

# **Nasdaq BX, Inc.**

## **Restated Certificate of Incorporation of Nasdaq BX, Inc.**

### **Article First**

The name of the corporation is Nasdaq BX, Inc. (the "Corporation").

### **Article Second**

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of the Corporation's registered agent at such address is The Corporation Trust Corporation.

### **Article Third**

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware and engaging in any and all activities necessary or incidental to the foregoing. Without limiting the generality of the foregoing, the nature of the business or purposes to be conducted and promoted shall include (i) supporting the operation, regulation, and surveillance of the national securities exchange operated by the Corporation, (ii) preventing fraudulent and manipulative acts and practices, promoting just and equitable principles of trade, fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removing impediments to and perfecting the mechanisms of a free and open market and a national market system, and, in general, protecting investors and the public interest, (iii) supporting the various elements of the national market system pursuant to Section 11A of the Securities Exchange Act of 1934 (the "Exchange Act") and the rules thereunder, (iv) fulfilling the Corporation's self-regulatory responsibilities as set forth in the Exchange Act, and (v) supporting such other initiatives as the Board of Directors (the "Board") may deem appropriate.

### **Article Fourth**

A. The total number of shares of stock that the Corporation shall have authority to issue is one thousand (1,000), all of which shall be common stock of one class, par value of one cent (\$.01) per share ("Common Stock").

B. All of the authorized shares of Common Stock initially shall be issued and outstanding, and shall initially be held by Nasdaq, Inc., a Delaware corporation. Nasdaq, Inc. may not transfer or assign any shares of stock of the Corporation, in whole or in part, to any entity, unless such transfer or assignment shall be filed with and approved by the U.S. Securities and Exchange Commission (the "SEC") under Section 19 of the Exchange Act and the rules promulgated thereunder.

## **Article Fifth**

A. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. The total number of Directors constituting the entire Board shall be fixed from time to time by the stockholders.

B. The Directors shall be elected by the holders of the Common Stock and shall hold office until their respective successors have been duly elected and qualified, subject, however, to prior death, resignation, retirement, disqualification, or removal from office. The election of Directors need not be by written ballot.

C. Special meetings of stockholders of the Corporation may be called at any time by the holder or holders of a majority of the outstanding shares of Common Stock, by the Board acting pursuant to a resolution adopted by a majority of the Directors then in office, or by the officers of the Corporation so authorized by the By-Laws.

D. Any meeting of stockholders called by the stockholders of the Corporation may be postponed by the holder or holders of a majority of the outstanding shares of Common Stock, and any meeting of stockholders called by the Board may be postponed by action of the Board, in each case at any time in advance of such meeting. The Board shall have the power to adopt such rules and regulations for the conduct of the meetings and management of the affairs of the Corporation as they may deem proper and the power to adjourn any meeting of stockholders, which powers may be delegated by the Board to the chairman of such meeting either in such rules and regulations or pursuant to the By-Laws of the Corporation.

E. Newly created directorships resulting from any increase in the authorized number of Directors or any vacancies in the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause shall only be filled in the manner specified by the By-Laws. Any Director so chosen shall hold office until the next election of Directors and until his successor shall be elected and qualified. No decrease in the number of Directors shall shorten the term of any incumbent Director.

F. Unless otherwise restricted by law, any Director may be removed by the holders of a majority of the shares at the time entitled to vote at an election of Directors, and shall cease to be a Director upon disqualification in the manner provided by the By-Laws. Any Director may resign at any time either upon notice of resignation to the Chair of the Board, the Chief Executive Officer, the President or the Secretary. Any such resignation shall take effect at the time specified therein, or, if the time is not so 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.

## **Article Sixth**

A. A Director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent that such

exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended.

B. Any repeal or modification of paragraph A shall not adversely affect any right or protection of a Director of the Corporation existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

#### **Article Seventh**

Any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing to the extent required by Delaware law.

#### **Article Eighth**

In furtherance of, and not in limitation of, the powers conferred by law, the Board is expressly authorized and empowered to adopt, amend or repeal the By-Laws of the Corporation; *provided, however,* that the By-Laws adopted by the Board under the powers hereby conferred may be amended or repealed by the Board or by the stockholders having voting power with respect thereto.

#### **Article Ninth**

The Corporation reserves the right to amend, alter, change, or repeal any provisions contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred herein are granted subject to this reservation.

#### **Article Tenth**

The Corporation shall have perpetual existence.

Adopted April 7, 2008. Amended by SR-BSE-2008-048 eff. December 23, 2008; amended by SR-BX-2009-021 eff. July 6, 2009; amended October 18, 2017 (SR-BX-2017-045).

## **CERTIFICATE OF AMENDMENT OF CERTIFICATE OF INCORPORATION OF BOSTON STOCK EXCHANGE, INCORPORATED**

Pursuant to Section 242 Of the General Corporation Law of the State of Delaware

Boston Stock Exchange, Incorporated, a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. The Certificate of Incorporation of the Corporation is hereby amended by deleting Article FIRST thereof and inserting the following in lieu thereof:

"FIRST. The name of the Corporation is NASDAQ BX, Inc."

2. The foregoing amendment was duly adopted in accordance with the provisions of Sections 242 and 228 (by the written consent of the stockholders of the Corporation) of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, Boston Stock Exchange, Incorporated has caused this Certificate to be executed by its duly authorized officer on this 30 day of December, 2008.

Boston Stock Exchange, Incorporated

By: -s-

Name: Joan C. Conley

Office: Secretary

## **CERTIFICATE OF AMENDMENT OF CERTIFICATE OF INCORPORATION OF NASDAQ BX, INC.**

Pursuant to Section 242 of the General Corporation Law of the State of Delaware

NASDAQ BX, INC., a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. The Certificate of Incorporation of the Corporation is hereby amended by deleting ARTICLE FIRST thereof and inserting the following in lieu thereof:

"FIRST. The name of the corporation is NASDAQ BX, Inc."

2. The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

[Signature Page Follows]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed by its duly authorized officer on this 1st day of February, 2016.

NASDAQ BX, INC.

By: -s-

Name: Joan C. Conley

Office: Secretary

## **By-Laws of Nasdaq BX, Inc.**

### **Article I Definitions**

When used in these By-Laws, unless the context otherwise requires, the terms set forth below shall have the following meanings:

- (a) "Act" means the Securities Exchange Act of 1934, as amended.
- (b) "affiliate" has the meaning ascribed to that term in Rule 12b-2 of the General Rules and Regulations under the Act, as in effect on the date of initial adoption of these By-Laws.
- (c) "Board" or "Board of Directors" means the Board of Directors of the Corporation.
- (d) Reserved.
- (e) Reserved.
- (f) Reserved.
- (g) Reserved.
- (h) Reserved.
- (i) "broker" shall have the same meaning as in Section 3(a)(4) of the Act.
- (j) "Commission" means the Securities and Exchange Commission.
- (k) "Contested Vote" means a process for selection of one or more Member Representative Directors for which the number of candidates on the List of Candidates exceeds the number of positions to be elected by the stockholders.
- (l) "Corporation" means Nasdaq BX, Inc.
- (m) "day" means calendar day.
- (n) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act.
- (o) "Delaware law" means the General Corporation Law of the State of Delaware.

(p) "Director" means a member of the Board.

(q) "Exchange" means the national securities exchange operated by the Corporation.

(r) "Exchange Member" means any registered broker or dealer that has been admitted to membership in the Exchange.

(s) "FINRA" means the Financial Industry Regulatory Authority, Inc. and its affiliates and includes, where relevant, the National Association of Securities Dealers, Inc. as predecessor to the Financial Industry Regulatory Authority, Inc.

(t) "Industry Director" means a Director (excluding any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns fifty percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate thereof or to FINRA or has had any such relationship or provided any such services at any time within the prior three years.

(u) "Industry member" means an Exchange Listing and Hearing Review Council member, Exchange Review Council member, or member of any other committee appointed by the Board who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute twenty percent or more of the professional revenues received by

the person or twenty percent or more of the gross revenues received by the person's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns fifty percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute twenty percent or more of the professional revenues received by the person or twenty percent or more of the gross revenues received by the person's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate thereof or to FINRA or has had any such relationship or provided any such services at any time within the prior three years.

(v) "List of Candidates" means the list of candidates for Member Representative Director positions to be voted upon by Exchange Members on a Voting Date.

(w) "Member Nominating Committee" means the Member Nominating Committee appointed pursuant to these By-Laws.

(x) "Member Representative Director" means a Director who has been elected by the stockholders after having been nominated by the Member Nominating Committee or voted upon by Exchange Members pursuant to these By-Laws (or elected by the stockholders without such nomination or voting in the case of the Member Representative Directors elected pursuant to Section 4.3(b)). A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member.

(y) "Member Representative member" means an Exchange Listing and Hearing Review Council member, Exchange Review Council member, or member of any other committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to these By-Laws.

(z) "Member Voting Record Date" means a date selected by the Board for the purpose of determining the Exchange Members entitled to vote for Member Representative Directors on a Voting Date in the event of a Contested Vote.

(aa) "Nominating Committee" means the Nominating Committee of the Board appointed pursuant to these By-Laws.

(bb) "Non-Industry Director" means a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Corporation or one of its affiliates; or (iii) any other individual who would not be an Industry Director.

(cc) "Non-Industry member" means an Exchange Listing and Hearing Review Council member, Exchange Review Council member, or member of any other committee appointed by the Board who is (i) a Public member; (ii) an officer or employee of an issuer of securities listed on a national securities exchange operated by the Corporation or one of its affiliates; or (iii) any other individual who would not be an Industry member.

(dd) "Officer" means an officer of the Corporation described in Article V.

(ee) "Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization or other organization, whether or not a legal entity, and any governmental authority.

(ff) "person associated with an Exchange Member" or "associated person of an Exchange Member" means any partner, officer, director, or branch manager of an Exchange 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 Exchange Member, or any employee of such Exchange Member, except that any person associated with an Exchange Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these By-Laws.

(gg) "Public Director" means a Director who has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA. For the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Corporation or one of its affiliates shall not be precluded from being considered a "Public Director" solely on the basis of such directorship.

(hh) "Public member" means an Exchange Listing and Hearing Review Council member, Exchange Review Council member, or member of any other committee appointed by the Board who has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA. For the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Corporation or one of its affiliates shall not be precluded from being considered a "Public member" solely on the basis of such directorship.

(ii) "Regulatory Funds" means fees, fines, or penalties derived from the regulatory operations of the Corporation. "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 Corporation, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Corporation.

(jj) "Rules" or "Exchange Rules" means the rules of the Corporation set forth in the rule manual maintained by the Corporation, as adopted by the Board, as hereafter amended or supplemented.

(kk) "statutory disqualification" shall have the same meaning as in Section 3(a)(39) of the Act.

(ll) "Voting Date" means a date selected by the Board on an annual basis, on which Exchange Members may vote with respect to Member Representative Directors in the event of a Contested Vote.



Amended Oct. 27, 2008; amended Dec. 23, 2008 (SR-BSE-2008-048); amended May 14, 2012 (SR-BX-2012-036); amended Dec. 9, 2015 (SR-BX-2015-080), operative Feb. 1, 2016; amended Oct. 18, 2017 (SR-BX-2017-045); amended Sept. 20, 2019 (SR-BX-2019-032).

## **Article II Offices**

### **Section 2.1 Location**

The address of the registered office of the Corporation in the State of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. The Corporation also may have offices at such other places both within and without the State of Delaware as the Board may from time to time designate or the business of the Corporation may require.

### **Section 2.2 Change of Location**

In the manner permitted by law, the Board or the registered agent may change the address of the Corporation's registered office in the State of Delaware and the Board may make, revoke, or change the designation of the registered agent.

## **Article III Meetings of Stockholders**

### **Section 3.1 Annual Meetings**

Annual meetings of stockholders for the election of Directors, and for such other business as may be stated in the notice of the meeting, shall be held at such place, either within or without the State of Delaware, and at such time and date as the Board, by resolution, shall determine and as set forth in the notice of the meeting. At each annual meeting, the stockholders entitled to vote shall elect a Board of Directors and may transact such other corporate business as shall be stated in the notice of the meeting. Only such persons as are nominated or voted upon in accordance with the procedures set forth in Article IV shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as Directors. The stockholders shall elect all persons nominated or voted upon in accordance with the procedures set forth in Article IV except in the event that any such person is not eligible for service under Section 4.3 of these By-Laws.

### **Amended.**

October 27, 2008.

### **Section 3.2 Special Meetings**

Special meetings of stockholders of the Corporation may be called at any time by the holders of a majority of the voting power entitled to vote for the election of Directors, by the Board acting pursuant to a resolution adopted by a majority of the Directors then in

office, or by the Chairman of the Board, the Chief Executive Officer, the President or the Secretary.

### **Section 3.3. Voting**

Each stockholder entitled to vote in accordance with the terms of the Certificate of Incorporation of the Corporation and these By-Laws may vote in person or by proxy, but no proxy shall be voted after three years from its date unless such proxy provides for a longer period. Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote thereon; all other questions shall be decided by the affirmative vote of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote thereon, except as otherwise provided by the Certificate of Incorporation or Delaware law.

### **Section 3.4 Quorum**

Except as otherwise required by law, by the Certificate of Incorporation of the Corporation or by these By-Laws, the presence, in person or by proxy, of stockholders holding shares constituting a majority of the voting power of the Corporation shall constitute a quorum at all meetings of the stockholders. In case a quorum shall not be present at any meeting, a majority in interest of the stockholders entitled to vote thereat, present in person or by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite amount of stock entitled to vote shall be present. At any such adjourned meeting at which the requisite amount of stock entitled to vote shall be represented, any business may be transacted that might have been transacted at the meeting as originally noticed; but only those stockholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof.

### **Section 3.5 Notice of Meetings**

Except as otherwise provided by law, written notice, stating the place, date and time of the meeting, and the general nature of the business to be considered, shall be given to each stockholder entitled to vote thereat, at his or her address as it appears on the records of the Corporation, not less than ten nor more than sixty days before the date of the meeting. No business other than that stated in the notice shall be transacted at any meeting without the unanimous consent of all the stockholders entitled to vote thereat.

### **Section 3.6 Action Without Meeting**

Unless otherwise provided by the Certificate of Incorporation of the Corporation, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and

voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing to the extent required by Delaware law.

## **Article IV Board of Directors**

### **Section 4.1 General Powers**

The property, business, and affairs of the Corporation shall be managed under the direction of the Board. The Board may exercise all such powers of the Corporation and have the authority to perform all such lawful acts as are permitted by the law, the Certificate of Incorporation, or these By-Laws. To the fullest extent permitted by applicable law, the Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 4.12 or to the Corporation staff.

### **Section 4.2 Number of Directors**

The exact number of Directors shall be fixed from time to time by the stockholders of the Corporation. No decrease in the number of Directors shall shorten the term of any incumbent Director.

#### **Amended.**

June 17, 2019 (SR-BX-2019-021).

### **Section 4.3 Qualifications**

Directors need not be stockholders of the Corporation or associated persons of Exchange Members. The number of Non-Industry Directors, including at least one Public Director and at least one Director representative of issuers and investors, shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors. At least twenty percent of the Directors shall be Member Representative Directors. A Director shall not be subject to a statutory disqualification.

#### **Amended.**

May 14, 2012 (SR-BX-2012-036).

May 20, 2013 (SR-BX-2013-029).

### **Section 4.4 Election**

(a) Except as otherwise provided by law or these By-Laws, Directors of the Corporation shall be elected each year at the annual meeting of the stockholders, or at a special meeting called for such purpose in lieu of the annual meeting. If the annual

election of Directors is not held on the date designated therefor, the Directors shall cause such election to be held as soon thereafter as convenient.

**(b)** The stockholders shall elect as Member Representative Directors the candidates nominated by the Member Nominating Committee; provided, however, that if there is a Contested Vote, the stockholders shall instead elect the candidates that emerge from the process described in Section 4.4(f).

**(c)** For each annual election of Directors, the Board shall select a Member Voting Record Date and a Voting Date. The Member Voting Record Date shall be at least 10 days but not more than 60 days prior to Voting Date. The Member Nominating Committee shall create a list of one or more candidates for each Member Representative Director position (the "List of Candidates") on the Board to be elected by the stockholders at the annual meeting or special meeting in lieu thereof. Promptly after selection of the Voting Date, in a Notice to Exchange Members and in a prominent location on a publicly accessible website, the Corporation (i) shall announce the Voting Date and the List of Candidates, and (ii) shall describe the procedures for Exchange Members to propose candidates for election at the next annual meeting. In the event of a Contested Vote, the Company shall also send Exchange Members the formal notice described in Section 4.4(e).

**(d)** An additional candidate may be added to the List of Candidates by any Exchange Member that submits a timely and duly executed written petition to the Secretary of the Corporation. To be timely, an Exchange Member's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's Voting Date (provided, however, that in the event that the Voting Date is more than 30 days before or more than 70 days after such anniversary date, notice by the Exchange Member must be so delivered not earlier than the close of business on the 120th day prior to such Voting Date and not later than the close of business on the later of the 90th day prior to such Voting Date or the tenth day following the day on which public announcement of such Voting Date is first made by the Corporation). Such Exchange Member's notice shall set forth: (i) as to the person whom the Exchange Member proposes for election as a Member Representative Director, all information relating to that person that is required to be disclosed in solicitations of proxies for election of Directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Act and the rules thereunder (and such person's written consent to be named in the List of Candidates and to serving as a Director if elected); (ii) a petition in support of the candidate duly executed by the authorized representatives of 10% or more of all Exchange Members; and (iii) the name and address of the Exchange Member making the proposal. The Corporation may require any proposed candidate to furnish such other information as it may reasonably require to determine the eligibility of such person to serve as a Member Representative Director.

(e) If, by the date on which an Exchange Member may no longer submit a timely proposal under paragraph (b), there is only one candidate for each Member Representative Director position to be voted upon on the Voting Date, the Member Nominating Committee's nomination with respect to the List of Candidates shall be considered final and submitted to the stockholders for election. If there is a Contested Vote, a formal notice of the Voting Date and the List of Candidates shall be sent by the Corporation at least 10 days but no more than 60 days prior to the Voting Date to the Exchange Members who were Exchange Members on the Member Voting Record Date, by any means, including electronic transmission, as determined by the Board or a committee thereof.

(f) In the event of a Contested Vote, each Exchange Member shall have the right to cast one vote for each Member Representative Director position to be filled; provided, however, that any such vote must be cast for a person on the List of Candidates. Notwithstanding the foregoing, an Exchange Member, either alone or together with its affiliates, may not cast votes representing more than 20% of the votes cast for a candidate, and any votes cast by the Exchange Member, either alone or together with its affiliates, in excess of such 20% limitation shall be disregarded. The votes may not be cumulated. The votes shall be cast by written ballot, electronic transmission or any other means as set forth in a notice to the Exchange Members sent by the Corporation prior to the Voting Date. Only votes received prior to 11:59 p.m. Eastern Time on the Voting Date shall be counted. The persons on the List of Candidates who receive the most votes shall be submitted to the stockholders for election.

(g) The Corporation shall not be required to hold meetings of the Exchange Members.

**Amended.**

October 27, 2008.

October 18, 2017 (SR-BX-2017-045).

**Section 4.5 *Removal and Disqualification***

(a) Any or all of the Directors may be removed from office at any time by the affirmative vote of the holders of a majority of the voting power entitled to vote for the election of Directors, at an annual meeting or a special meeting called for such purpose, and the vacancy thus created may be filled, at such meeting, by the affirmative vote of holders of shares constituting a majority of the voting power of the Corporation; provided, however, that the stockholders shall remove a Member Representative Director only for cause, which shall include, without limitation, the failure of such Director to be free of any statutory disqualification.

(b) A Director shall be disqualified and his or her term of office as a Director shall terminate immediately upon a determination by the Board, by a majority vote of the

remaining Directors, (a) that the Director no longer satisfies the classification for which the Director was elected; and (b) that the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If a Director is disqualified and his or her term of office as a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy.

#### **Section 4.6 Resignation**

Any Director may resign at any time either upon notice of resignation to the Chair of the Board, the Chief Executive Officer, the President, or the Secretary. Any such resignation shall take effect at the 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.

#### **Section 4.7 Filing of Vacancies**

(a) Whenever any Director position other than a Member Representative Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation or the creation of a new directorship, the Nominating Committee shall nominate, and the Board shall appoint by majority vote, a person satisfying the classification (Industry, Non-Industry, or Public Director), if applicable, for the directorship as provided in Section 4.3 to fill such vacancy.

(b) Whenever a Member Representative Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation or the creation of a new directorship, the Member Nomination Committee shall nominate, and the Board shall appoint by majority vote, a person to fill such vacancy, except that if the remaining term of office for the vacant Director position is less than six months, no replacement shall be required.

#### **Section 4.8 Quorum and Voting**

(a) At all meetings of the Board, unless otherwise set forth in these By-Laws or required By-Law, a quorum for the transaction of business shall consist of a majority of the Board. In the absence of a quorum, a majority of the Directors present may adjourn the meeting until a quorum be present.

(b) Except as provided herein or by applicable law, the vote of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board.

#### **Section 4.9 Regulation**

(a) The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of the Corporation, not inconsistent with law, the Certificate of Incorporation, or these By-Laws, 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 Corporation 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 Corporation, or in relying in good faith upon other records of the Corporation.

(b) In light of the unique nature of the Corporation and its operations, and in light of the Corporation'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 Exchange and the other operations of the Corporation, 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.

#### **Section 4.10 Meetings**

(a) An annual meeting of the Board shall be held for the purpose of organization, election of officers, and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of the stockholders, no notice of the annual meeting of the Board need be given. Otherwise, such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with Section 4.11.

(b) Regular meetings of the Board may be held at such time and place, within or without the State of Delaware, as determined from time to time by the Board. After such determination has been made, notice shall be given in accordance with Section 4.11.

(c) Special meetings of the Board may be called by the Chair of the Board, by the Chief Executive Officer, by the President, or by at least one-third of the Directors then in office. Notice of any special meeting of the Board shall be given to each Director in accordance with Section 4.11.

(d) Directors or members of any committee appointed by the Board may participate in a meeting of the Board or of such committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes. If all the participants are

participating by telephone conference or other communications equipment, the meeting shall be deemed to be held at the principal place of business of the Corporation.

#### **Section 4.11 Notice of Meetings; Waiver of Notice**

(a) Notice of any meeting of the Board shall be deemed to be duly given to a Director if: (i) mailed to the address last made known in writing to the Corporation by such Director as the address to which such notices are to be sent, at least seven days before the day on which such meeting is to be held; (ii) sent to the Director at such address by any form of electronic transmission, not later than the day before the day on which such meeting is to be held; or (iii) delivered to the Director personally or orally, by telephone or otherwise, not later than the day before the day on which such meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) Notice of any meeting of the Board need not be given to any Director if waived by that Director in writing or by electronic transmission whether before or after the holding of such meeting, or if such Director is present at such meeting, subject to Section 10.3.

(c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present thereat, except when a Director attends the 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 4.12 Committees**

(a) The Board may, by resolution or resolutions adopted by the Board, appoint one or more committees, each committee to consist of one or more of the Directors or other persons. Except as herein provided, vacancies in membership of any committee shall be filled by the Board. The Board may designate one or more Directors or other persons as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another qualified person to act at the meeting in the place of any such absent or disqualified member. Except as otherwise provided by the By-Laws, members of a committee shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a committee may be removed from such committee only by the Board.

(b) The Board may, by resolution or resolutions adopted by the Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of the Corporation to the extent permitted by law. A committee, to the extent permitted by



law and provided in the resolution or resolutions creating such committee, may authorize the seal of the Corporation to be affixed to all papers that may require it.

(c) Except as otherwise provided by applicable law, no committee shall have the power or authority of the Board in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election of Directors) expressly required by Delaware law to be submitted to stockholders for approval, or (ii) adopting, amending, or repealing any By-Law of the Corporation.

(d) Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.

(e) Unless otherwise provided by these By-Laws, a majority of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

(f) Upon request of the Secretary of the Corporation, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Member Representative, Non-Industry, or Public Committee member. The Secretary of the Corporation shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this subsection at least annually and upon request of the Secretary of the Corporation, and shall report immediately to the Secretary any change in such information.

(g) The term of office of a committee member shall terminate immediately upon a determination by the Board, by a majority vote of the Directors, (i) that the committee member no longer satisfies the classification for which the committee member was selected; and (ii) that the committee member's continued service as such would violate the compositional requirements of such committee set forth in these By-Laws. If the term of office of a committee member terminates under this Section, and the remaining term of office of such committee member at the time of termination is not more than six months, during the period of vacancy the relevant committee shall not be deemed to be in violation of the compositional requirements of such committee set forth in these By-Laws by virtue of such vacancy.

#### **Section 4.13 Committees Composed Solely of Directors**

(a) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation between meetings of the Board. The number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry

Directors on the Executive Committee. The percentage of Public Directors on the Executive Committee shall be at least as great as the percentage of Public Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee shall be at least as great as the percentage of Member Representative Directors on the whole Board. An Executive Committee member shall hold office for a term of one year or until his or her successor is elected and qualified, and subject to such Director's earlier resignation, removal, disqualification, or death.

(b) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of the Corporation, including recommendations for Corporation's annual operating and capital budgets and proposed changes to the rates and fees charged by Corporation. A Finance Committee member shall hold office for a term of one year or until his or her successor is elected and qualified, and subject to such Director's earlier resignation, removal, disqualification, or death.

(c) The Board shall appoint a Regulatory Oversight Committee. The Committee shall oversee the adequacy and effectiveness of the Corporation's regulatory and selfregulatory organization responsibilities; assess the Corporation's regulatory performance; and assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Corporation's regulatory functions. In furtherance of its functions, the Regulatory Oversight Committee shall (A) review the Corporation's regulatory budget and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (B) meet regularly with the Chief Regulatory Officer in executive session; and (C) be informed about the compensation and promotion or termination of the Chief Regulatory Officer and the reasons therefor. The Regulatory Oversight Committee shall consist of at least three members, each of whom shall be a Public Director and an "independent director" as defined in Rule 5605 of the Rules of The Nasdaq Stock Market.

Amended by SR-BX-2009-021 eff. July 6, 2009; amended Oct. 18, 2017 (SR-BX-2017-045); amended Sept. 20, 2019 (SR-BX-2019-032).

#### **Section 4.14 Committees Not Composed Solely of Directors**

(a) The Board shall appoint an Exchange Listing and Hearing Review Council and an Exchange Review Council as provided in Articles VI and VII of the By-Laws.

(b) The Board shall appoint a Nominating Committee and a Member Nominating Committee. The Member Nominating Committee shall nominate candidates for each Member Representative Director position on the Board in accordance with Section 4.4 of these By-Laws, and shall nominate candidates for appointment by the Board for each vacant or new position on the Exchange Listing and Hearing Review Council, the Exchange Review Council, or other committee that is to be filled with a Member Representative member under the terms of these By-Laws. The Nominating Committee shall nominate candidates for all other vacant or new Director positions on the Board, and

candidates for all other vacant or new positions on the Exchange Listing and Hearing Review Council or the Exchange Review Council.

**(i)** The Nominating Committee shall consist of no fewer than six and no more than nine members. The number of Non-Industry members on the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee. If the Nominating Committee consists of six members, at least two shall be Public members. If the Nominating Committee consists of seven or more members, at least three shall be Public members. No officer or employee of the Corporation shall serve as a member of the Nominating Committee in any voting or non-voting capacity. No more than three of the Nominating Committee members and no more than two of the Industry members shall be current Directors.

**(ii)** A Nominating Committee member may not simultaneously serve on the Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee.

**(iii)** The Member Nominating Committee shall consist of no fewer than three and no more than six members. All members of the Member Nominating Committee shall be a current associated person of a current Exchange Member. The Board will appoint such individuals after appropriate consultation with representatives of Exchange Members.

**(iv)** Members of the Nominating Committee and the Member Nominating Committee shall be appointed annually by the Board and may be removed by a majority vote of the Board.

**(v)** The Secretary shall collect from each nominee for Director such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Member Representative, Non-Industry, or Public Director, if applicable, and the Secretary shall certify to the Nominating Committee or the Member Nominating Committee each nominee's classification, if applicable. Directors shall update the information submitted under this subsection at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

**(c)** The Board shall appoint a Quality of Markets Committee.

**(i)** The Quality of Markets Committee shall have the following functions: (A) to provide advice and guidance to the Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of the Exchange from the perspective of investors, both individual and institutional, retail firms, market making firms, companies on the Exchange, and other

market participants; and (B) to advise the Board with respect to national market system plans and linkages between the facilities of the Corporation and other markets.

**(ii)** The Quality of Markets Committee shall include broad representation of participants in the Exchange, including investors, market makers, integrated retail firms, and order entry firms. The Quality of Markets Committee shall include a number of Member Representative members that is equal to at least twenty percent of the total number of members of the Quality of Markets Committee. The number of Non-Industry members of the Quality of Markets Committee shall equal or exceed the sum of the number of Industry members and Member Representative members.

**(iii)** At all meetings of the Quality of Markets Committee, a quorum for the transaction of business shall consist of a majority of the Quality of Markets Committee, including not less than fifty percent of the Non-Industry members. If at least fifty percent of the Non-Industry members (A) are present at or (B) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than fifty percent of the Non-Industry members be present to constitute the quorum shall be waived.

**(d)** Reserved.

**(e)** The Board shall appoint an Arbitration and Mediation Committee, or shall cause the Corporation to enter into an agreement with a self-regulatory organization that provides regulatory services pursuant to which such self-regulatory organization shall appoint an Arbitration and Mediation Committee on the Corporation's behalf.

**(i)** The Arbitration and Mediation Committee shall advise the Board on the development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of public investors and Exchange Members, shall monitor rules and procedures governing the conduct of dispute resolution, and shall have such other powers and authority as are necessary to effectuate the purposes of the Exchange Rules.

**(ii)** The Arbitration and Mediation Committee shall consist of no fewer than 3 and no more than 10 members, and shall have at least fifty percent Non-Industry members.

**(iii)** At all meetings of the Arbitration and Mediation Committee, a quorum for the transaction of business shall consist of a majority of the Arbitration and Mediation Committee, including not less than fifty percent of Non-Industry committee members. If at least fifty percent of the Non-Industry committee members (A) are present at or (B) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than fifty percent of the Non-Industry committee members be present to constitute the quorum shall be waived.

**(f)** Reserved.

**Amended.**

October 27, 2008

May 14, 2012 (SR-BX-2012-036).

Amended Apr. 30, 2014 (SR-BX-2014-024), operative May 30, 2014.

#### **Section 4.15 Conflicts of Interest; Contracts and Transactions Involving Directors**

(a) A Director or a member of the Exchange Listing and Hearing Review Council, the Exchange Review Council, or any other committee shall not directly or indirectly participate in any adjudication of the interests of any party if that Director or Exchange Listing and Hearing Review Council member, Exchange Review Council member, or other committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director or Exchange Listing and Hearing Review Council member, Exchange Review Council member, or other committee member shall recuse himself or herself or shall be disqualified.

(b) No contract or transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are Directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the board or committee which authorizes the contract or transaction, or solely because any such Director's or officer's votes are counted for such purpose, if: (i) the material facts as to the Director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes or ratifies the contract or transaction by the affirmative votes of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (ii) the material facts as to the Director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board, a committee or the stockholders.

#### **Section 4.16 Compensation of Board, Council, and Committee Members**

The Board may provide for reasonable compensation of the Chair of the Board, the Directors, Exchange Listing and Hearing Review Council and Exchange Review Council members, and the members of other committees. The Directors may be paid their expenses, if any, of attendance at meetings of the Board and may be paid a fixed sum for attendance at each meeting of the Board, a stated salary as Director or other remuneration. No such payment shall preclude any Director from serving the Corporation in any other capacity and

receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

#### **Section 4.17 Action Without Meeting**

Any action required or permitted to be taken at a meeting of the Board or of a committee may be taken without a meeting if all Directors or all members of such committee, as the case may be, consent thereto in accordance with applicable law.

### **Article V Officers, Agents, and Employees**

#### **Section 5.1 Principal Officers**

The principal officers of the Corporation shall be elected by the Board and shall include a Chair, a Chief Executive Officer, a President, a Secretary, a Treasurer, and such other officers as may be designated by the Board. One person may hold the offices and perform the duties of any two or more of said principal offices, except the offices and duties of President and Vice President or of President and Secretary. None of the principal officers, except the Chair of the Board, need be Directors of the Corporation.

#### **Section 5.2 Election of Principal Officers; Term of Office**

(a) The principal officers of the Corporation shall be elected annually by the Board at the annual meeting of the Board convened pursuant to Section 4.10(a). Failure to elect any principal officer annually shall not dissolve the Corporation.

(b) If the Board shall fail to fill any principal office at an annual meeting, or if any vacancy in any principal office shall occur, or if any principal office shall be newly created, such principal office may be filled at any regular or special meeting of the Board.

(c) Each principal officer shall hold office until a successor is duly elected and qualified, or until death, resignation, or removal.

#### **Sec. 5.3 Subordinate Officers, Agents, or Employees**

In addition to the principal officers, the Corporation may have one or more subordinate officers, agents, and employees as the Board may deem necessary, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board, the Chief Executive Officer, the President, or any officer designated by the Board, may from time to time determine. Agents and employees of the Corporation shall be under the supervision and control of the officers of the Corporation, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.

#### **Section 5.4 Delegation of Duties of Officers**

The Board may delegate the duties and powers of any officer of the Corporation 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 5.5 Resignation and Removal of Officers**

(a) Any officer may resign at any time upon notice of resignation to the Board, the 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. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer of the Corporation 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 Corporation.

### **Section 5.6 Chair of the Board**

The Chair of the Board shall preside at all meetings of the Board at which the Chair is present. The Chair shall exercise such other powers and perform such other duties as may be assigned to the Chair from time to time by the Board.

### **Section 5.7 Chief Executive Officer**

The Chief Executive Officer shall, in the absence of the Chair of the Board, preside at all meetings of the Board at which the Chief Executive Officer is present. The Chief Executive Officer shall be the chief executive officer of the Corporation and shall have general supervision over the business and affairs of the Corporation. 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.

### **Section 5.8 President**

The President shall, in the absence of the Chair of the Board and the Chief Executive Officer, preside at all meetings of the Board at which the President is present. The President shall have general supervision over the operations of the Corporation. 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.

### **Section 5.9 Vice President**

The Board shall elect 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 shall include the positions of Executive Vice President, Senior Vice President, and Vice President.

### **Section 5.10 Chief Regulatory Officer**

An officer of the Corporation shall be designated as the Chief Regulatory Officer of the Corporation. The Chief Regulatory Officer shall have general supervision of the regulatory operations of the Corporation, including responsibility for overseeing the Exchange's surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another self-regulatory organization to which the Corporation is a party. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Corporation 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. The Chief Regulatory Officer may also serve as the General Counsel of the Corporation.

Amended Sept. 6, 2018 (SR-BX-2018-044).

### **Section 5.11 Secretary**

The Secretary shall act as Secretary of all meetings of the Board at which the Secretary is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of the Corporation, and shall have supervision over the care and custody of the books and records of the Corporation. The Secretary shall be empowered to affix the Corporation's seal, if any, to documents, the execution of which on behalf of the Corporation 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 5.12 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 5.13 Treasurer**

The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of the Corporation and shall cause the funds of the Corporation to be deposited in the name of the Corporation 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 Corporation. 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 5.14 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 VI Exchange Listing and Hearing Review Council**

### **Section 6.1 Appointment and Authority**

The Board shall appoint an Exchange Listing and Hearing Review Council. The Exchange Listing and Hearing Review Council may be authorized to act for the Board in a manner consistent with these By-Laws and the Rules with respect to listing decisions. The Exchange Listing and Hearing Review Council also shall consider and make recommendations to the Board on policy and rule changes relating to issuer listings. The Board may delegate such other powers and duties to the Exchange Listing and Hearing Review Council as the Board deems appropriate.

### **Section 6.2 Number of Members and Qualifications**

(a) The Exchange Listing and Hearing Review Council shall consist of no fewer than 8 and no more than 18 members, of which not more than fifty percent may be engaged in market-making activity or employed by an Exchange Member whose revenues from market-making activity exceed ten percent of its total revenues. The Exchange Listing and Hearing Review Council shall include at least five Non-Industry members (including at least two Public members), and a number of Member Representative members that is equal to at least twenty percent of the total number of members of the Exchange Listing and Hearing Review Council.

(b) As soon as practicable following the appointment of members, the Exchange Listing and Hearing Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Exchange Listing and Hearing Review Council. The Board, by resolution adopted by a majority of Directors then in office, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair.

### **Section 6.3 Nomination Process**

The Secretary of the Corporation shall collect from each nominee for the office of member of the Exchange Listing and Hearing Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry, Member Representative, Public, or Non-Industry member, and the Secretary shall certify to the Nominating Committee or the Member Nominating Committee (as applicable) each nominee's qualifications and classification. After appointment to the Exchange Listing and Hearing Review Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

### **Section 6.4 Term of Office**

(a) Except as otherwise provided in this Article, each Exchange Listing and Hearing Review Council member shall hold office for a term of three years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(b) The Exchange Listing and Hearing Review Council shall be divided into three classes. The term of office of those of the first class shall expire one year after the date of their appointment, the term of office of those of the second class shall expire two years after the date of their appointment, and the term of office of those of the third class shall expire three years after the date of their appointment.

(c) No member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive terms following the expiration of such member's initial term.

### **Section 6.5 Resignation**

A member of the Exchange Listing and Hearing Review Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the 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.

### **Section 6.6 Removal**

Any or all of the members of the Exchange Listing and Hearing Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

### **Section 6.7 Disqualification**

Notwithstanding Section 6.4, the term of office of an Exchange Listing and Hearing Review Council member shall terminate immediately upon a determination by the Board, by a majority vote, (a) that the member no longer satisfies the classification (Industry, Member Representative, Public, or Non-Industry) for which the member was elected; and (b) that the member's continued service as such would violate the compositional requirements of the Exchange Listing and Hearing Review Council set forth in Section 6.2. If the term of office of an Exchange Listing and Hearing Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Exchange Listing and Hearing Review Council shall not be deemed to be in violation of Section 6.2 by virtue of such vacancy.

### **Section 6.8 Filling of Vacancies**

If a position on the Exchange Listing and Hearing Review Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee or the Member Nominating Committee (as applicable) shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Section 6.2(a) to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

### **Section 6.9 Quorum and Voting**

At all meetings of the Exchange Listing and Hearing Review Council, a quorum for the transaction of business shall consist of a majority of the Exchange Listing and Hearing Review Council, including one Non-Industry member and one Member Representative member. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.

### **Section 6.10 Meetings**

The members of the Exchange Listing and Hearing Review Council may participate in a meeting through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

## **Article VII Exchange Review Council**

### **Section 7.1 Appointment and Authority**

The Board shall appoint an Exchange Review Council. The Exchange Review Council may be authorized to act for the Board in a manner consistent with these By-Laws and the Exchange Rules with respect to an appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; the exercise of exemptive authority; and such other proceedings or actions as may be authorized by the Exchange Rules. The Exchange Review Council also may consider and make recommendations to the Board on policy and rule changes relating to business and sales practices of Exchange Members and associated persons and enforcement policies, including policies with respect to fines and other sanctions, may advise the Board on regulatory proposals and industry initiatives relating to quotations, execution, trade reporting, and trading practices and may advise the Board in its administration of programs and systems for the surveillance and enforcement of rules governing Exchange Members' conduct and trading activities in the national securities exchange operated by the Corporation. The Board may delegate such other powers and duties to the Exchange Review Council as the Board deems appropriate.

Amended Apr. 30, 2014 (SR-BX-2014-024), operative May 30, 2014.

### **Section 7.2 Number of Members and Qualifications**

The Exchange Review Council shall consist of no fewer than 8 and no more than 12 members. The Exchange Review Council shall include a number of Member Representative members that is equal to at least twenty percent of the total number of members of the Exchange Review Council. The number of Non-Industry members, including at least three Public members, shall equal or exceed the sum of the number of Industry members and Member Representative members. As soon as practicable following the appointment of members, the Exchange Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Exchange Review Council. The Board, by resolution adopted by a majority of Directors then in office, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair. No more than fifty percent of the members of the Exchange Review Council shall be engaged in market making activity or employed by an Exchange Member firm whose revenues from market making activity exceed ten percent of its total revenues.

Amended Apr. 30, 2014 (SR-BX-2014-024), operative May 30, 2014.

### **Section 7.3 Nomination Process**

The Secretary of the Corporation shall collect from each nominee for the office of member of the Exchange Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry, Member Representative, Non-Industry, or Public member, and the Secretary shall certify to the Nominating Committee or the Member Nominating Committee (as applicable) each nominee's qualifications and classification. After appointment to the Exchange Review

Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

#### **Section 7.4 Term of Office**

(a) Except as otherwise provided in this Article, each Exchange Review Council member shall hold office for a term of three years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(b) The Exchange Review Council shall be divided into three classes. The term of office of those of the first class shall expire one year after the date of their appointment, the term of office of those of the second class shall expire two years after the date of their appointment, and the term of office of those of the third class shall expire three years after the date of their appointment. After the expiration of the term of office of those in the first class, members shall be appointed for terms of three years to replace those whose terms expire.

(c) No member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive three-year terms following the expiration of such member's initial term.

#### **Section 7.5 Resignation**

A member of the Exchange Review Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the 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.

#### **Section 7.6 Removal**

Any or all of the members of the Exchange Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

#### **Section 7.7 Disqualification**

Notwithstanding Section 7.4, the term of office of an Exchange Review Council member shall terminate immediately upon a determination by the Board, by a majority vote, (a) that the member no longer satisfies the classification (Industry, Member Representative, Non-Industry, or Public) for which the member was elected; and (b) that the member's continued service as such would violate the compositional requirements of the Exchange Review Council set forth in Section 7.2. If the term of office of an Exchange Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the

Exchange Review Council shall not be deemed to be in violation of Section 7.2 by virtue of such vacancy.

### **Section 7.8 Filling of Vacancies**

If a position on the Exchange Review Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee or the Member Nominating Committee (as applicable) shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Section 7.2 to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

### **Section 7.9 Quorum and Voting**

At all meetings of the Exchange Review Council, a quorum for the transaction of business shall consist of a majority of the Exchange Review Council, including not less than fifty percent of the Non-Industry members of the Exchange Review Council and at least one Member Representative member of the Exchange Review Council; provided, however, that a quorum for the transaction of business with regard to an appeal of proceedings involving Exchange Rules 4612, 4619, 4620, and 11890, and Exchange Options Rules Chapter V Section 6 shall consist of three members of the Exchange Review Council. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.

Amended Apr. 30, 2014 (SR-BX-2014-024), operative May 30, 2014.

### **Section 7.10 Meetings**

The members of the Exchange Review Council may participate in a meeting through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

### **Section 7.11 Review Subcommittee**

The Exchange Review Council shall appoint a Review Subcommittee to determine whether disciplinary and membership proceedings decisions should be called for review by the Exchange Review Council under the Exchange Rules and to perform any other function authorized by the Exchange Rules. The Review Subcommittee shall be composed of no fewer than two and no more than four members of the Exchange Review Council. The number of Non-Industry members of the Review Subcommittee shall equal or exceed the sum of the number of Industry members and Member Representative members of the Review Subcommittee, and the Review Subcommittee shall include at least one Member Representative member. At all meetings of the Review Subcommittee, a quorum for the transaction of business shall consist of not less than fifty percent of the members of the Review Subcommittee, including not less than fifty percent of the Non-Industry members of

the Review Subcommittee and one Member Representative member of the Review Subcommittee.

## **Article VIII Indemnification**

### **Section 8.1 Indemnification of Directors, Officers, Employees, and Agents**

(a) The Corporation shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of the Corporation, or is or was a Director, officer, or employee of the Corporation who is or was serving at the request of the Corporation as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:

(i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Corporation) against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) any threatened, pending, or completed action or suit by or in the right of the Corporation to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

(b) The Corporation shall advance expenses (including attorneys' fees and disbursements) reasonably and actually incurred in defending any action, suit, or proceeding in advance of its final disposition to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(c) The Corporation may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of the Corporation or is or was an agent of the Corporation who is or was serving at the request of the Corporation as a Director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in subsection (a).

**(d)** The Corporation may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

**(e)** Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by the Corporation to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) The person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Corporation; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to the Corporation.

**(f)** The indemnification provided by this Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.

**(g)** Notwithstanding the foregoing, but subject to subsection (j), the Corporation shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

**(h)** The Corporation's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

**(i)** Any repeal or modification of the provisions of this Section shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

**(j)** If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has



been received by the Corporation, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, the Corporation shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

## **Section 8.2 Indemnification Insurance**

The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee, or agent of the Corporation, or is or was serving at the request of the Corporation as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability hereunder.

## **Article IX Capital Stock**

### **Section 9.1 Certificates**

Each stockholder shall be entitled to a certificate or certificates in such form as shall be approved by the Board, certifying the number of shares of capital stock in the Corporation owned by such stockholder.

### **Section 9.2 Signatures**

Certificates for shares of capital stock of the Corporation shall be signed in the name of the Corporation by two officers with one being the Chair of the Board, the Chief Executive Officer, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board. Such certificates may be sealed with the corporate seal of the Corporation or a facsimile thereof.

### **Section 9.3 Stock Ledger**

**(a)** A record of all certificates for capital stock issued by the Corporation shall be kept by the Secretary or any other officer, employee, or agent designated by the Board. Such record shall show the name and address of the person, firm, or corporation in which certificates for capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates which have been canceled, the date of cancellation thereof.

**(b)** The Corporation shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. The Corporation shall not be bound to recognize any equitable or other claim to or interest in any share of

capital stock on the part of any other person, whether or not the Corporation shall have express or other notice thereof.

#### **Section 9.4 Transfers of Stock**

(a) The Board may make such rules and regulations as it may deem expedient, not inconsistent with law, the Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of certificates for shares of capital stock of the Corporation.

(b) Transfers of capital stock shall be made on the books of the Corporation only upon delivery to the Corporation or its agent of: (i) a written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing; (ii) the certificate for the shares of capital stock being transferred; and (iii) a written assignment of the shares of capital stock evidenced thereby.

(c) All of the authorized shares of Common Stock initially shall be issued and outstanding, and shall initially be held by Nasdaq, Inc., a Delaware corporation, which was renamed Nasdaq, Inc. effective September 8, 2015. Nasdaq, Inc. may not transfer or assign any shares of stock of the Corporation, in whole or in part, to any entity, unless such transfer or assignment shall be filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder.

Amended July 6, 2009 (SR-BX-2009-021); amended Dec. 9, 2015 (SR-BX-2015-080), operative Feb. 1, 2016.

#### **Section 9.5 Cancellation**

Each certificate for capital stock surrendered to the Corporation for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to Section 9.6 until such existing certificate shall have been canceled.

#### **Section 9.6 Lost, Stolen, Destroyed, and Mutilated Certificates**

In the event that any certificate for shares of capital stock of the Corporation shall be mutilated, the Corporation shall issue a new certificate in place of such mutilated certificate. In the event that any such certificate shall be lost, stolen, or destroyed, the Corporation may, in the discretion of the Board or a committee appointed thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or the owner's representatives, to furnish to the Corporation a bond with an acceptable surety or sureties and in such sum as will be sufficient to indemnify the

Corporation against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board, it is proper to do so.

### **Section 9.7 Fixing of Record Date**

The Board may fix a record date in accordance with Delaware law.

### **Section 9.8. Dividends**

Subject to the provisions of the Certificate of Incorporation, the Board may, out of funds legally available therefor at any regular or special meeting, declare dividends upon stock of the Corporation as and when they deem appropriate. Notwithstanding the foregoing, (i) the Corporation shall not be required to pay dividends to the stockholder on account of its interest in the Corporation if such dividends would violate the Delaware General Corporation Law or any other applicable law or is otherwise required to fulfill the regulatory functions or responsibilities of the Corporation, and (ii) Regulatory Funds shall not be used for non-regulatory purposes, but rather shall be used to fund the legal, regulatory and surveillance operations of the Corporation, and dividends shall not be paid using Regulatory Funds.

Amended Sept. 20, 2019 (SR-BX-2019-032).

## **Article X Miscellaneous Provisions**

### **Section 10.1 Corporate Seal**

The seal of the Corporation shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board, the name of the Corporation, the year of its incorporation, and the words "Corporate Seal" and "Delaware." The seal may be used by causing it to be affixed or impressed, or a facsimile thereof may be reproduced or otherwise used in such manner as the Board may determine.

### **Section 10.2 Fiscal Year**

The fiscal year of the Corporation shall begin the 1st day of January in each year, or such other month as the Board may determine by resolution.

### **Section 10.3 Waiver of Notice**

(a) Whenever notice is required to be given by law, the Certificate of Incorporation or these By-Laws, 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 10.4 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 Corporation 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 Corporation, 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 Corporation by any officer of the Corporation, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of the Corporation. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

#### **Section 10.5 Books and Records**

The Board shall keep or cause to be kept within the United States complete and accurate books of account and records with respect to the Corporation's business. The books of the Corporation shall at all times be maintained by the Board. The Corporation's books of account shall be kept using the method of accounting determined by the stockholder. The Corporation's independent auditor shall be an independent public accounting firm selected by the Board. Other than as provided in this Section 10.5 with respect to the Commission, all confidential information pertaining to the self-regulatory function of the Corporation (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Corporation shall: (i) not be made available to any persons other than to those officers, directors, employees and agents of the Corporation that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Corporation and the officers, directors, employees and agents of the Corporation; and (iii) not be used for any nonregulatory purposes. Nothing in these By-Laws 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 and impede the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission.

Adopted Sept. 20, 2019 (SR-BX-2019-032).

## **Article XI Amendments; Emergency By-Laws**

### **Section 11.1 By Stockholders**

These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any meeting of the stockholders by the affirmative vote of the holders of a majority of voting power of the then outstanding stock entitled to vote, voting together as a single class.

### **Section 11.2 By Directors**

To the extent permitted by the Certificate of Incorporation, these By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any regular or special meeting of the Board by a resolution adopted by a vote of a majority of the whole Board.

### **Section 11.3 Emergency By-Laws**

The Board may adopt emergency By-Laws subject to repeal or change by action of the stockholders which shall, notwithstanding any different provision of law, the Certificate of Incorporation, or these By-Laws, 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 Corporation 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 By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency.

## **Article XII Exchange Authorities**

### **Section 12.1 Rules**

To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among Exchange 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 Corporation and of the 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, including, but not limited to, rules for the required or voluntary arbitration of controversies between members and between members and customers or others. If any such rules or amendments thereto are approved by the Commission or otherwise become effective as provided in the Act, they shall become effective Exchange Rules as of the date of Commission approval or effectiveness under the Act. The Board is hereby authorized, subject to the provisions of these By-Laws and the Act, to administer, enforce, and interpret, any Rules adopted hereunder.

### **Section 12.2 Disciplinary Proceedings**

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

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

(i) a breach by an Exchange Member or a person associated with an Exchange Member of any covenant with the Corporation or its members;

(ii) violation by an Exchange Member or a person associated with an Exchange Member of any of the terms, conditions, covenants, and provisions of the By-Laws, the Rules, or the federal securities laws, including the rules and regulations adopted thereunder;

(iii) failure by an Exchange Member or person associated with an Exchange Member to: (A) submit a dispute for arbitration as may be required by the Rules; (B) appear or produce any document in the Exchange Member's or person's possession or control as directed pursuant to the 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 Exchange Member or person associated with an Exchange 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 12.3 Membership Qualifications**

(a) The Board shall have authority to adopt rules and regulations applicable to applicants seeking to become Exchange Members, Exchange Members, and persons associated with applicants or Exchange 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 an Exchange market maker, shall be promulgated and applied on a consistent basis, and the Corporation shall institute safeguards to ensure fair and evenhanded access to all of its services and facilities.

#### **Section 12.4 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 Exchange Members and issuers and any other persons using any facility or system that the Corporation operates or controls; provided, however, that such fees, dues, assessments, and other charges shall be equitably allocated among Exchange Members and issuers and any other persons using any facility or system that the Corporation operates or controls.

#### **Section 12.5 Authority to Take Action Under Emergency or Extraordinary Market Conditions**

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

(a) the trading in or operation of the national securities exchange operated by the Corporation or any other organized securities markets that may be operated by the Corporation, the operation of any automated system owned or operated by the Corporation, and the participation in any such system or 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 Exchange 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.

## **NASDAQ BX Equities LLC Fifth Amended and Restated Operating Agreement**

### **FIFTH AMENDED AND RESTATED OPERATING AGREEMENT**

This FIFTH AMENDED AND RESTATED OPERATING AGREEMENT of NASDAQ BX Equities LLC (the "Company") is made as of December 30, 2008 (the "Effective Date"), by and among The NASDAQ OMX Group, Inc., a Delaware corporation ("NASDAQ OMX") and NASDAQ BX, Inc., a Delaware corporation ("BX") and wholly-owned subsidiary of NASDAQ OMX as the sole Members of the Company, for the purpose of recording their agreement regarding the affairs of the Company and the conduct of its business.

### **RECITALS**

WHEREAS, the Certificate of Formation (as amended, the "Certificate"), attached as Exhibit 1 hereto has been filed with the Office of the Secretary of State of the State of Delaware for the purpose of commencing the existence of the Company pursuant to the Act (as defined below) on June 4, 2005, and has been thereafter amended, including to change the name of the Company from "BSX Group LLC" to "NASDAQ BX Equities LLC" and registered agent and office of the Company (each such filing being herein ratified and confirmed);

NOW, THEREFORE, in order to carry out their intent as expressed above and in consideration of the mutual agreements hereinafter contained, the parties hereby agree as follows:

#### Article 1 Definitions

1.1 Certain Defined Terms: As used in this Agreement, the following capitalized terms have the following meanings:

"Act" means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et. seq., as amended and in effect from time to time, and any successor statute.

"Additional Capital Contribution" means any Capital Contribution effected after completion of the Initial Capital Contributions pursuant to Section 7.3 hereof.

"Advisors" means, with respect to any Person, any of such Person's attorneys, accountants or consultants.

"Affiliate" means, with respect to any Person, any other Person controlling, controlled by or under common control with, such Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise with respect to such Person. A Person is presumed to control any other Person, if that Person: (i) is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (ii) directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the Person; or (iii) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the partnership.

"Agreement" means this Fifth Amended and Restated Operating Agreement, including all exhibits and schedules hereto, as amended, restated or supplemented from time to time.

"Bankruptcy" has the meaning ascribed thereto in Section 18-304 of the Act.

"BX" has the meaning set forth in the preamble.

"BX Contribution Schedule" shall mean the Contribution Schedule of BX set forth in Schedule 3.



"Capital Account" means a separate account maintained for each Member in the manner described in this paragraph, which is intended to comply and be interpreted and applied consistent with the Treasury Regulations under §704(b) of the Code. There shall be credited to each Member's Capital Account (i) its Capital Contributions; (ii) the share of income and gain of the Company allocated to the Member pursuant to Section 10.1 hereof (including the Member's share of any income and gains of the Company exempt from U.S. federal income tax); (iii) the amount of any liabilities of the Company that are assumed by such Member or that are secured by any property distributed to such Member by the Company; and (iv) any other items required by Treasury Regulations §1.704-1(b)(2)(iv). There shall be charged against each Member's Capital Account (i) the amount of cash and the fair market value of property distributed to it from the Company; (ii) the share of losses and deductions of the Company allocated to the Member pursuant to Section 10 hereof (including the Member's share of any expenditures of the Company not deductible or properly chargeable to capital accounts for U.S. federal income tax purposes); (iii) the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company; and (iv) any other items required by Treasury Regulations § 1.704-1 (b)(2)(iv). In connection with the maintenance of Capital Accounts for the Members, NASDAQ OMX may make adjustments consistent with Treasury Regulations §1.704-1(b)(2)(iv)(f) upon the occurrence of any event described in subparagraph (5) of such Regulations. The Members' Capital Accounts shall be further adjusted in accordance with Treasury Regulations § 1.704-1 (b)(2)(iv)(g) in the event of a revaluation of the Company property pursuant to Treasury Regulations § 1.704-1 (b)(2)(iv)(f), or if required by Treasury Regulations § 1.704-1 (b)(2)(iv)(d)(3).

"Capital Contribution" means the amount of cash and the fair market value of all property (net of any liability secured by such property that the Company is considered to assume, or take subject to Section 752 of the Code) and/or services contributed to the Company by a Member in its capacity as such at any point in time, including any Additional Capital Contributions. All such amounts contributed shall be reflected on the books and records of the Company.

"Certificate" has the meaning set forth in the recitals hereto.

"Code" means the United States Internal Revenue Code of 1986, as amended and in effect from time to time.

"Company" has the meaning set forth in the preamble.

"Company Minimum Gain" means partnership minimum gain with respect to the Company, as determined under Treasury Regulations § 1.704-2(d).

"Confidential Information" means any confidential or proprietary information of the Company

"Distributable Cash" has the meaning set forth in Section 9.1 hereof.

"Effective Date" means the date hereof.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder.

"Facility" shall have the meaning set forth in Section 3(a)(2) of the Exchange Act.

"Fiscal Year" has the meaning set forth in Section 12.3 hereof.

"Funding Date" shall mean any date on which a Member provides a Capital Contribution or Additional Capital Contribution

"Government Authority" means any federal, national, state, municipal, local, foreign, territorial, provincial or other governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, domestic or foreign.

"Indemnitees" has the meaning set forth in Section 14.1 hereof.

"Initial Capital Contributions" has the meaning set forth in Section 7.1.

"Liquidator" has the meaning set forth in Section 11.1(b) hereof.

"Member" means NASDAQ OMX and BX, in each such Person's capacity as a member of the Company.

"Member Nonrecourse Deductions" means partner nonrecourse deductions with respect to a Member, as determined under Treasury Regulations § 1.704-2(i)(2).

"Member Nonrecourse Debt Minimum Gain" means partner nonrecourse debt minimum gain with respect to a Member, within the meaning of Treasury Regulations § 1.704-2(i)(2).

"Nonrecourse Debt" means a liability of the Company as to which no Member bears the economic risk of loss as determined under Treasury Regulations § 1.752-2 (including a liability of an entity owned by the Company to the extent such liability is treated as a liability of the Company for U.S. federal income tax purposes and no other owner of such entity bears the economic risk of loss as determined under Treasury Regulations § 1.752-2).

"Nonrecourse Deductions" shall have the meaning as set forth in Treasury Regulations § 1.704-2(b)(1) and the amount for the partnership year shall be determined in accordance with the rules of Treasury Regulations § 1.704-2(c).

"Officers" has the meaning set forth in Section 5.1 hereof.

"Percentage Interest" with respect to a Member or Person means the ratio of the number of Units held by the Member or Person to the total of all of the issued Units, expressed as a percentage and determined with respect to each class of Units, whenever applicable.

"Person" shall mean an individual, corporation, association, general or limited partnership, organization, business, firm, limited liability company, joint venture, trust, estate, or other entity, association or organization, whether constituting a legal entity or not.

"Regulatory Funds" means fees, fines, or penalties derived from the regulatory operations of the Company. "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 Company, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Company.

"SEC" means the United States Securities and Exchange Commission.

"Tax Amount" of a Member for a fiscal year or other period shall mean the product of (a) the Member's Tax Rate for such fiscal year or other period, and (b) the Member's Tax Amount Base for such fiscal year or other period, and shall be reduced by (c) any United States federal, state or local income tax credits allocated to the Member by the Company for such fiscal year or other period, all as estimated in good faith by NASDAQ OMX.

"Tax Amount Base" of a Member for a fiscal year or other period shall mean the taxable income (for U.S. federal income tax purposes) allocated to the Member by the Company for such fiscal year or other period; provided that such taxable income shall be computed (i) without regard to the application of §704 (c) of the Code with respect to any variation between the fair market value and tax basis of any assets at the time such assets were contributed to the Company and (ii) without regard to any taxable income or loss recognized by a Member (other than through its distributive share of income or gain of the Company) in connection with the dissolution, initial public offering, sale of substantially all equity or assets of the Company or any similar event.

"Tax Rate" of a Member for a fiscal year or other period shall mean the highest effective marginal combined United States federal, state and local income tax rate applicable during such fiscal year to business entities of the same type as the Member that do business exclusively in the Commonwealth of Massachusetts, giving proper effect to the federal deduction for state and local income taxes and taking into account any special tax rates (such as special capital gains tax rates) applicable to any portion or portions of the Member's Tax Amount Base.

"Treasury Regulations" means the regulations promulgated under the Code, as amended and in effect from time to time.

"Units" shall mean equal units of limited liability company interest in the Company, including an interest in the ownership and profits and losses of the Company and the right to receive distributions from the Company as set forth in this Agreement. For the avoidance of doubt, the ownership or possession of Units shall not in and of itself entitle the owner or holder thereof to vote or consent to any action with respect to the Company (which rights, except as otherwise specifically provided in this Agreement with respect to BX, shall be vested in only duly admitted members of the Company), or to exercise any right of a member of the Company under this Agreement, the Act or other applicable law.

"Unpermitted Deficit" has the meaning set forth in Section 10.3 hereof.

"U.S. Equities" means equity securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan, and NASD's Over-The-Counter Bulletin Board equity securities.

## 1.2 Other Definitions

The words "include," "includes," and "including" where used in this agreement are deemed to be followed by the words "without limitation."

Any reference to "Dollars" or "\$" in this Agreement refers to U.S. Dollars.

Except as otherwise provided in this Agreement or unless the context otherwise clearly requires, (a) terms used in this Agreement that are defined in the Act will have the meaning set forth in the Act; (b) all references in this Agreement to one gender also include, where appropriate, the other gender; (c) the singular includes the plural and the plural includes the singular; and (d) references in this Agreement to the preamble, Sections, Schedules, and Exhibits shall be deemed to mean the preamble and sections of, and schedules and exhibits to, this Agreement.

## Article 2 Organization

2.1 Formation and Continuation of Company. Each of the parties hereto hereby (a) ratifies the formation of the Company as a limited liability company under the Act, the execution of the Certificate (and each amendment thereto as of the date hereof) and the filing of the Certificate (and each amendment thereto as of the date hereof) in the Office of the Secretary of State of the State of Delaware and (b) agrees that the rights, duties and liabilities of the Members shall be as provided in the Act, except as otherwise provided herein. The name of the Company shall be NASDAQ BX Equities LLC.

2.2 Principal Office; Registered Agent and Office. The principal place of business of the Company shall be such location as shall be determined from time to time by BX. BX may, at any time, change the name or the principal place of business of the Company and shall give notice thereof to the Members. The registered agent for service of process on the Company in the State of Delaware required to be maintained by § 18-104 of the Act shall be The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801 and the registered office of Company in the State of Delaware shall be c/o The Corporation Trust Company at the same address. BX may at any time change the registered agent of the Company or the location of such registered office and shall give notice thereof to the Members.

2.3 Term. The legal existence of the Company shall be perpetual, unless the Company is sooner dissolved as a result of an event specified in the Act or pursuant to a provision of this Agreement.

2.4 Interest of Members; Property of Company. Units held by a Member shall be personal property for all purposes. All real and other property owned by the Company shall be deemed the Company's property owned by the Company as an entity, and no Member, individually, shall own any such property. The name and mailing address of each Member and the number and class of Units held by each and the Percentage Interest represented thereby shall be as listed on Schedule 2 attached hereto. BX shall be required to update said Schedule 2 from time to time as necessary to accurately reflect the information contained therein upon (i) a Member ceasing to be a member of the Company, (ii) the admission of a new Member or (iii) any change in the number or class of Units owned by a Member, in each case pursuant to the terms and conditions specified in this Agreement.

## 2.5 The Units.

(a) Except as otherwise provided in this Agreement, all Units are identical to each other and accord the holders thereof the same obligations, rights and privileges as are accorded to each other holder thereof. Except as otherwise provided in this Agreement, the Company will not subdivide or combine any Units, or make or pay any distribution on any Units, or accord any other payment, benefit or preference to any Units, except by extending such subdivision, combination, distribution, payment, benefit or preference equally to all Units.

(b) Units have no par value. To the extent that any Units must be cancelled or any Units shall be issued, the amount of such Units shall be rounded to the nearest whole number, to the extent feasible, as determined by BX.

2.6 Intent. It is the intent of the Members that the Company (a) shall always be operated in a manner consistent with its treatment as a partnership for United States federal income tax purposes (and, to the extent possible, for state income tax purposes within the United States), and (b) to the extent not inconsistent with the foregoing clause (a), shall not be operated or treated as a partnership for purposes of §303 of the Federal Bankruptcy Code (11 U.S.C. §303). Neither the Company nor any Member shall take any action inconsistent with the express intent of the parties hereto as set forth in the immediately preceding sentence.

2.7 Article 8 Opt-In. Each limited liability company interest in the Company (including the Units) shall constitute a "security" within the meaning of (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware (the "Delaware UCC") and (ii) the Uniform Commercial Code of any other applicable jurisdiction that now or thereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995 (each, an "Other State UCC"). For all purposes of Article 8 of the Delaware UCC and any Other State UCC, Delaware law shall constitute the local law of the Company's jurisdiction in the Company's capacity as the issuer of Units.

## 2.8 Certificates.

(a) All Units shall be represented by one or more certificates (a "Unit Certificate") issued to the registered owner of such Units by the Company. Each such Unit Certificate shall be denominated in terms of the number and class of Units in the Company evidenced by such Unit Certificate and shall be signed by at least one officer of the Company on behalf of the Company. Within fourteen (14) days of a Funding Date, the Company shall issue to each Person one or more Unit Certificates in the name of such Person to represent the Units owned by such Person as of the date hereof.

(b) Upon the issuance of additional Units in the Company to any Person in accordance with the provisions of this Agreement, the Company shall issue to such Person one or more Unit Certificates in the name of such Person. Each such Unit Certificate shall be denominated in terms of the class and number of Units in the Company evidenced by such Unit Certificate and shall be signed by at least one officer of the Company on behalf of the Company.

(c) The Company shall issue a new Unit Certificate in place of any Unit Certificate previously issued if the registered owner of the Units represented by such Unit Certificate, as reflected on the books and records of the Company:

(i) makes proof by affidavit, in form and substance satisfactory to BX in its sole discretion, that such previously issued Unit Certificate has been lost, stolen or destroyed;

(ii) requests the issuance of a new Unit Certificate before the Company has notice that such previously issued Unit Certificate has been acquired by a protected purchaser;

(iii) if requested by BX in its sole discretion, delivers to the Company a bond, in form and substance satisfactory to BX in its sole discretion, with such surety or sureties as the Board in its sole discretion may direct, to indemnify the Company against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Unit Certificate; and

(iv) satisfies any other reasonable requirements imposed by BX.

(d) Upon the Transfer in accordance with the provisions of this Agreement by any Person of any or all of its Units represented by a Unit Certificate, such Person shall deliver such Unit Certificate to the Company for cancellation (endorsed thereon or endorsed on a separate document), and any officer of the Company shall thereupon cause to be issued a new Unit Certificate to such Person's permitted transferee or such Person, as applicable, for the class and number of Units being transferred or converted and, if applicable, cause to be issued to such Person a new Unit Certificate for that class and number of Units that were represented by the canceled Unit Certificate and that are not being transferred or converted; provided, however, the Company shall have no duty to register the Transfer unless the requirements of Section 8-401 of the Delaware UCC are satisfied.

(e) Legends.

(i) Each Unit Certificate issued by the Company shall include the following legend:

"THE RIGHTS, POWERS, PREFERENCES, RESTRICTIONS (INCLUDING TRANSFER RESTRICTIONS) AND LIMITATIONS OF THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED BY THIS CERTIFICATE ARE SET FORTH IN, AND THIS CERTIFICATE AND THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY ARE ISSUED AND SHALL IN ALL RESPECTS BE SUBJECT TO, THE TERMS AND PROVISIONS OF, THE FIFTH AMENDED AND RESTATED OPERATING AGREEMENT OF NASDAQ BX EQUITIES LLC (THE "COMPANY"), DATED AS OF DECEMBER 30, 2008, AS THE SAME MAY BE AMENDED AND/OR RESTATED FROM TIME TO TIME (THE "AGREEMENT"). THE TRANSFER, SALE, ALIENATION, ASSIGNMENT, EXCHANGE, PARTICIPATION, SUBPARTICIPATION, ENCUMBRANCE, OR DISPOSITION IN ANY MANNER, WHETHER DIRECT OR INDIRECT, VOLUNTARY OR INVOLUNTARY, BY OPERATION OF LAW OR OTHERWISE, OF THIS CERTIFICATE AND THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY ARE RESTRICTED AS DESCRIBED IN THE AGREEMENT. THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED BY THIS CERTIFICATE MAY NOT BE SOLD, ASSIGNED OR TRANSFERRED BY THE HOLDER HEREOF UNLESS SUCH SALE, ASSIGNMENT, OR TRANSFER HAS BEEN FILED WITH AND APPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION UNDER SECTION 19 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND THE RULES PROMULGATED THEREUNDER.

EACH LIMITED LIABILITY COMPANY INTEREST REPRESENTED HEREBY SHALL CONSTITUTE A "SECURITY" WITHIN THE MEANING OF (I) ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE (INCLUDING SECTION 8-102(A)(15) THEREOF) AS IN EFFECT FROM TIME TO TIME IN THE STATE OF DELAWARE (THE "DELAWARE UCC") AND (II) THE UNIFORM COMMERCIAL CODE OF ANY OTHER APPLICABLE JURISDICTION THAT NOW OR HEREAFTER SUBSTANTIALLY INCLUDES THE 1994 REVISIONS TO ARTICLE 8 THEREOF AS ADOPTED BY THE AMERICAN LAW INSTITUTE AND THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND APPROVED BY THE AMERICAN BAR ASSOCIATION ON FEBRUARY 14, 1995 (EACH, AN "OTHER STATE UCC"). FOR ALL PURPOSES OF ARTICLE 8 OF THE DELAWARE UCC AND ANY OTHER STATE UCC, DELAWARE SHALL CONSTITUTE THE LOCAL LAW OF THE COMPANY'S JURISDICTION IN THE COMPANY'S CAPACITY AS THE ISSUER OF THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY."

(ii) In addition, unless counsel to the Company has advised Company that such legend is no longer needed, each Unit Certificate shall bear a legend in substantially the following form:

"THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY HAVE NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAWS, AND SUCH SECURITIES MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS THE SAME ARE REGISTERED AND QUALIFIED IN ACCORDANCE WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR IN THE OPINION OF

COUNSEL REASONABLY SATISFACTORY TO THE COMPANY SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED."

### Article 3

#### Purposes and Powers

3.1 Purposes. 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 and engaging in any and all activities necessary or incidental to the foregoing. Without limiting the generality of the foregoing, the nature of the business or purposes to be conducted and promoted shall include (i) supporting the operation, regulation, and surveillance of a cash equities market operated by the Company, (ii) preventing fraudulent and manipulative acts and practices, promoting just and equitable principles of trade, fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removing impediments to and perfecting the mechanisms of a free and open market and a national market system, and, in general, protecting investors and the public interest, (iii) supporting the various elements of the national market system pursuant to Section 11A of the Exchange Act and the rules thereunder, (iv) fulfilling the self-regulatory responsibilities of the Company and the Members as set forth in the Exchange Act, and (v) supporting such other initiatives as the Members may deem appropriate.

3.2 Powers. The Company, and BX and the Officers of the Company on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 3.1 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

### Article 4

#### Management

4.1 Management by BX. In accordance with Section 18-402 of the Act, management of the Company shall be vested in BX. BX 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, possessed by members of a limited liability company under the laws of the State of Delaware. BX has the authority to bind the Company. BX may delegate any of its powers as permitted by the Act. Notwithstanding any other provision of this Agreement (but subject to Section 4.2), BX is authorized to execute and deliver any document on behalf of the Company without any vote or consent of any other Person.

4.2 Member Conduct. The Company, and to the extent that they relate to the Company, the Members, shall comply with the federal securities laws and the rules and regulations thereunder; shall cooperate with the SEC and BX pursuant to its regulatory authority and the provisions of this Agreement; and shall engage in conduct that fosters and does not interfere with the Company's ability: to prevent fraudulent and manipulative acts and practices, to promote just and



equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

## Article 5

### Officers

5.1 In General. Except as provided herein, BX may, from time to time as it deems advisable, select natural persons who are officers of BX and designate them as officers of the Company (the "Officers") and assign titles (including, without limitation, President, Vice President, Secretary and Treasurer) to any such person. Officers of the Company must also be officers of BX. Any number of offices may be held by the same person. BX may appoint such Officers as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by BX. The salaries of all Officers of the Company shall be fixed by or in the manner prescribed by BX. The Officers of the Company shall hold office until their successors are chosen and qualified. Any vacancy occurring in any office of the Company shall be filled by BX. Unless otherwise determined by BX, any officer of BX upon designation by BX shall automatically and without any action by any Person be appointed as an Officer of the Company with the same title and powers with respect to the Company as such Officer has with respect to BX.

5.2 Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of BX not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business, and the actions of the Officers taken in accordance with such powers shall bind the Company.

5.3 Duties and Conduct of Officers. Except to the extent otherwise modified herein, each Officer shall have a fiduciary duty of loyalty and care similar to that of officers of business corporations organized under the General Corporation Law of the State of Delaware. Each Officer shall comply with the federal securities laws of the United States and the rules and regulations thereunder; shall cooperate with the SEC pursuant to its regulatory authority and the provisions of this Agreement; and shall engage in conduct that fosters and does not interfere with the Company's ability: to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

## Article 6

### Operating Budget

The Company's operating budget for each Fiscal Year must be approved by BX.

## Article 7

### Members; Financing Company

#### 7.1 Initial Capital Contributions — Units.

(a) Subject to the BX Contribution Schedule, the Initial Capital Contribution by, and the date such Initial Capital Contribution was made or shall be made to the Company, as the case may be, by each Member is set forth opposite their respective names on Schedule 1 hereto, as amended from time to time.

(b) The number of Units (and class designation) held by, and Percentage Interest of, each Member is set forth in Schedule 2 hereto, as amended from time to time.

(c) The value assigned to each Initial Capital Contribution is equal to the amount of cash and the fair market value of all other assets, services and/or properties contributed by such Member, determined as set forth on Schedule 1.

(d) In the event of any dispute as to the fair market value of any Capital Contribution made through the provision of services or the contribution of assets or property, the fair market value of such Capital Contribution shall be finally determined by an independent accounting firm of national prominence that has no current business relationship with any of the disputing Members or the Company or as the Members shall otherwise agree.

7.2 Members; Capital. NASDAQ OMX and BX hereby continue as Members of the Company upon their execution of the Agreement. The Capital Contributions of the Members shall be set forth on the books and records of the Company. No interest shall be paid on any Capital Contribution to the Company. No Member shall have any personal liability for the repayment of the Capital Contribution of any Member, and no Member shall have any obligation to fund any deficit in its Capital Account. Each Member hereby waives, for the term of the Company, any right to partition the property of the Company or to commence an action seeking dissolution of the Company under the Act.

#### 7.3 Additional Capital Contributions.

BX shall, at its sole discretion, determine the capital needs of the Company. If at any time, or from time to time after the Effective Date, the Board shall determine that additional capital is required in the interests of the Company, additional working capital shall be raised in such manner as determined by BX, including but not limited to the following: (i) if filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder, the issuance of new Units to third parties; (ii) the issuance of convertible debt; (iii) borrowing funds from new sources; (iv) borrowing funds from existing Members or deferring payment for services performed by then-existing Members; and (v) the issuance of additional Units to then-existing Members. In all cases, BX shall pursue those financing alternatives deemed non-dilutive to the existing Members before all other financing alternatives.

7.4 Borrowings and Loans. If any Member shall lend any monies to the Company, the amount of any such loan shall not constitute an increase in the amount of such Member's Capital Contribution unless specifically agreed to by the the Members. The terms of such loans and the interest rate(s) thereon shall be commercially reasonable terms and rates, as determined by BX.

7.5 General. Except as otherwise provided in this Agreement, any Member and its Affiliate may lend money to, borrow money from, act as surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with the Company and, subject to applicable law, shall have the same rights and obligations with respect thereto as a Person who is not a Member in the Company. Any such transactions with a Member or an Affiliate of a Member shall be on the terms approved by BX from time to time

7.6 Liability of the Members Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, will be solely the debts, obligations and liabilities of the Company and not that of any Member

## Article 8

### Transferability of Units

#### 8.1 Restrictions on Transfer.

No Person shall directly or indirectly, whether voluntarily, involuntarily, by operation of law or otherwise, transfer, dispose of, sell, lend, pledge, hypothecate, encumber, assign, exchange, participate, subparticipate, or otherwise transfer in any manner (each, a "Transfer") all or any portion of its Units, or any rights arising under, out of or in respect of this Agreement, unless such Transfer shall be filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder.

#### 8.2 Continuation of LLC.

The liquidation, dissolution, bankruptcy, insolvency, death, or incompetency of any Member shall not terminate the business of the Company or, in and of itself, dissolve the Company, which shall continue to be conducted upon the terms of this Agreement by the other Members and by the personal representatives and successors in interest of such Member.

#### 8.3 No Retroactive Effect.

No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Board may, at the time an additional Member is admitted, close the Company books (as though the Company's Fiscal Year has ended) or make pro-rata allocations of loss, income and expense deductions to an additional Member for that portion of the Company's Fiscal Year in which an additional Member was admitted in accordance with the provisions of §706(d) of the Code.

## Article 9

## Distributions

9.1 Current Distributions. If at any time and from time to time BX determines that the Company has cash that is not required for the operations of the Company, the payment of liabilities or expenses of the Company, or the setting aside of reserves to meet the anticipated cash needs of the Company ("Distributable Cash"), then:

(a) Within 10 days after the end of each fiscal quarter, the Company shall make distributions ("Tax Distributions") to the Members of their respective Tax Amounts for such fiscal quarter (or, in the event that Distributable Cash is less than the total of all such Tax Amounts, the Company shall distribute the Distributable Cash in proportion to such Tax Amounts). If after the end of any fiscal year it is determined that a Member's Tax Amount for the fiscal year exceeds the sum of the Tax Distributions made to the Member hereunder and the distributions made to such member under Section 9.1(b) for such fiscal year (any such excess, a "Shortfall Amount"), then the Company shall, on or before the 75th day of the next fiscal year, make an additional Tax Distribution to the members of their respective Shortfall Amounts (or, in the event that Distributable Cash is less than the total of all such Shortfall Amounts, the Company shall distribute the Distributable Cash in proportion to such Shortfall Amounts). If the aggregate Tax Distributions to any Member pursuant to this subsection for a fiscal year exceed the Member's Tax Amount for such fiscal year, such excess shall be deducted from the Member's Tax Amount when calculating the Tax Distributions to be made to such Member for each subsequent fiscal year until the excess has been fully accounted for. All Tax Distributions to a Member shall be treated as advances against any subsequent distributions to be made to such Member under Section 9.1(b) or Section 11.2. Subsequent distributions made to the Member pursuant to Sections 9.1(b) and Section 11.2 shall be adjusted so that when aggregated with all prior distributions to the Member pursuant to those provisions, and with all prior Tax Distributions to the Member, the amount distributed shall be equal, as nearly as possible, to the aggregate amount that would have been distributable to such member pursuant to Section 9.1(b) and Section 11.2 if this Agreement contained no provision for Tax Distributions.

(b) After making the Tax Distributions described in subsection (a) hereof, BX may distribute all or any portion of remaining Distributable Cash to the Members in proportion to their Percentage Interests, unless the distribution is a liquidating distribution, which shall be made in the manner set out in Section 11.1(b).

9.2 Limitation. The Company, and BX on behalf of the Company, shall not make a distribution to any Member on account of its interest in the Company if and to the extent such distribution would violate the Act or other applicable law. Distributions shall not be paid using Regulatory Funds.

9.3 Withholdings Treated as Distributions. Any amount that the Company is required to withhold and pay over to any governmental authority on behalf of a Member shall be treated as a distribution made to such Member pursuant to Section 9.1(a), 9.1(b) or 11.2, and shall be deducted from the amounts next distributable to such Member pursuant to any of those provisions until the withholding has been fully accounted for. To the extent that such an amount

is treated, pursuant to the previous sentence, as a distribution under Section 9.1(a), it shall also be treated as a Tax Distribution, with the consequences described in Section 9.1(a).

## Article 10

### Allocations of Profits and Losses

10.1 Allocations of Profits; General. Except as provided in Sections 10.3 through 10.9 below, all profits and credits of the Company (for both accounting and tax purposes) for each fiscal year shall be allocated to the Members from time to time (but no less often than once annually and before making any distribution to the Members) first, in proportion to any prior allocations of losses under Section 10.2 not previously taken into account pursuant to this clause first, to the extent of such losses, and second, in proportion to their Percentage Interest.

10.2 Allocations of Losses; General. (a) Except as provided in Sections 10.3 through 10.9 below, all net losses of the Company for each fiscal year (for both accounting and tax purposes), and all Nonrecourse Deductions, shall be allocated to the Members from time to time (but no less often than once annually and before making any distribution to the Members) first, in proportion to any prior allocations of profits under Section 10.1 not previously taken into account pursuant to this clause first, to the extent of such profits, second, in proportion to the Members' Capital Contributions, to the extent thereof, and third, in proportion to their Percentage Interest.

(b) Allocations of Nonrecourse Deductions shall be made pursuant to Treasury Regulation Section 1.752-3(a).

10.3 Limitation. Notwithstanding anything otherwise provided in Section 10.2, no Member will be allocated any losses not attributable to Nonrecourse Debt to the extent such allocation (without regard to any allocations based on Nonrecourse Debt), and after taking into account any reductions to the Member's Capital Account required by Treasury Regulations § 1.704-1 (b)(2)(ii)(d)(4), (5), or (6) results in a deficit in such Member's Capital Account in excess of such Member's actual or deemed obligation, if any, to restore deficits on the dissolution of the Company (any such excess, an "Unpermitted Deficit"). Any losses not allocable to a Member under this sentence shall be allocated to the other Members. In the event any Member's Capital Account is adjusted (by way of distribution, allocation or otherwise) to create an Unpermitted Deficit, the Company shall allocate to such Member, as soon as possible thereafter, items of income or gain sufficient to eliminate the Unpermitted Deficit. In the event that upon liquidation of the Company or the liquidation of a Member's interest, such Member's Capital Account has an Unpermitted Deficit, the Member must make a Capital Contribution to such Member's Capital Account so as to cure the Unpermitted Deficit.

10.4 Qualified Income Offset. In the event any Member unexpectedly receives adjustments, allocations, or distributions described in Treasury Regulations § 1.704-1 (b)(2)(ii)(d)(4), (5) or (6), items of income and gain of the Company shall be specially allocated to such Member in an amount and manner sufficient to eliminate the deficit balance in such Member's Capital Account created by such adjustments, allocations or distributions as promptly as possible. The preceding

sentence is intended to comply with the "qualified income offset" requirement in Treasury Regulations § 1.704-1 (b)(2)(ii)(d), and shall be interpreted consistently therewith.

10.5 Nonrecourse Debt and Chargebacks. If at the end of any fiscal year of the Company, after taking into account all distributions made and to be made in respect of such year but prior to any allocation of profits and losses for such year except the allocations required by Section 10.3, any Member shall have a negative Capital Account by reason (and to the extent) of allocations of items of loss or deduction attributable in whole or part to Nonrecourse Debt secured by any of the assets of the Company, such Member shall be allocated (or if more than one Member has such a negative Capital Account, all such Members shall be allocated ratably among them in accordance with the respective proportions of such negative balances as are attributable to such deductions or losses) that portion of any items of income and gain for such year as may be equal to the amount by which the negative balance of such Member's Capital Account exceeds the sum of (A) such Member's allocable share of the aggregate Minimum Gain with respect to all of the Company's assets securing such Nonrecourse Debt plus (B) such Member's allocable share of aggregate Company debt which is not Nonrecourse Debt, such allocable share to be determined in accordance with the provisions of Section 752 of the Code and the Treasury Regulations thereunder. In addition, if there is a net decrease in the Company's aggregate Minimum Gain with respect to all of its assets for a taxable year, each Member shall be allocated items of income and gain ratably in an amount equal to that Member's share of such net decrease in the manner and to the extent required by Treasury Regulations Section 1.704-2(f) or any successor regulation. The preceding sentence is intended to comply with the minimum gain chargeback requirement of Treasury Regulations § 1.704-2(f), and shall be interpreted and applied in a manner consistent therewith.

10.6 Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Member that (in its capacity, directly or indirectly, as lender, guarantor, or otherwise) bears the economic risk of loss with respect to the loan to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations § 1.704-2(i). If, during any fiscal year or other period, there is a net decrease in Member Nonrecourse Debt Minimum Gain, that decrease shall be charged back among the Members in accordance with Treasury Regulations § 1.704-2(i) (4). The preceding sentence is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement of Treasury Regulations § 1.704-2(i)(4), and shall be interpreted and applied in a manner consistent therewith.

10.7 Calculation of Profits and Losses. Net Profit and Net Loss shall be computed for each Fiscal Year as an amount equal to the Company's taxable income or loss for such Fiscal Year determined in accordance with Code Section 703(a), including pursuant to Code Section 703(a)(1), all items of income, gain loss or deduction required to be stated separately and with adjustments as follows: (a) In computing Net Profit or Net Loss pursuant to this Section, there shall be added any income of the Company exempt from federal income tax and not otherwise taken into account in computing the Company's taxable income or loss; (b) Any expenditure of the Company, that was not otherwise taken into account in computing Net Profit or Net Loss, which is described in Code Section 705(a)(2)(B) or that pursuant to Treasury Regulation Section 1.704-1 (b)(2)(iv)(i) is treated as an expenditure that is described in Code Section 705(a)(2)(B),

shall be subtracted from such taxable income or loss; (c) To the extent that the net book value of any asset of the Company is adjusted to equal such asset's fair market value or to the extent that the net book value of any asset of the Company is adjusted as a result of a distribution in kind to any Member, where such distribution equals to the fair market value of such asset on the date of distribution, then such adjustment shall be taken into account as gain or loss from the disposition of such asset for the purposes of computing Net Profit or Net Loss; (d) To the extent that any gain or loss is recognized for federal income tax purposes as a result of the disposition of any asset of the Company, such gain or loss for the purposes of this Section, such gain or loss will be computed by reference to the net book value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its net book value; and (e) Any items allocated pursuant to Section 10.2(b) Allocations of Nonrecourse Deductions, or Section 10.3 Limitation, or Section 10.4 Qualified Income Offset, or Section 10.5 Nonrecourse Debt and Chargebacks shall not be taken into account in computing Net Profit or Net Loss.

10.8 Section 704(c) and Capital Account Revaluation Allocations. The Members agree that to the fullest extent possible with respect to the allocation of depreciation and gain for U.S. federal income tax purposes, Section 704(c) of the Code shall apply with respect to non-cash property contributed to the Company by any Member. For purposes hereof, any allocation of income, loss, gain or any item thereof to a Member pursuant to Section 704(c) of the Code shall affect only its tax basis in its Percentage Interest and shall not affect its Capital Account. In addition to the foregoing, if the Company's assets are reflected in the Capital Accounts of the Members at a book value that differs from the adjusted tax basis of the assets (e.g., because of a revaluation of the Members' Capital Accounts under Treasury Regulations § 1.704-1 (b)(2)(iv)(f)), allocations of depreciation, amortization, income, gain or loss with respect to such property shall be made among the Members in a manner consistent with the principles of Section 704(c) of the Code and this Section 10.8.

10.9 Offset of Regulatory Allocations. The allocations required by Sections 10.3 through 10.6 and Section 10.8 are intended to comply with certain requirements of the Treasury Regulations. NASDAQ OMX may, in its discretion and to the extent not inconsistent with Section 704 of the Code, offset any or all such regulatory allocations either with other regulatory allocations or with special allocations of income, gain, loss or deductions pursuant to this section in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the regulatory allocations were not part of this Agreement.

10.10 Terminating and Special Allocations. Notwithstanding the foregoing allocation provisions, any profits or losses resulting from a liquidation, merger or consolidation of the Company, the sale of substantially all the assets of the Company in one or a series of related transactions, or any similar event (and, if necessary, specific items of gross income, gain, loss, or deduction incurred by the Company in the fiscal year of such transaction(s)) shall be allocated among the Members so that after such allocations and the allocations required by Section 11.3, and immediately before the making of any liquidating distributions to the Members under Section 11.2, the Members' Capital Accounts equal, as nearly as possible, the amounts of the respective distributions to which they are entitled under Section 11.2.

## Article 11

### Dissolution and Winding Up

11.1 (a) The Company shall be dissolved and its affairs shall be wound up upon:

- (i) the election to dissolve the Company made by the the consent of both Members; or
- (ii) the entry of a decree of judicial dissolution under § 18-802 of the Act; or
- (iii) the termination of the legal existence of the last remaining Member or the occurrence of any other event which terminates the continued membership of the last remaining Member in the Company, unless the Company is continued without dissolution in accordance with the Act; or
- (iv) the occurrence of any other event that causes the dissolution of a limited liability company under the Act unless the Company is continued without dissolution in accordance with the Act.

Notwithstanding any other provision of this Agreement, the Bankruptcy of a Member shall not cause the Member to cease to be a Member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(b) Upon dissolution of the Company, the business of the Company shall continue for the sole purpose of winding up its affairs. The winding up process shall be carried out by all of the Members unless the dissolution is caused by the sole remaining Member's ceasing to be a member of the Company, in which case a liquidating trustee may be appointed for the Company by the personal representative of the last remaining Member (the Members or such liquidating trustee is referred to herein as the "Liquidator"). In winding up the Company's affairs, every effort shall then be made to dispose of the assets of the Company in an orderly manner, having regard to the liquidity, divisibility and marketability of the Company's assets. If the Liquidator determines that it would be imprudent to dispose of any non-cash assets of the Company, such assets may be distributed in kind to the Members, in lieu of cash, proportionately to their rights to receive cash distributions hereunder; provided, that the Liquidator shall in its sole discretion determine the relative shares of the Members of each kind of those assets that are to be distributed in kind. The Liquidator shall not be entitled to be paid by the Company any fee for services rendered in connection with the liquidation of the Company, but the Liquidator (whether one or more Members or a liquidating trustee) shall be reimbursed by the Company for all third-party costs and expenses incurred by it in connection therewith and shall be indemnified by the Company with respect to any action brought against it in connection therewith by applying, *mutatis mutandis*, the provisions of Article 14.

11.2 Application and Distribution of Assets.

(a) The assets of the Company in winding up at any time shall be applied or distributed as follows: first, to creditors of the Company, including Members who are creditors, to the extent otherwise permitted by law, whether by payment or the making of reasonable provision for the payment thereof, and including any contingent, conditional and unmatured liabilities of the



Company, taking into account the relative priorities thereof; second, to the Members and former Members in satisfaction of liabilities under the Act for distributions to such Members and former Members; and third, to the Members, for the return of their Capital Contributions and then in proportion to their respective Percentage Interests.

(b) Reserve. A reasonable reserve for contingent, conditional and unmatured liabilities in connection with the winding up of the business of the Company shall be retained by the Company until such winding up is completed or such reserve is otherwise deemed no longer necessary by the Liquidator.

11.3 Capital Account Adjustments. For purposes of determining a Member's Capital Account, if, on liquidation and dissolution, some or all of the assets of the Company are distributed in kind, the Company profits (or losses) shall be increased by the profits (or losses) that would have been realized had such assets been sold for their fair market value on the date of dissolution of the Company, as determined by the Liquidator. Such increase shall: (i) be allocated to the Members in accordance with Article 10 hereof and (ii) increase (or decrease) the Members' Capital Account balances accordingly, it being the general intent that the adjustments contemplated by this subsection shall have the effect, as nearly as possible, of causing the Members' Capital Account balances to be in proportion to their Percentage Interests.

11.4 Termination of the LLC. Subject to Section 18.10 of this Agreement, the separate legal existence of the Company shall terminate when all 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 Members in the manner provided for in this Article 11, and a Certificate of Cancellation shall have been filed in the manner required by the Act.

## Article 12

### Books, Records and Accounting

12.1 Books of Account. BX shall cause to be entered in appropriate books, kept at the Company's principal place of business, which must be in the United States, all transactions of or relating to the Company. Each Member shall have access to and the right, at such Member's sole cost and expense, to inspect and copy such books and all other the Company records during normal business hours; provided that the inspecting Member shall be responsible for any out-of-pocket costs or expenses incurred by the Company in making such books and records available for inspection. Notwithstanding the foregoing, the books and records of the Company shall be subject at all times to inspection and copying by the BSE and the SEC at no additional cost to the BSE or the SEC. The books, records, premises, officers, directors, agents, and employees of the Company shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the BSE and its Affiliates for the purpose of and subject to oversight pursuant to the Exchange Act. .

12.2 Deposits of Funds. All funds of the Company shall be deposited in its name in such checking, money market, or other account or accounts as BX may from time to time designate; withdrawals shall be made therefrom on such signature or signatures as BX shall determine.

12.3 Fiscal Year. The fiscal year of the Company shall begin on January 1st and end on December 31st (the "Fiscal Year").

12.4 Financial Statements; Reports to Members. The Company, at its cost and expense, shall prepare and furnish to each of the Members, within 90 days after the close of each taxable year, financial statements of the Company, and all other information necessary to enable such Member to prepare its tax returns, including without limitation a statement showing the balance in such Member's Capital Account.

12.5 Tax Elections. The Members may, by unanimous agreement and in their absolute discretion, make all tax elections (including, but not limited to, elections relating to depreciation and elections pursuant to Section 754 of the Code) as they deem appropriate. Notwithstanding anything contained in Article 10 of this Agreement, any adjustments made pursuant to Section 754 of the Code shall affect only the successor in interest to the transferring Member. Each Member will furnish the Company with all information necessary to give effect to any such election and will pay the costs of any election applicable as to it.

12.6 Tax Matters Member. NASDAQ OMX shall be the tax matters Member of the Company for purposes of the Code, and shall be entitled to take such actions on behalf of the Company in any and all proceedings with the Internal Revenue Service as it, in its absolute discretion, deems appropriate without regard to whether such actions result in a settlement of tax matters favorable to some Members and adverse to other Members. Notwithstanding the foregoing, NASDAQ OMX shall (a) promptly deliver to the other Members copies of any notices, letters or other documents received by NASDAQ OMX as the tax matters Member of the Company, (b) keep the other Members informed with respect to all matters involving NASDAQ OMX as the tax matters Member of the Company, and (c) consult with the other Members and obtain the approval of the other Members prior to taking any actions as the tax matters Member of the Company. The tax matters Member shall not be entitled to be paid by the Company any fee for services rendered in connection with any tax proceeding, but shall be reimbursed by the Company for all costs and expenses incurred by it in connection with any such proceeding and shall be indemnified by the Company with respect to any action brought against it in connection with the settlement of any such proceeding by applying, *mutatis mutandis*, the provisions of Article 14.

Article 13

Reserved

Article 14

#### Exculpation and Indemnification

14.1 Members Generally. Except as set forth in the second sentence of this Section 14.1, no Member, nor any Affiliate of a Member, nor any of Member or Affiliate's respective shareholders, directors, employees, Advisors or other agents, nor any officers, agents, Advisors or employees of the Company (collectively, the "Indemnitees"), shall have any liability to the

Company, to any other Member, or to any third party for any loss suffered by the Company, such other Member or such third party that arises out of any action or inaction of such Member (or any other Indemnitee), (a) with respect to its activities under this Agreement or (b) otherwise in its capacity as a Member, if such Member or such other Indemnitee, in good faith, determined that such course of conduct was in the best interests of the Company or not inconsistent with the best interests of the Company and such course of conduct did not constitute gross negligence or willful misconduct of such Member (or other Indemnitees) or a material breach by such Member of this Agreement. To the fullest extent permitted by law, each Member (and such other Indemnitees) shall be indemnified by the Company against any losses, judgments, liabilities, expenses (including, without limitation, reasonable attorneys' fees and court costs) and amounts paid in settlement of any claims sustained by it arising out of any action or inaction of such Member (or any other Indemnitee), (a) with respect to its activities under this Agreement or (b) otherwise in its capacity as a Member, provided that the same were not the result of gross negligence or willful misconduct of such Member (or such other Indemnitee) or a breach by such Member of this Agreement. Any Person claiming reimbursement of expenses under this Article 14 shall be paid amounts to which he or it would be entitled hereunder as such expenses are incurred upon presentation of appropriate documentation to the Company, subject to providing a written undertaking to repay any such amounts to which such Person ultimately turns out not to be entitled under the standards herein set forth. The indemnification and advancement of expenses provided by this Article shall continue as to an Indemnitee who has ceased to be a Member (or otherwise an Indemnitee), and shall inure to the benefit of the heirs, executors, administrators, and successors of such Member (and the other Indemnitees). Any indemnification pursuant to this Section 14.1 shall be solely out of the assets of the Company and shall not be a personal obligation of any Member.

14.2 Duties of Indemnitee. To the extent that, at law or in equity, an Indemnitee has duties (including fiduciary duties) and liabilities relating thereto to the Company or to the Members, the Members and any other Indemnitee acting in connection with the Company's business or affairs shall not be liable to the Company or to any Member for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of an Indemnitee otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Indemnitee.

Article 15

Reserved

Article 16

### Confidentiality and Related Matters

Confidential Regulatory Information. To the fullest extent permitted by applicable law, all Confidential Information pertaining to the self-regulatory function of BX or the business of BX related to the trading of U.S. Equities (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Company shall: (a) not be made available to any person (other than as provided in the proviso at the end of

this sentence) other than to those officers, employees and agents of the Company who have a reasonable need to know the contents thereof; (b) be retained in confidence by the Company and the officers, employees and agents of the Company; and (c) not be used for any commercial purposes; provided, that nothing in this sentence shall be interpreted so as to limit or impede the rights of the Commission or BX 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, employees or agents of the Company to disclose such Confidential Information to the Commission or BX.

## Article 17

Reserved

## Article 18

General

18.1 Entire Agreement; Integration, Amendments. This Agreement contains the sole and entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. This Agreement may only be changed, amended or supplemented by an agreement in writing executed and delivered by the Members. Any proposed amendment to this Agreement shall be submitted to the BX Board of Directors for review and, if such amendment is required, under Section 19 of the Exchange Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the SEC before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

18.2 Binding Agreement. The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective representatives, successors in interest and permitted assigns.

18.3 Notices. Any and all notices contemplated by this Agreement shall be deemed adequately given if in writing and delivered in hand, or upon receipt when sent by telecopy confirmed by one of the other methods for providing notice set forth herein, or one (1) business day after being sent, postage prepaid, by nationally recognized overnight courier (e.g., Federal Express), or 5 days after being sent by certified or registered mail, return receipt requested, postage prepaid, to the party or parties for whom such notices are intended. All such notices to Members shall be addressed to the last address of record on the books of the Company; all such notices to the Company shall be addressed to the Company at the address set forth in Section 2.1 or at such other address as the Company may have designated by notice given in accordance with the terms of this subsection.

18.4 Captions. Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this agreement or the intent of any provisions hereof.

18.5 Governing Law, Etc. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, all rights and remedies being governed by such laws, without regard to its conflict of laws rules.

18.6 Member Books, Records, and Jurisdiction.

(a) NASDAQ OMX acknowledges that to the extent they are related to the Company's activities, the books, records, premises, officers, directors, agents, and employees of NASDAQ OMX shall be deemed to be the books, records, premises, officers, directors, agents, and employees of BX for the purpose of and subject to oversight pursuant to the Exchange Act.

(b) The Company and its Members, officers, agents, and employees, as well as the officers, directors, agents and employees of Members irrevocably submit to the exclusive jurisdiction of the U.S. federal courts, the SEC, and BX, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws or the rules or regulations thereunder, arising out of, or relating to, the Company's activities or Section 18.6(a) (except that such jurisdictions shall also include Delaware for any such matter relating to the organization or internal affairs of the Company), and hereby waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. federal courts, SEC, or BX, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency, and, to the fullest extent permitted by laws, waive the defense or application of any foreign secrecy or blocking statutes or regulations with respect to the Members, their officers, directors, agents and employees, that relate to the Company's activities or their participation therein or in connection therewith.

(c) With respect to Article 16 and Sections 4.2, 12.1 and 18.6, each Member shall take such action as is necessary to insure that such Member's officers, directors, agents, and employees consent in writing to the applicability of these provisions with respect to the Company related activities.

18.7 Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

18.8 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof or thereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

18.9 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18.10 Survival. The provisions of Articles 14, 16, and 18 shall survive the termination of this Agreement for any reason. All other rights and obligations of the Members shall cease upon the termination of this Agreement.

**IN WITNESS WHEREOF, the parties hereto have executed this agreement as of December 30, 2008.**

NASDAQ BX, INC.

By: \_\_\_\_\_

Name: Joan C. Conley

Title: Secretary

THE NASDAQ OMX GROUP, INC.

By: \_\_\_\_\_

Name: John M. Yetter

Title: Vice President and Deputy General Counsel

## **Delegation Agreement**

This DELEGATION AGREEMENT dated January 12, 2009 (the "Agreement"), is by and between NASDAQ BX, Inc. (the "Exchange"), a Delaware corporation, and NASDAQ BX Equities LLC, a Delaware limited liability company ("BX Equities LLC").

WHEREAS, the Exchange is a registered national securities exchange pursuant to Section 6 of the Securities Exchange Act of 1934, as amended (the "Exchange Act");

WHEREAS, BX Equities LLC is a controlled subsidiary of the Exchange; and

WHEREAS, the Exchange desires to delegate to BX Equities LLC, and BX Equities LLC desires to assume, certain limited responsibilities and obligations of the Exchange solely with respect to the operation of a cash equities trading facility, on the terms and subject to the conditions set forth in this Agreement. The delegation set forth below is limited to operation of the cash equities trading facility and does not include operation of an options market or other functions not specifically set forth in this limited delegation.

NOW, THEREFORE, in consideration of the agreements contained herein, the parties hereto agree as follows:

I. The Exchange

The Exchange shall have ultimate responsibility for the operations, rules and regulations developed by BX Equities LLC, as well as their enforcement. Actions taken by BX Equities LLC pursuant to delegated authority remain subject to review, approval or rejection by the board of directors of the Exchange in accordance with procedures established by that board of directors. In addition, the Exchange will expressly retain the following authority and functions (together, the "Retained Functions"):

1. To exercise overall responsibility for ensuring that statutory and self-regulatory obligations and functions of the Exchange are fulfilled and to perform any duties and functions not delegated.
2. To delegate authority to BX Equities LLC to take actions on behalf of the Exchange
3. To direct BX Equities LLC to take action necessary to effectuate the purposes and functions of the Exchange, consistent with the independence of the Exchange's regulatory functions, exchange rules, policies and procedures and the federal securities laws.

## II. BX Equities LLC

### *A. Functions and Responsibilities*

Subject to the retention of the Retained Functions, the Exchange shall delegate to BX Equities LLC, and BX Equities LLC shall assume, the following responsibilities and functions of the Exchange, as a registered national securities exchange (each, a "Delegated Market Responsibility" and together the "Delegated Market Responsibilities"):

1. To operate the NASDAQ BX Equities Market, including automated systems supporting it.
2. To provide and maintain a communications network infrastructure linking market participants for the efficient process and handling of quotations, orders, transaction reports and comparisons of transactions in cash equities.
3. To act as a Securities Information Processor for quotations and transaction information related to securities traded on the NASDAQ BX Equities Market and any trading facilities operated by BX Equities LLC.
4. To administer the participation of the Exchange in the National Market System plans governing the listing, quoting, trading and regulation of cash equities and Commission regulations related thereto.
5. To collect, process, consolidate and provide to the Exchange accurate information requisite to operation of a surveillance audit trail for the quoting and trading of cash equities.
6. To establish and assess access fees, transaction fees, market data fees and other fees for the products and services offered by BX Equities LLC.

7. To develop, adopt and administer rules governing participation in the NASDAQ BX Equities Market.
8. To refer to the Exchange any complaints of a regulatory nature involving potential rule violations by member organizations or employees.
9. To establish the annual budget for BX Equities LLC for approval by the Exchange.
10. To determine allocation of BX Equities LLC resources.
11. To manage external relations on matters related to trading on and the operation and functions of the NASDAQ BX Equities Market with Congress, the Commission, state regulators, other self-regulatory organizations, business groups, and the public.

*B. Covenants Relating to BX Equities LLC*

For so long as BX Equities LLC has any Delegated Market Responsibility pursuant to this Agreement, BX Equities LLC agrees that:

1. To the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the Exchange or any Delegated Market Responsibility (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange that shall come into the possession of BX Equities LLC shall: (a) not be made available to any person (other than as provided in the proviso at the end of this sentence) other than to those officers, employees and agents of the BX Equities LLC who have a reasonable need to know the contents thereof; (b) be retained in confidence by BX Equities LLC and the officers, employees and agents of BX Equities LLC; and (c) not be used for any non-regulatory purposes; provided, that nothing in this sentence shall be interpreted so as to limit or impede the rights of the Commission or the Exchange 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, employees or agents of BX Equities LLC to disclose such confidential information to the Commission or the Exchange
2. BX Equities LLC's books and records shall be subject at all times to inspection and copying by (a) the Commission and (b) by the Exchange.
3. BX Equities LLC's books and records shall be maintained within the United States.
4. The books, records, premises, officers, and employees of BX Equities LLC shall be deemed to be the books, records, premises, officers, and employees of the Exchange for purposes of and subject to oversight pursuant to the Exchange Act.
5. BX Equities LLC shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and the Exchange pursuant to and to the extent of its regulatory authority, and shall take reasonable steps necessary to cause its



agents to cooperate, with the Commission and, where applicable, the Exchange pursuant to their regulatory authority.

6. BX Equities LLC, its officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange and to obligations to investors and the general public and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of the Exchange relating to their regulatory functions (including disciplinary matters) or that would interfere with the ability of the Exchange to carry out its responsibilities under the Exchange Act.

7. BX Equities LLC, its officers, and those of its employees whose principal place of business and residence is outside of the United States shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the Exchange or any delegated market responsibility (and shall be deemed to agree that BX Equities LLC may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding), and BX Equities LLC and each such officer or employee, in the case of any such officer or employee by virtue of his acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

For so long as BX Equities LLC has any Delegated Market Responsibility pursuant to this Agreement, the Exchange agrees that:

1. The Exchange may not transfer or assign any of its ownership of BX Equities LLC.

### III. Amendments

This Agreement may not be modified except pursuant to a written agreement among the Exchange and BX Equities LLC; provided that, prior to the effectiveness of any such amendment, such amendment shall be filed with, and approved by, the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder.

**IN WITNESS WHEREOF, the parties hereto have executed this agreement as of December 30, 2008.**

NASDAQ BX, Inc.

By: \_\_\_\_\_

Name: John Zecca

Title: Chief Regulatory Officer

NASDAQ BX Equities LLC

By: NASDAQ BX, Inc., its manager

By: \_\_\_\_\_

Name: Joan Conley

Title: Secretary