set forth in Article VII of this constitution. The Initial Board of Governors shall not be permitted to receive or approve any applications for Associate Broker or Subscriber of the Exchange.

(4) Receive initiation fees and dues from Underwriting Members and Broker Members, and shall hold all such monies, for the account of each Underwriting member and Broker Member, In Trust, in an interest bearing account.

(5) Set a place and time for the first meeting of the Members of Exchange, and give notice of such meeting to each Member of the Exchange.

(f) No member approved under Section (c)(3) shall transact any business on the Exchange during the term of the Initial Board of Governors.

## § 2. First Meeting of the Members

The first meeting of the Members of the exchange shall be held on the seventieth day after the date the full Initial Board is appointed, or

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if that day is a non-business day, then the meeting shall be held on the next business day.

**§ 3. Election of Governors**

(a) At the first meeting of the Members of the Exchange, the Members shall elect the twelve members of the Board of Governors and the members of the Nominating Committees provided for in Article VI.

(b) The names of all nominees for elections shall be submitted in writing to the Chairman of the Initial Board of Governors no later than ten (10) days prior to the first meeting of the Members. The Initial Board of Governors shall determine if the nominees meet the qualifications for election to the position for which nominated.

(c) All members on the date of the first meeting of Members shall be entitled to vote in accordance with Section 7 of Article VI.

(d) The Board shall consist of the following:

(i) Six (6) Governors nominated by the Underwriting Members of the Exchange and elected by all the members.

(ii) Two (2) Governors nominated by the Broker Members of the Exchange and elected by all the members.

(iii) Four (4) Governors nominated and elected by all the Members. These Governors shall be the representatives of the public on the Board, and shall meet the criteria set forth in Section 2(d) of Article VI.

(e) The terms of the Governors on this first Board shall be as follows:

(i) Of the six Governors nominated by the Underwriting Members, two shall serve for 1 year, two shall serve for 2 years, and two shall serve for 3 years.

(ii) Of the two Governors nominated by the Broker Members, one shall serve for 2 years, and one shall serve for 3 years.

(iii) Of the four Public Governors, two shall serve for 1 year, one shall serve for 2 years, and one shall serve for 3 years.

(f) Nominees receiving the highest number of votes shall be deemed elected to the position for which they were nominated and they shall take office immediately and shall be vested with all the

rights and powers granted them under this constitution. Those persons elected to the Board who receive the greater number of votes shall serve the longer terms.

**§ 4. Board of Governors**

Upon election under Section 3, the Board shall commence the management of the Exchange, but no business shall be transacted on the Exchange by any Member until the Board has authorized the Exchange to begin operations.

**§ 5. Board of Governors**

Upon being elected, the Members of the Underwriting Nominating Committee and the Members of the Broker Nominating Committee shall begin their duties pursuant to Article VI.

ARTICLE XVIII  
SUBVENTION CERTIFICATES

1. The Exchange may, by resolution of the board of governors accept subventions for any amount from members or non-members on terms and conditions not inconsistent with the Not-for-Profit Corporation Law of the State of New York, and to issue certificates therefor. Such subventions shall consist of money or other property, tangible or intangible, actually received by the Exchange or expanded for its benefit or for its formation or reorganization, or a combination thereof, and shall be evidenced by the issuance of subvention certificates in accordance with the provisions of section 505 of the Not-for-Profit Corporation Law.

2. The board of governors may, for the purposes of defraying all or any part of the start-up and operating costs of the Exchange, by resolution require Underwriting Members and Broker Members to purchase subvention certificates. Such subvention certificates may contain such terms and conditions as the board of governors in its sole discretion may determine by resolution.