

## Exhibit 5 – Text of Proposed Rule Change

All Text Is New

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**OPERATING AGREEMENT****OF****IEX Options LLC****(a Delaware limited liability company)**

This Operating Agreement (this “**Agreement**”) of IEX Options LLC, is made effective as of \_\_\_\_\_, 2025, by its sole member, Investors’ Exchange LLC, a Delaware limited liability company (the “**LLC Member**” or “**Investors’ Exchange**”).

**ARTICLE I****Definitions**

When used in this Agreement, unless the context otherwise requires, the terms set forth below shall have the following meanings:

- (a) “’34 Act” means the Securities Exchange Act of 1934, as amended.
- (b) “Act” means Delaware Limited Liability Company Act, as amended from time to time.
- (c) An “affiliate” of, or person “affiliated” with a specific person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.
- (d) “Board” or “Board of Directors” means the Board of Directors of the LLC Member.
- (e) “broker” shall have the same meaning as in Section 3(a)(4) of the ’34 Act.
- (f) “Commission” means the Securities and Exchange Commission.
- (g) “Company” means IEX Options LLC, a Delaware limited liability company.
- (h) “day” means a calendar day.
- (i) “dealer” shall have the same meaning as in Section 3(a)(5) of the ’34 Act.
- (j) “Director” means the persons elected or appointed to the Board of Directors from time to time in accordance with the Certificate of Formation and Operating Agreement, in each case as amended, of the LLC Member.

(k) “Exchange” means the national securities exchange operated by the LLC Member.

(l) “Options Member” means any registered broker or dealer that has been admitted to membership in the national securities exchange operated by the LLC Member. An Options Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the '34 Act. An Options Member is not an equity holder of the Company by reason of being an Options Member, nor a member of the LLC Member.

(m) “Facility” shall have the meaning as in Section 3(a)(2) of the Act.

(n) “IEXG” means IEX Group, Inc., a Delaware corporation and the sole member of Investors' Exchange LLC.

(o) “LLC Member” means any person who maintains a direct ownership interest in the Company. The sole LLC Member of the Company shall be Investors' Exchange LLC.

(p) “LLC Member Operating Agreement” means the Third Amended and Restated Operating Agreement of the Investors' Exchange LLC, effective August 11, 2020 (as the same may be amended or modified from time to time).

(q) “person” shall mean a natural person, partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government.

(r) “person associated with an Options Member” or “associated person of an Options Member” means any partner, officer, or director of an Options Member (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Options Member, or any employee of such Options Member, except that any person associated with an Options Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of this Agreement.

(s) “registered broker or dealer” means any registered broker or dealer, as defined in Section 3(a)(48) of the '34 Act, that is registered with the Commission under the '34 Act.

(t) “Regulatory Funds” means fees, fines, or penalties derived from the regulatory operations of the Exchange in enforcing IEX Options Rules. “Regulatory Funds” shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Exchange or the Company, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Company.

(u) “IEX Options Rules” shall have the same meaning as set forth in Section 3(a)(27) of the '34 Act.

(v) “SRO” means a self-regulatory organization pursuant to Section 3 of the Exchange Act.

(w) “statutory disqualification” shall have the same meaning as in Section 3(a)(39) of the '34 Act.

(x) “Stockholder Options Member” means an Options Member that also maintains, directly or indirectly, an ownership interest in the Company. As of the date of this Agreement, the LLC Member is not a Stockholder Options Member.

## **ARTICLE II**

### **Office and Agent**

#### **Section 1. Name**

The name of the Company is “IEX Options LLC”.

#### **Section 2. Formation; Term**

On September 11, 2024, the Company was organized as a Delaware limited liability company upon the filing of the Company’s Certificate of Formation with the Secretary of State of the State of Delaware. The term of the Company shall be perpetual, unless sooner terminated as hereinafter provided.

#### **Section 3. LLC Member**

The mailing address of the LLC Member is set forth on Exhibit A attached hereto. LLC Member was admitted to the Company as the LLC Member of the Company upon its execution of a counterpart signature page to this Agreement at which time it acquired 100% of the limited liability company interests of the Company.

#### **Section 4. Purpose**

The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Act.

#### **Section 5. Powers**

In furtherance of its purposes, but subject to all of the provisions of this Agreement, the Company shall have the power and is hereby authorized to do all things and engage in all such activities as may be necessary, convenient or incidental to the conduct of the business of the Company, and have and exercise all of the powers and rights conferred upon limited liability

companies formed pursuant to the Act.

**Section 6. Principal Business Office**

The principal business office of the Company shall be located at 3 World Trade Center, 58<sup>th</sup> Floor, New York, NY 10007, or such other location as may hereafter be determined by the LLC Member. The Company may have such other office or offices as the LLC Member may from time to time designate or as the purposes of the Company may require from time to time.

**Section 7. Registered Office**

The address of the registered office of the Company in the State of Delaware is c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808, and the name of the registered agent of the Company in the State of Delaware at such address is Corporation Service Company. The LLC Member may, upon compliance with the applicable provisions of the Act, change the Company's resident office or resident agent from time to time, all as determined by the LLC Member.

**Section 8. Registered Agent**

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808 or such other registered agent of the Company as the LLC Member may designate from time to time upon compliance with the applicable provisions of the Act.

**ARTICLE III**

**Management**

**Section 1. Powers**

(a) The business and affairs of the Company shall be managed by the Board, except to the extent that the authority, powers and duties of such management shall be delegated to a committee or committees of the Board pursuant to the LLC Member Operating Agreement or the IEX Options Rules. The Board of Directors shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. To the fullest extent permitted by applicable law, this Agreement, the LLC Member Operating Agreement, and the IEX Options Rules, the Board may appoint, remove and replace any officers, employees or agents of the Company from time to time, and may delegate any of its powers to a committee appointed pursuant to Article V of the LLC Member Operating Agreement or to any officer, employee or agent of the Company.

(b) The Board shall have the power to adopt, amend or repeal the IEX Options Rules in accordance with Article VII, Section 1 of this Agreement.

(c) The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of the Company, not inconsistent with law, the Certificate of Formation or this Agreement, as the Board may deem proper. A Director shall, in the performance of such Director's duties, be fully protected, to the fullest extent permitted by law, in relying in good faith upon the books of account or reports made to the Company by any of its officers, by an independent certified public accountant, by an appraiser selected with reasonable care by the Board or any committee of the Board or by any agent of the Company, or in relying in good faith upon other records of the Company.

(d) In connection with managing the business and affairs of the Company, the Board and each Director shall consider applicable requirements for establishing and operating the Company as a Facility of the Exchange under Section 6 of the '34 Act, including, without limitation, the requirements that (a) the IEX Options Rules shall be designed to protect investors and the public interest and (b) the Exchange shall be so organized and have the capacity to carry out the purposes of the '34 Act and to enforce compliance by its "members," as that term is defined in Section 3 of the '34 Act (such statutory members being referred to in this Agreement as "Options Members") and persons associated with Options Members, with the provisions of the '34 Act, the rules and regulations under the '34 Act, and the IEX Options Rules. In discharging his or her responsibilities as a member of the Board of Directors or as an officer or employee of the Company, each such Director, officer or employee shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission, LLC Member and the Company pursuant to its regulatory authority.

(e) In light of the unique nature of the Company as a Facility of the Exchange and its operations and in light of the LLC Member's status as a self-regulatory organization, the Board, when evaluating any proposal, shall, to the fullest extent permitted by applicable law, take into account all factors that the Board deems relevant, including, without limitation, to the extent deemed relevant: (i) the potential impact thereof on the integrity, continuity and stability of the Company as a Facility of the Exchange and the other operations of the LLC Member and Company, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

(f) The Board and each committee of the Board, as set forth in the LLC Member Operating Agreement, shall have the same authority, functions, and responsibilities with respect to the Company as the Board and such committees have with respect to the Exchange. The Board and each committee shall be selected and shall operate in accordance with the LLC Member Operating Agreement.

**Section 2. Action in Lieu of Meeting**

Unless otherwise restricted by statute or this Agreement, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing(s) or electronic transmission(s) are filed with the minutes of proceedings of the Board or the committee.

**Section 3. Waiver of Notice**

(a) Whenever notice is required to be given by law or this Agreement, a waiver thereof by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board, or members of a committee, need be specified in any waiver of notice.

(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

**Section 4. Interpretation of Agreement**

The Board shall have the power to interpret this Agreement and any interpretation made by it shall be final and conclusive.

**Section 5. Conflicts of Interest; Contracts and Transactions Involving Directors**

(a) A Director or a member of any committee may not participate in the consideration or decision of any matter relating to a particular Options Member, company, or individual if such Director or committee member has a material interest in, or a professional, business, or personal relationship with, that Options Member, company, or individual, or if such participation shall create an appearance of impropriety. In any such case, the Director or committee member shall recuse himself or herself or shall be disqualified. If a member of the Board or any committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Board or applicable committee.

(b) No contract or transaction between the Company and the LLC Member, any of its Directors or Officers, or Officers of the Company, or between the Company and any other corporation, partnership, association, or other organization in which the LLC Member, any of its Directors or Officers, or Officers of the Company are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or

are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum.

**Section 6.**     Assignment

The LLC Member may not transfer or assign, in whole or in part, its ownership interest(s) in the Company to any entity, unless such transfer or assignment shall be filed with and approved by the Commission under Section 19 of the '34 Act and the rules promulgated thereunder.

**ARTICLE IV**

**Officers, Agents and Employees**

**Section 1.**     General

The officers of the Company shall include a Chief Executive Officer, a President, a Chief Regulatory Officer, a Secretary, a Treasurer, and such other officers as in the Board's opinion are desirable for the conduct of the business of the Company. Any two or more offices may be held by the same person, except that the offices of the President and Secretary may not be held by the same person. The offices of the Company may be held by the same person that holds such office or otherwise is an officer of the Exchange or the LLC Member. The office of Chief Regulatory Officer shall be held by the same person as the person who is the Chief Regulatory Officer of the Exchange.

**Section 2.**     Appointment and Tenure

Each officer of the Company shall be appointed by the Board on an annual basis, and shall hold office until his or her successor is appointed and qualified or until his or her earlier death, disability, disqualification, removal, or resignation. An officer may serve for any number of terms, consecutive or otherwise.

**Section 3.**     Resignation and Removal of Officers; Vacancies

(a) Any officer may resign at any time upon notice of resignation to the Chairman and Chief Executive Officer, the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

(b) Any officer of the Company may be removed, with or without cause, by the Board. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with the Company.

(c) Vacancies in any office of the Company may be filled for the unexpired term by the Board.

**Section 4. Compensation**

The compensation of all officers and agents of the Company shall be set by the LLC Member, with the exception of the Chief Regulatory Officer, whose compensation shall be set by the Regulatory Oversight Committee of the Board in accordance with Article V, Section 6(c) of the LLC Member Operating Agreement. As of the date hereof, the Company and the LLC Member and other applicable affiliates of the Company have entered into an expense sharing agreement, which governs among other things, the allocation methodology for compensation expenses to the Company. The Board from time to time may review the reasonableness of the allocation methodology contained in the expense sharing agreement.

**Section 5. Powers and Duties; Delegation**

Each of the officers of the Company shall, unless otherwise ordered by the Board, have such powers and duties as customarily pertain to the respective office, and such further powers and duties as from time to time may be conferred by the Board, or by an officer delegated such authority by the Board. The Board may delegate the duties and powers of any officer of the Company to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient.

**Section 6. Chief Executive Officer**

The Chief Executive Officer shall be the chief executive officer of the Company, shall have general supervision over the business and affairs of the Company, and shall serve at the pleasure of the Board. The Chief Executive Officer shall have all powers and duties usually incident to the office of the Chief Executive Officer, except as specifically limited by a resolution of the Board. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to the Chief Executive Officer from time to time by the Board. The Chief Executive Officer shall attend the meetings of the Board that relate to the Company; provided, however, that he or she shall not participate in executive sessions of the Board.

**Section 7. President**

The President shall have general supervision over the operations of the Company. The

President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board. The President shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board. The President shall attend the meetings of the Board that relate to the Company.

**Section 8. Vice President**

The Board shall appoint one or more Vice Presidents. In the absence or disability of the President or if the office of President becomes vacant, the Vice Presidents in the order determined by the Board, or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board at any time to extend or restrict such powers and duties or to assign them to others. Any Vice President may have such additional designations in such Vice President's title as the Board may determine. The Vice Presidents shall generally assist the President in such manner as the President shall direct. Each Vice President shall exercise such other powers and perform such other duties as may be assigned to such Vice President from time to time by the Board, the Chief Executive Officer or the President. The term "Vice President" used in this Section 8 shall include the positions of Executive Vice President, Senior Vice President, and Vice President.

**Section 9. Chief Regulatory Officer**

The Chief Regulatory Officer of the Exchange shall also be the Chief Regulatory Officer of the Company and shall have general supervision of the regulatory operations of the Company in the same manner as with respect to the Exchange, including responsibility for overseeing the surveillance, examination, and enforcement functions of the Exchange with respect to the Company and for administering any regulatory services agreements with another self-regulatory organization to which the Exchange is a party that pertain to the Company. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Board in executive session at regularly scheduled meetings of such committee, and at any time upon request of the Chief Regulatory Officer or any member of the Regulatory Oversight Committee of the Board.

**Section 10. Secretary**

The Secretary shall record all the proceedings of all meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of the Company, and shall have supervision over the care and custody of the books and records of the Company. The Secretary shall be empowered to affix the Company's seal, if any, to documents, the execution of which on behalf of the Company under its seal is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board. The Secretary shall exercise such other powers and perform such other duties as may be assigned to the Secretary

from time to time by the Board, the Chief Executive Officer or the President.

**Section 11.** Assistant Secretary

In the absence of the Secretary or in the event of the Secretary's inability or refusal to act, any Assistant Secretary, approved by the Board, shall exercise all powers and perform all duties of the Secretary. An Assistant Secretary shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Secretary from time to time by the Board or the Secretary.

**Section 12.** Treasurer

The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of the Company and shall cause the funds of the Company to be deposited in the name of the Company in such banks or other depositories as the Board may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of the Company. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to the Treasurer from time to time by the Board, the Chief Executive Officer or the President.

**Section 13.** Assistant Treasurer

In the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assistant Treasurer, approved by the Board, shall exercise all powers and perform all duties of the Treasurer. An Assistant Treasurer shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Treasurer from time to time by the Board or the Treasurer.

**ARTICLE V**

**Indemnification**

**Section 1.** Indemnification of Directors, Officers, Employees and Other Agents.

The Company shall indemnify its directors and executive officers to the fullest extent not prohibited by the Delaware General Corporation Law; provided, however, that the Company may limit the extent of such indemnification by individual contracts with its directors and executive officers; and, provided, further, that the Company shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against the Company or its directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the Company or (iii) such indemnification is provided by the Company, in its sole discretion, pursuant to the powers vested

in the Company under the Delaware General Corporation Law.

*(a) Other Officers, Employees and Other Agents.*

The Company shall have the power to indemnify its other officers, employees and other agents as set forth in the Delaware General Corporation Law.

*(b) Expenses.*

The Company shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he/she is or was an officer of the Company and/or LLC Member, a Director, or is or was serving at the request of the Company as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding upon receipt of an undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Article V or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (f) of this Article V, Section 1, no advance shall be made by the Company to an officer of the Company (except by reason of the fact that such officer is or was a director of the Exchange in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Company.

*(c) Enforcement.*

Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Article V shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the Company and the director or officer. Any right to indemnification or advances granted by this Article V to a director or officer shall be enforceable by or on behalf of the person holding such right in the forum in which the proceeding is or was pending or, if such forum is not available or a determination is made that such forum is not convenient, in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in

such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. The Company shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible in the Delaware General Corporation Law for the Company to indemnify the claimant for the amount claimed. Neither the failure of the Company (including the Board of Directors, independent legal counsel or the LLC Member) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he/she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Company (including the Board of Directors, independent legal counsel or the LLC Member) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

*(d) Non-Exclusivity of Rights.*

To the fullest extent permitted by the Act, the rights conferred on any person by this Article V shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, this Agreement, agreement, vote of the LLC Member or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The Company is specifically authorized to enter into individual contracts with any or all of the directors, its officers, employees or agents respecting indemnification and advances, to the fullest extent permitted by the Act and this Agreement.

*(e) Survival of Rights.*

The rights conferred on any person by this Article V shall continue as to a person who has ceased to be a director or an officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

*(f) Insurance.*

The Company, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Article V.

*(g) Amendments.*

Any repeal or modification of this Article V shall only be prospective and shall not affect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the Company.

*(h) Saving Clause.*

If this Article V or any portion hereof shall be invalidated on any ground by any court of

competent jurisdiction, then the Company shall nevertheless indemnify each director and officer to the fullest extent permitted by any applicable portion of this Article V that shall not have been invalidated, or by any other applicable law.

(i) *Certain Definitions.*

For the purposes of this Article V, the following definitions shall apply:

(i) The term “proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement and appeal of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative.

(ii) The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding, including expenses of establishing a right to indemnification under this Article V or any applicable law.

(iii) The term the “Company” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article V with respect to the resulting or surviving corporation as he/she would have with respect to such constituent corporation if its separate existence had continued.

(iv) References to a “director,” “officer,” “employee,” or “agent” of the Company shall include, without limitation, situations where such person is serving at the request of the Company as a director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

**Section 2.**     Facility of the Exchange Not Liable

Except as provided in the IEX Options Rules, the Company, as a Facility of the Exchange, shall not be liable for any loss or damage sustained by any current or former Options Member growing out of the use or enjoyment by such Options Member of the facilities afforded by the Company (or any predecessor or successor thereof) or its subsidiaries.

## ARTICLE VI

### Amendments; Emergency Operating Agreement

#### **Section 1.**     By the LLC Member or Board

(a) This Agreement may be altered, amended, or repealed, or a new operating agreement may be adopted, (i) by the written consent of the LLC Member, or (ii) at any regular or special meeting of the Board or by a resolution adopted by the Board.

(b) Before any amendment to, or repeal of, any provision of this Agreement shall be effective, those changes shall be submitted to the Board of Directors of the LLC Member and if such amendment or repeal must be filed with or filed with and approved by the Commission, then the proposed changes to this Agreement shall not become effective until filed with or filed with and approved by the Commission as set forth in Article VI, Section 4 of this Agreement.

#### **Section 2.**     Emergency Operating Agreement

The Board may adopt an emergency operating agreement subject to repeal or change by action of the LLC Member which shall, notwithstanding any different provision of law, the Certificate of Formation, or this Agreement, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which the Company conducts its business or customarily holds meetings of the Board, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency operating agreement may make any provision that may be practicable and necessary under the circumstances of the emergency.

#### **Section 3.**     Authority to Take Action Under Extraordinary Market Conditions

The Board, or such person or persons as may be designated by the Board, in the event of extraordinary market conditions, shall have the authority to take any action regarding:

(a) the trading in or operation of the Company as a Facility of the Exchange, the operation of any automated system owned or operated by the Company, and the participation in any such system of any or all persons or the trading therein of any or all securities; and

(b) the operation of any or all offices or systems of Options Members, if, in the opinion of the Board or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.

#### **Section 4.**     Commission Approval

Before any amendment to, alteration or repeal of any provision of this Agreement under

this Article VI shall be effective, those changes shall be submitted to the Board and if the same must be filed with and approved by the Commission under Section 19 of the '34 Act and the rules promulgated thereunder, then the proposed changes to this Agreement shall not become effective until filed with or filed with and approved by the Commission under Section 19 of the '34 Act and the rules promulgated thereunder, as the case may be.

## **ARTICLE VII**

### **Authorities of the Board over the Company as a Facility of the Exchange**

#### **Section 1. IEX Options Rules**

(a) The Board, acting in accordance with the terms of this Agreement and the IEX Options Rules, shall be vested with all powers necessary for the governance of the Company as a Facility of the Exchange within the meaning of the '34 Act. To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among Options Members, to collaborate with governmental and other agencies in the promotion of fair practices and the elimination of fraud, and in general to carry out the purposes of the Company and of the '34 Act, the Board is hereby authorized to adopt such rules and such amendments thereto as it may, from time to time, deem necessary or appropriate pertaining to the Company as a Facility of the Exchange. If any such rules or amendments thereto become effective pursuant to any rule filing made to the Commission as provided in the '34 Act, they shall become operative IEX Options Rules as of the date of effectiveness under the '34 Act unless a later operative date is declared by the LLC Member. The Board is hereby authorized, subject to the provisions of this Agreement and the '34 Act, to administer, enforce, interpret, issue exemptions from, suspend, or cancel any IEX Options Rules adopted hereunder.

#### **Section 2. Disciplinary Proceedings**

(a) The Board is authorized to establish procedures relating to disciplinary proceedings involving Options Members and their associated persons.

(b) The Board is authorized to impose appropriate sanctions applicable to Options Members, including censure, fine, suspension, or expulsion from membership, suspension or bar from being associated with all Options Members, limitation of activities, functions, and operations of an Options Member, or any other fitting sanction, and to impose appropriate sanctions applicable to persons associated with Options Members, including censure, fine, suspension, or barring a person associated with an Options Member from being associated with all Options Members, limitation of activities, functions, and operations of a person associated with an Options Member, or any other fitting sanction, for:

(i) a breach by an Options Member or a person associated with an Options Member of any covenant with the Company or the LLC Member;

(ii) violation by an Options Member or a person associated with an Options Member of any of the terms, conditions, covenants, and provisions of this Agreement, the IEX Options Rules, or the federal securities laws, including the rules and regulations adopted thereunder;

(iii) failure by an Options Member or person associated with an Options Member to: (A) submit a dispute for arbitration as may be required by the Rules; (B) appear or produce any document in the Options Member's or person's possession or control as directed pursuant to the IEX Options Rules; (C) comply with an award of arbitrators properly rendered, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied; or (D) comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition; or

(iv) failure by an Options Member or person associated with an Options Member to adhere to any ruling, order, direction, or decision of or to pay any sanction, fine, or costs imposed by the Board or any entity to which the Board has delegated its powers.

### **Section 3. Membership Qualifications**

(a) The Board shall have authority to adopt rules and regulations applicable to Options Members, applicants seeking to become Options Members, and persons associated with applicants or Options Members, establishing specified and appropriate standards with respect to the training, experience, competence, financial responsibility, operational capability, and such other qualifications as the Board finds necessary or desirable.

(b) The Board may from time to time make such changes in such rules, regulations, and standards as it deems necessary or appropriate.

(c) Uniform standards for regulatory and other access issues, such as admission to membership and conditions to becoming a Facility market maker or other relevant membership category, shall be promulgated and applied on a consistent basis, and the Company shall institute safeguards to ensure fair and evenhanded access to all of its services and facilities.

### **Section 4. Fees, Dues, Assessments, and Other Charges**

The Board shall have authority to fix and levy the amount of fees, dues, assessments, and other charges to be paid by Options Members and issuers and any other persons using any system that the Company operates or controls; provided, however, that such fees, dues, assessments, and other charges shall be equitably allocated among Options Members and issuers and any other persons using any system that the Company operates or controls. Any Regulatory Funds will not be used for non-regulatory purposes or distributed to the LLC Member for non-

regulatory purposes, but rather, shall be applied to fund regulatory operations of the Exchange including pertaining to the Company as a Facility of the Exchange (including surveillance and enforcement activities), or, as the case may be, shall be used to pay restitution and disgorgement of funds intended for customers.

## **ARTICLE VIII**

### **Miscellaneous Provisions**

#### **Section 1.**     Operational Date of the Facility of the Exchange

The Company has been formed, subject to the filing and effectiveness of a rule filing with the Commission, to be operated as a Facility of the Exchange pursuant to Section 19 of the '34 Act (such date of approval by the Commission, the “**Effective Date**”). During the period between formation and the first date on which the Company commences operating as a facility of the Exchange (the “**Operational Date**”), references in this Agreement to “the Company as a Facility of the Exchange” shall be construed as references to “the Company to be operated as a Facility of the Exchange.”

#### **Section 2.**     Fiscal Year

The fiscal year of the Company shall be as determined from time to time by the Board.

#### **Section 3.**     Participation in Board and Committee Meetings

All meetings of the Board (and any committees of the Board) pertaining to the self-regulatory function of the Exchange with respect to the Company (including disciplinary matters) shall be closed to all persons other than members of the Board and officers, staff, counsel or other advisors of the Company and/or Exchange whose participation is necessary or appropriate to the proper discharge of such regulatory functions and any representatives of the Commission. In no event shall members of the Board of Directors of IEXG who are not also members of the Board, or any officers, staff, counsel or advisors of the LLC Member who are not also officers, staff, counsel or advisors of the LLC Member and/or Company (or any committees of the Board), be allowed to participate in any meetings of the Board (or any committee of the Board) pertaining to the self-regulatory function of the Exchange with respect to the Company (including disciplinary matters).

#### **Section 4.**     Books and Records; Confidentiality of Information and Records Relating to SRO Function

The books and records of the Company shall be maintained at a location within the United States. The Exchange shall have complete and full access to the Company’s books and records. All books and records of the Company reflecting confidential information pertaining to the self-regulatory function of the Exchange with respect to the Company (including but not limited to

disciplinary matters, trading data, trading practices, and audit information relating to the Company's activities as a Facility) shall be retained in confidence by the Company and its personnel, including officers, employees and agents, and will not be used by the Company for any non-regulatory purposes and shall not be made available to any person (including, without limitation, any Options Member) other than to personnel of the Commission, and those personnel of the Company or Exchange, members of committees of the Board, members of the Board, hearing officers and other agents of the Exchange to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of the Exchange with respect to the Company. Nothing in this Article VIII shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Exchange and/or Company to disclose such confidential information to the Commission.

**Section 5. Distributions**

Subject to any provisions of any applicable statute or other provisions of this Agreement, distributions may be declared upon the profits of the Company by, and in the absolute discretion of, the Board; and any such distributions may be paid in cash, property or units of membership interests of the Company, as determined by the Board, and shall be declared and paid on such dates and in such amounts as are determined by the Board. Notwithstanding any provision to the contrary contained in this Agreement, (i) the Company shall not be required to make a distribution to the LLC Member on account of its interest in the Company if such distribution would violate the Act or any other applicable law, and (ii) the Company shall not make a distribution to the LLC Member using Regulatory Funds or in violation of Article VII, Section 4 of this Agreement.

**Section 6. Reserves**

Before payment of any dividends, there may be set aside out of any funds of the Company available for dividends such sum or sums as the Board from time to time, in its absolute discretion but subject to Article VII, Section 4 of this Agreement, determines to be proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Company, or for such other purpose as the Board shall determine to be conducive to the interests of the Company, and the Board may modify or abolish any such reserve in the manner in which it was created.

**Section 7. Execution of Instruments, Contracts, etc.**

(a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of the Company by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board, any committee given specific authority in the

premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board may authorize any officer, employee, or agent, in the name of and on behalf of the Company, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States government or by any state, county, municipal, or other governmental authority may be executed in the name of the Company by any officer of the Company, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of the Company. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

**Section 8. Power to Vote Stock**

Unless otherwise instructed by the Board, the Chief Executive Officer of the Company shall have the power and authority on behalf of the Company to attend and to vote at any meeting of stockholders, partners or equity holders of any corporation, partnership or any other entity in which the Company may hold stock, partnership or other equity interests, as the case may be, and may exercise on behalf of the Company any and all of the rights and powers incident to the ownership of such stock, partnership or other equity interest at such meeting, and shall have the power and authority to execute and deliver proxies, waivers and consents on behalf of the Company in connection with the exercise by the Company of the rights and powers incident to the ownership of such stock, partnership or other equity interest. The Board and the Chief Executive Officer may from time to time confer like powers upon any other person or persons.

**Section 9. Severability**

If any provision of this Agreement, or the application of any provision of this Agreement to any person or circumstances, is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected.

**Section 10. Tax Classification**

The LLC Member intends that the Company shall be treated as a "disregarded entity" within the meaning of Treasury Regulations Section 301.7701-2(c)(2) for federal and applicable state income tax purposes and will file its tax returns consistent with such treatment.

**Section 11. Ownership of Company Property**

All assets owned by the Company shall be owned by the Company as an entity and held in the name of the Company. The LLC Member shall not hold any ownership interest in any

Company property in its own name or right.

**Section 12. Transfer of Rights**

The LLC Member may not transfer or assign in whole or in part its limited liability company interest in the Company to any entity, unless such transfer or assignment shall be filed with and approved by the Commission under Section 19 of the '34 Act and the rules promulgated thereunder.

**Section 13. Indemnification**

(a) The Company shall indemnify and hold harmless to the fullest extent permitted by the laws of the State of Delaware, as if the Company were a corporation incorporated under the laws of the State of Delaware, the LLC Member and any officer and any affiliate thereof (individually, in each case, an "Indemnitee"), from and against any and all Losses arising out of or incidental to the business, activities or operations of, or relating to, the Company, regardless of whether the Indemnitee continues to be a member, officer or affiliate thereof at the time any such liability or expense is paid or incurred; *provided, however*, that no member, officer or affiliate may be indemnified by the Company from and against any Losses which result from the willful misconduct of such person.

(b) The indemnification provided by this Section 13 shall be in addition to any other rights to which an Indemnitee may be entitled under any other agreement, by vote of the LLC Member, as a matter of law or equity, or otherwise, both as to an action in the Indemnitee's capacity as a member, officer or affiliate thereof, and as to an action in another capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

**Section 14. Limited Liability.**

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise (including, without limitation, those arising as member, owner or shareholder of another company, partnership or entity), shall be the debts, obligations and liabilities solely of the Company, and neither any LLC Member nor any of its Directors or Officers or Officers of the Company shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a LLC Member or its Directors or Officers or Officers of the Company.

**Section 15. Capital Contributions**

The LLC Member has contributed to the Company the amounts set forth in the books and records of the Company.

**Section 16. Additional Contributions**

The LLC Member is not required to make any additional capital contribution to the Company. However, the LLC Member may make additional capital contributions to the Company at any time upon the consent of such LLC Member. To the extent that the LLC Member makes an additional capital contribution to the Company, the LLC Member shall revise the books and records of the Company. The provisions of this Agreement, including this Section 16, are intended to benefit the LLC Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third-party beneficiary of this Agreement), and the LLC Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

**Section 17. Allocation of Profits and Losses**

Subject to the restrictions of Article VII Section 4, the Company's profits and losses shall be allocated to the LLC Member.

**Section 18. Dissolution**

(a) The Company shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (i) the occurrence of any dissolution event set forth in this Agreement, as the same may be amended from time to time, (ii) the written consent of the LLC Member, (iii) the withdrawal or dissolution of the LLC Member or the occurrence of any other event which terminates the continued membership of the LLC Member in the Company unless the business of the Company is continued in a manner permitted by the Act, or (iv) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

(b) Notwithstanding any other provision of this Agreement, the bankruptcy of the LLC Member will not cause the LLC Member to cease to be a member of the Company, and upon the occurrence of such an event the business of the Company shall continue without dissolution.

(c) In the event of dissolution, the LLC Member shall conduct only such activities as are necessary to wind up the affairs of the Company (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, provided under the Act and applicable law.

(d) The Company shall terminate when (i) all the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the LLC Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

**Section 19. Severability of Provisions**

Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

**Section 20. Entire Agreement**

Except as expressly set forth in this Agreement, this Agreement constitutes the entire agreement with respect to the subject matter hereof and supersedes and replaces any other written or oral agreement relating to the subject matter hereof, including any prior operating agreement of the Company.

**Section 21. Governing Law**

This Agreement shall be governed by, and construed under, the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

**Section 22. No Third-Party Beneficiary**

Any agreement to pay any amount and any assumption of liability in this Agreement contained, express or implied, shall be only for the benefit of the LLC Member and its respective heirs, successors, and permitted assigns, and such agreements and assumptions shall not inure to the benefit of the obligees of any indebtedness of any other party, whomsoever, deemed to be a third-party beneficiary of this Agreement.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, the LLC Member has executed this Agreement as of the date first above written.

**LLC MEMBER:**

**Investors' Exchange LLC**

\_\_\_\_\_  
Name:

Title:

**EXHIBIT A**  
**SCHEDULE OF LLC MEMBER**

<b><u>Name</u></b>	<b><u>Capital Contribution</u></b>	<b><u>Membership Interest</u></b>
Investors' Exchange LLC 3 World Trade Center 58 <sup>th</sup> Floor New York, NY 10007	\$1.00	100%