

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 119

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2026 - \* 005

Amendment No. (req. for Amendments \*)

Filing by NASDAQ BX, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input checked="" type="checkbox"/> 19b-4(f)(6)		
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Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

A proposal to repeal the Restated Certificate of Incorporation of the Exchange and adopt the Certificate of Formation and the Limited Liability Company Agreement of Nasdaq Texas, LLC as well as amend the Bylaws of the Exchange.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \*

Title \*

E-mail \*

Telephone \*

**Signature**


Pursuant to the requirements of the Securities Exchange of 1934, NASDAQ BX, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date

(Title \*)

By   
(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

 Date: 2026.01.21  
17:10:13 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

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SR-BX-2026-005 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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SR-BX-2026-005 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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SR-BX-2026-005 Exhibit 5A.docx  
SR-BX-2026-005 Exhibit 5B.docx  
SR-BX-2026-005 Exhibit 5C.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq BX, Inc. (“BX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to repeal the Restated Certificate of Incorporation of the Exchange (“Certificate of Incorporation”) and adopt the Certificate of Formation (“Certificate of Formation”) and the Limited Liability Company Agreement of Nasdaq Texas, LLC (“LLC Agreement”) as well as amend the Bylaws of the Exchange (“Bylaws”) to reflect (1) the proposed conversion of the Exchange to a Texas limited liability company (“LLC”) and proposed name change to “Nasdaq Texas, LLC;” (2) a change in address of the registered office for the Exchange; (3) certain changes to the Bylaws due to the proposed conversion of the Exchange to a Texas LLC that are substantive but not material; and (4) certain non-substantive conforming changes.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on February 13, 2026.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on January 20, 2026. No other action is necessary for the filing of the rule change. The proposed amendments will be filed with the State of Delaware and the State of Texas.

Questions and comments on the proposed rule change may be directed to:



3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The purpose of the proposed rule change is to convert the Exchange from a corporation organized under the laws of the state of Delaware to a limited liability company organized under the laws of the state of Texas. Specifically, the Exchange proposes to repeal the Restated Certificate of Incorporation of Nasdaq BX, Inc. ("Certificate of Incorporation"), adopt the Certificate of Formation ("Certificate of Formation") and the Limited Liability Company Agreement of Nasdaq Texas, LLC ("LLC Agreement"), as well as amend the Bylaws of the Exchange ("Bylaws") to reflect (1) the proposed conversion of the Exchange to a Texas limited liability company ("LLC") and proposed name change to "Nasdaq Texas, LLC"; (2) a change in address of the registered office for the Exchange; (3) certain changes to the Bylaws due to the

proposed conversion of the Exchange to a Texas LLC that are substantive but not material; and (4) certain non-substantive conforming changes.

The Exchange is proposing to convert to an LLC to more closely conform its organizational structure to that of other Nasdaq, Inc. entities.<sup>3</sup> To effect such change, the Exchange proposes to repeal the Certificate of Incorporation and file the Certificate of Formation with the Texas Secretary of State, together with a Certificate and Plan of Conversion. By virtue of the conversion, the Exchange will convert from a corporation organized under the laws of the state of Delaware to an LLC organized under the laws of the state of Texas and all rights, privileges, powers, property and liabilities shall vest in the LLC at the time of conversion.

All changes described herein would become operative upon the filing of the Certificate Conversion with the Delaware Secretary of State and the filing of the Certificate of Formation, Certificate of Conversion and Plan of Conversion with the Texas Secretary of State.

The Exchange is not proposing to affect the duties of the Exchange's role as a "national securities exchange" registered under Section 6 of the Act.<sup>4</sup> The Exchange's proposed formation documents, including the Certificate of Formation, Limited Liability Agreement and Bylaws, are consistent in form and scope with the governing documents of other Nasdaq, Inc. entities.<sup>5</sup> The proposed changes will not substantively impact the Exchange's existing rules or its current obligations and requirements under its governing documents or the Act. The Exchange is not

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<sup>3</sup> See Nasdaq Stock Market LLC governing documents, available at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>; see also Nasdaq PHLX, LLC governing documents available at <https://listingcenter.nasdaq.com/rulebook/phlx/rules> and Nasdaq ISE, LLC governing documents available at <https://listingcenter.nasdaq.com/rulebook/bx/rules>.

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> See supra note 4.

proposing any changes to its rules or various fee schedules other than the technical amendments to implement the conversion to a Texas corporation and the name change, as set forth below.

To effect the changes, the Exchange proposes the following amendments, as reflected in Exhibit 5.

#### Certificate of Formation

In order to convert from a Delaware corporation to a Texas LLC, a Certificate of Conversion will be filed with the Secretary of State of the State of Delaware in addition to a Certificate of Conversion and a Certificate of Formation which will be filed with the Secretary of State of the State of Texas. The conversion certificates are necessary to effect the conversion of the Exchange from a Delaware corporation to a Texas LLC pursuant to the Texas Business Organizations Code (“BOC”) and the Delaware Limited Liability Company Act however, all current rights, privileges, powers, property and liabilities of the Exchange shall carry over to the new limited liability company.

Further, the BOC requires that a Certificate of Formation be filed to accomplish the formation of the LLC. Unlike a Certificate of Incorporation which may contain actual governing provisions, a Certificate of Formation typically only sets forth limited pieces of information. As such, only the information in Articles First, Second, Third and Fifth of the Exchange Certificate of Incorporation are reflected in the Certificate of Formation, with certain changes.

More specifically, current Article First states the name of the Exchange. As required by Form 205,<sup>6</sup> the name set forth in Article 1 of the Certificate of Formation reflects the new name

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<sup>6</sup> See Form 205 of the Secretary of State of the State of Texas, Article 1, Entity Name and Type.

“Nasdaq Texas, LLC” rather than “Nasdaq BX, Inc.” The LLC is referred to as a “limited liability company” in this provision rather than a “corporation.”

Current Article Second provides the name and address of the Exchange’s registered agent and the registered office address in Delaware. As required by Form 205,<sup>7</sup> Article 2 of the Certificate of Formation will set forth the change in the address of the Exchange’s registered office address from Delaware to Texas. The registered agent will remain unchanged,<sup>8</sup> and the new Texas address will be located at 1999 Bryan Street, Suite 900, Dallas, TX 75201.

As required by Form 205,<sup>9</sup> Article 3 will list the names of the Exchange’s initial managers. The managers set forth in Article 3 are the same as the directors that are currently serving on the Board and they have the same term, so there would be no change to the Board.

As required by Form 205,<sup>10</sup> Article 4 will specify that the purpose for which the Exchange is formed “is for the transaction of any and all lawful business for which a limited liability company may be organized under the BOC.” The purpose enumerated in current Article Third, includes: “(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

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<sup>7</sup> See Form 205 of the Secretary of State of the State of Texas, Article 2, Registered Agent and Registered Office.

<sup>8</sup> The Certificate of Formation reflects the registered agent’s name as CT Corporation System, but the agent is the same entity as The Corporation Trust Company, which is reflected in Article Second of the Certificate of Incorporation.

<sup>9</sup> See Form 205 of the Secretary of State of the State of Texas, Article 3, Governing Authority.

<sup>10</sup> See Form 201 of the Secretary of State of the State of Texas, Article 4, Purpose.

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 may deem appropriate.”<sup>11</sup>

The Exchange’s initial mailing address, as required by Form 205,<sup>12</sup> Article 5, will be the same as the registered office address provided in Article 2.

As required by Form 205,<sup>13</sup> Article 6, the name and address of the Organizer will be Erika Moore, 1100 New York Avenue, NW, 3<sup>rd</sup> Floor, Washington, DC 20005.

The governing provisions of a Texas LLC must be set forth in the company agreement of such Texas LLC. Therefore, the remaining provisions of the repealed Restated Certificate of Incorporation will be reflected in the LLC Agreement and Bylaws, as together, these documents are considered the company agreement of the Exchange for purposes of the BOC (the “Company Agreement”).<sup>14</sup>

### Exchange Bylaws

Following the conversion of the Exchange, it is proposed that the Exchange adopt the Company Agreement. As noted above, the Company Agreement will consist of an LLC Agreement and the Bylaws. Currently, the Bylaws are based on Delaware corporate

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<sup>11</sup> As noted below, language substantially similar to this is included in Section 7 of the LLC Agreement.

<sup>12</sup> See Form 201 of the Secretary of State of the State of Texas, Article 5, Initial Mailing Address.

<sup>13</sup> See Form 201 of the Secretary of State of the State of Texas, Article 6, Organizer.

<sup>14</sup> The BOC requires a company agreement for an entity to be duly formed (see BUS ORG § 101.631). Additionally, a limited liability company agreement is defined in Section 101.001 as an agreement that governs the affairs or the conduct of the limited liability company. Both the Exchange Bylaws and the Exchange LLC Agreement together constitute the limited liability company agreement for purposes of the BOC.

requirements; however, once the Exchange converts to an LLC, the Bylaws will be structured to align with the requirements of a Texas LLC and are attached as Exhibit A to the LLC Agreement. The proposed Bylaws are substantially similar to the structure of the bylaws of Nasdaq ISE, LLC (“ISE Bylaws”), with certain modifications to reflect that the Exchange is a Texas LLC, whereas ISE is a Delaware LLC, as further explained below.<sup>15</sup> As a result, there are significant differences between the current and the proposed Bylaws.

For example, the Exchange intends to add language to the Preamble of the proposed Bylaws that pairs the Bylaws with the proposed LLC Agreement which will reflect that the two documents work together to form the Company Agreement. The Exchange also proposes to add the term “Executive Representative,” which is defined in proposed Article I(k) and used in proposed Article II, Section 1(b), to clarify the procedures and individuals involved with annual elections of Member Representatives, and to conform the proposed Bylaws to the ISE Bylaws. Additionally, the Exchange proposes to amend the Bylaws to reflect provisions that are not applicable to a manager-managed LLC. First, the Exchange proposes to amend current Section 4.5 regarding the basis for removing or disqualifying a Director<sup>16</sup> to more closely align with Section 9(i) of the proposed LLC Agreement. The Exchange also proposes to add a requirement to Article II, Section 3 that the sole member of the LLC (“Sole LLC Member”) shall select a Director. The proposed change also will effectively eliminate stockholders, and responsibilities formerly held by the sole stockholder of the Exchange would shift to the Sole LLC Member. This proposed change also conforms to how limited liability companies typically operate, and the

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<sup>15</sup> Similar to BX, Nasdaq ISE, LLC is a national securities exchange that has Nasdaq, Inc as its ultimate parent entity.

<sup>16</sup> Pursuant to the Bylaws “Director” shall mean the Persons (as defined in the LLC Agreement) elected or appointed to the Board of Directors from time to time in accordance with the LLC Agreement and the Bylaws, in their capacity as managers of the Company.

language conforms to the ISE Bylaws. Second, the Exchange will remove Article III (Meeting of Stockholders), Article IX (Capital Stock) Article X Section 10.1 (Corporate Seal) of the current Bylaws in its entirety because the proposed conversion to an LLC will effectively eliminate the Exchange's stockholders and the Exchange will no longer have capital stock and will no longer need to hold annual or special stockholder meetings. Rather, the Exchange will continue as a manager-managed entity. Third, the Exchange will remove certain provisions of current Bylaws Section 4.4 related to the annual election of directors by stockholder vote, current Bylaws Section 4.10 related to annual meetings and current Bylaws Section 4.15(b) related to the approval of a conflict transaction by the stockholders because the Exchange will no longer have stockholders or annual stockholder meetings following its conversion to an LLC. Rather, Article II and Article III, Section 1 of the proposed LLC Agreement will provide for the election/selection of directors, and proposed Article III, Section 7 will address how conflicts of interest are handled. The language in those provisions conform to the LLC Agreement of Nasdaq ISE, LLC ("ISE LLC Agreement").

The Exchange proposes removing certain portions of the current Bylaws to align with the ISE Bylaws. First, the Exchange is proposing to remove the conflict of interest provision in current Section 4.15(b) of the Bylaws which states that no contract or transaction is void solely because an interested party is present at the meeting or votes. Similarly, the Exchange proposes removing current Bylaws Section 10.2 (Fiscal Year) because the ISE Bylaws do not specifically define the fiscal year. Additionally, the Exchange proposed to move current Section 4.12 (Committees) to Section 9(g) of the proposed LLC Agreement. The Exchange is also proposing to remove the Arbitration and Mediation Committee provisions in current Bylaws Section 4.14(e) because no other Nasdaq-operated exchange, including ISE, currently has an Arbitration

and Mediation Committee, and this committee is no longer part of the typical governance structure for the Nasdaq-operated exchanges. Additionally, the Exchange proposes moving the indemnification clauses in current Section 8.1 of the Bylaws to the proposed LLC Agreement with the exception of certain provisions, including: (i) disallowing advancement of expenses under certain circumstances; (ii) extension of indemnification rights to heirs, successors, executors, and administrators; (iii) reservation of indemnification for the time prior to repeal, in the event the indemnification provision is repealed; (iv) right to recover advancement of expenses if not paid in full within 60 days of a claim. These proposed changes to the Bylaws are intended to conform with the ISE Bylaws, which do not contain such specific or inclusive indemnification rights. The Exchange also proposes removing the provision regarding indemnification insurance, or current Bylaws Section 8.2 to conform with the ISE Bylaws, which also do not contain this specific provision.

As noted above, the Exchange's proposed updated Bylaws are in substantially the same form as the ISE Bylaws, with certain modifications to reflect the conversion to a Texas LLC. Generally, the Exchange proposes to replace all references to ISE with Nasdaq Texas and all references to Delaware law with references to the corresponding Texas law in addition to the following amendments described below.

The proposed Preamble language mirrors the language used in the ISE Bylaws. The Exchange proposes non-substantive changes to Article I (Definitions) to clarify certain defined terms and to align the terms to be consistent with the terms used in the LLC Agreement. Also, while ISE and BX both have Review Councils, ISE does not have a Listing Hearing Review Council. Therefore, the Exchange proposes to modify the definitions to add an Exchange Listing Hearing Review Council member to the definitions of "Industry member," "Member

Representative Member” and “Public member.” The Exchange also proposes to amend the name of the Company Member or Sole LLC Member, as defined in Article 1(e) to mean Nasdaq, Inc. rather than International Securities Exchange Holdings, Inc. to align with the corporate structure of the Exchange.

Article II (Annual Election of Member Representative Directors and Other Actions By Exchange Members), Article III (Board of Directors) and Article IV (Officers, Agents, and Employees), as proposed are substantively identical to the ISE Bylaws. However, the Exchange is proposing to make a substantive but non-material change to Article III, Sections 6, 7 and 8 to add a reference to the Exchange Listing and Hearing Review Council.

As discussed above, while ISE and BX both have Review Councils, ISE does not currently have a Listing and Hearing Review Council. Therefore, the Exchange has added Article V (Exchange Listing and Hearing Review Council) to describe the Listing and Hearing Review Council, which is substantively identical to the current description in the BX bylaws.

Article VI (Exchange Review Council) as proposed, is substantially similar to the current ISE requirements and substantially identical to the current BX bylaws. However, the rule references in Section 9 are modified to conform to the Exchange rules.

As proposed, Article VII (Miscellaneous Provisions), Article VIII (Amendments; Emergency Bylaws) and Article IX (Exchange Authorities) are substantively identical to the ISE Bylaws.

#### Exchange Limited Liability Company Agreement

Similar to the Bylaws, the LLC Agreement proposed by the Exchange is based on, and substantially similar to, the current ISE LLC Agreement with certain modifications as discussed below. Because the LLC Agreement and the Bylaws act together to form the Company

Agreement, certain governing provisions in the current Bylaws will appear in the LLC Agreement instead. For example, the provisions related to books and records, which appear as Section 10.5 in the current Bylaws, will be discussed in Section 16 of the proposed LLC Agreement.

Generally, the proposed LLC Agreement will contain non-substantive and non-material differences from the ISE LLC Agreement such as (1) replacing any reference to ISE with Nasdaq Texas, (2) removing all references to Delaware state law and replacing them with references to Texas state law, where applicable, (3) describing the Exchange as a newly formed company rather than a company continuing from a merger, where applicable and (4) capitalizing all terms that are capitalized within the proposed Bylaws.

The preamble of the ISE LLC Agreement discusses the entity's original corporate structure and the subsequent merger and conversion into a Delaware LLC. The proposed preamble of the Exchange's LLC Agreement differs from the ISE LLC Agreement because the Exchange's LLC Agreement describe the formation of BX as a Delaware corporation and its conversion into a Texas LLC.

The name of the Exchange in Section 1 will reflect the newly formed Nasdaq Texas, LLC. The Exchange is not changing the principal business office in Section 2 which shall be located at 151 W 42nd Street, New York, NY 10036. While the registered agent is unchanged, Sections 3 and 4 of the LLC Agreement will reflect the new registered office and new registered agent address, respectively.

The Exchange is not proposing to include references to a merger and merger documents as discussed in Section 6 (currently titled Certificates). Instead, the Exchange is proposing to rename the section "Duration" and only include the discussion addressing circumstances that

could affect the length of the Exchange's existence. Additionally, to align with the BOC, the Exchange is proposing to incorporate winding up and revocation within this section as additional reasons that may affect the Exchange's existence.

Unlike the ISE Bylaws, only the Sole LLC Member is required to adopt the proposed Bylaws. Therefore, the Exchange is not proposing to include references to the Exchange and the Board from Section 9(c) (Management) of the ISE LLC Agreement. However, the Exchange is proposing to add clarifying language to Section 9(c) of the LLC Agreement to explain that the Company Agreement consists of the Bylaws and LLC Agreement.

Proposed Schedule A attached to the LLC Agreement, which provides definitions not otherwise defined within the Company Agreement, will have the following non-material differences from the current Schedule A of the ISE LLC Agreement: (1) include the word "exhibit" to the list of documents that define the term Agreement; (2) for the definition of "bankruptcy," and "company," remove references to Delaware law and replace it with references to Texas law; (3) remove the term "certificate of formation" and replace it with the term and definition for Certificate of Conversion; (4) remove the term "Certificate of Merger" and replace it with the term "Certificate of Incorporation; (5) replace Nasdaq ISE with the name Nasdaq Texas; (6) remove reference to "ISE Member" and replace the definition with the term "Nasdaq Texas Member;" (7) replace International Securities Exchange Holdings, Inc. with Nasdaq, Inc. within the definition of "Sole LLC Member."

Schedule B of the ISE LLC Agreement includes the name, mailing address of the Sole LLC Member and its total interest in ISE. The Exchange is proposing to include a similar Schedule B to the proposed LLC Agreement to reflect Nasdaq, Inc. as the Sole LLC Member

with a mailing address of 151 West 42<sup>nd</sup> Street, New York, NY 10036 with 100 percentage interest in the Exchange.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(1)<sup>18</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>19</sup> in that it is designed 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 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. In addition, the proposed changes are consistent with Section 6(b)(3) of the Act,<sup>20</sup> which requires the rules of the Exchange to provide a fair representation and requirements as to the selection of the directors of the Exchange.

In addition to converting to a Texas entity as discussed above, the Exchange is also proposing to convert its corporate structure from a corporation to an LLC. As such, pursuant to the BOC, the Exchange is required to have a Certificate of Formation in lieu of a Certificate of

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(1).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 15 U.S.C. 78f(b)(3).

Incorporation. The differences in the certificates are intended to reflect the conversion of the Exchange facilitate the Exchange's compliance with Texas law, which enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed changes will not substantively impact the Exchange's existing rules and all rights, privileges, powers, property and liabilities shall vest in the LLC at the time of conversion. The Exchange is not proposing to affect the duties of the Exchange's role as a "national securities exchange" registered under Section 6 of the Act.<sup>21</sup> Moreover, the Commission has allowed for another national securities exchange to be registered in Texas.<sup>22</sup>

The Company Agreement, which includes Schedules A and B, is modeled primarily after the ISE governing documents because ISE's corporate structure is substantially similar to the Exchange's proposed structure as an LLC. The proposed differences between the ISE documents and the Company Agreement are non-substantive and non-material changes that do not change or implicate the Exchange's governance as an "exchange" within the meaning of the Act. The proposed name changes in the Company Agreement and the Certificate of Formation aligns certain provisions with the BOC and facilitates compliance with Texas law, update addresses, and effect non-substantive and non-material changes removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from corporate governance provisions that are either unclear or inconsistent with the governing law. The Exchange also believes that the proposed the Company Agreement provides a fair

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<sup>21</sup> 15 U.S.C. 78f.

<sup>22</sup> See Securities Exchange Act Release No. 34-102507 (Feb. 28, 2025) 90 FR 11445 (March 6, 2025) (SR-NYSECHX-2025-01).

representation and requirements as to the directors and removes impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the governing documents. The Company Agreement along with the Certificate of Formation would accurately reflect that, by virtue of the conversion, the Exchange will convert from a corporation organized under the laws of the state of Delaware to an LLC organized under the laws of the state of Texas.

The addition of the Exchange Listing and Hearing Review Council to Article V of the Bylaws maintains consistency with the current BX compliance requirements. Similarly, the proposed additions to Article III Sections 6,7 and 8 of the Bylaws to add a reference to the Exchange Listing and Hearing Review Council are not material and ensure consistency with the LLC Agreement and existing obligations and requirements for the Exchange Board, as specified elsewhere in the proposed Bylaws, its other governing documents and its rules. Adding the references will remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that investors and market participants can more easily navigate, understand and comply with the Bylaws in addition to further enabling the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

Not including references to a merger and merger documents as discussed in Section 6 of the LLC Agreement, will accurately reflect the history of the formation of the Exchange. Similarly, removal of references to the Exchange and the Board throughout the LLC Agreement

will accurately reflect the requirements for adopting the Bylaws. Moreover, these proposed changes to the LLC Agreement will reduce potential investor and market participant confusion and therefore remove impediments to and perfect the mechanism of a free and open market and a national market system. Additionally, these proposed amendments would facilitate the Exchange's compliance with Texas law, which would further enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange is not proposing to affect the corporate governance of the Exchange as an "national securities exchange" registered under Section 6 of the Act and its existing governance requirements, including as to membership of the Board, will not change and will remain consistent with Section 6(b)(3) of the Act.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with repealing the Exchange Certificate of Incorporation, adopting the Exchange Certificate of Formation and updating the Exchange to reflect the corporate organizational changes and name change.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>23</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>24</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposal does not significantly affect the protection of investors or the public interest, as all current rights, privileges, powers, property and liabilities of the Exchange shall carry over to the new limited liability company and the Exchange is not proposing any amendments to its ownership, the Board or to its trading rules other than minor technical amendments to implement the conversion to Texas jurisdiction and name changes. The proposed differences between the ISE certificate of formation, bylaws or LLC agreement and the Exchange's Certificate of Formation and Company Agreements are non-substantive and non-material which will contribute to the orderly operation of the Exchange by ensuring accuracy and adding clarity and transparency.

Moreover, the proposed rule changes are substantially similar to the ISE Bylaws and LLC agreement and do not significantly affect the protection of investors or the public interest because the Exchange is not proposing to affect the duties and responsibilities of the Exchange

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<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>24</sup> 17 CFR 240.19b-4(f)(6).

as an “national securities exchange” registered under Section 6 of the Act.<sup>25</sup> The proposed changes will not substantively impact the Exchange’s existing rules or its current obligations and requirements under its governing documents or the Act, including Section 6(b)(3) of the Act.<sup>26</sup>

Furthermore, Rule 19b-4(f)(6)(iii)<sup>27</sup> requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that the new corporate structure and name change can take effect promptly. Granting the waiver of the operative delay will allow the Exchange to expedite its corporate governance restructuring and permit the immediate submission and implementation of additional proposals such as establishing new listing rules and fees and changing the Exchange’s name throughout the current rulebook. This approach ensures the Exchange maintains its obligations as a national securities exchange registered under Section 6 of the Act and Texas law, while also helping to mitigate potential confusion among investors and market participants regarding the Exchange’s corporate governance framework.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

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<sup>25</sup> 15 U.S.C. 78f.

<sup>26</sup> 15 U.S.C. 78f(b)(3).

<sup>27</sup> 17 CFR 240.19b-4(f)(6)(iii).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5A. Text of the Restated Certificate of Incorporation of Nasdaq BX, Inc.

5B. Text of the Bylaws of Nasdaq BX, Inc.

5C. Text of the Proposed Certificate of Formation of Nasdaq Texas, LLC

5D. Text of the Proposed Bylaws of Nasdaq Texas, LLC

5E. Text of the Proposed LLC Agreement of Nasdaq Texas, LLC

**EXHIBIT 1****SECURITIES AND EXCHANGE COMMISSION****[Release No. 34 ; File No. SR-BX-2026-005]****Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Repeal the Restated Certificate of Incorporation and Adopt a Certificate of Formation and Company Agreement**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 21, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to repeal the Restated Certificate of Incorporation of the Exchange (“Certificate of Incorporation”) and adopt the Certificate of Formation (“Certificate of Formation”) and the Limited Liability Company Agreement of Nasdaq Texas, LLC (“LLC Agreement”) as well as amend the Bylaws of the Exchange (“Bylaws”) to reflect (1) the proposed conversion of the Exchange to a Texas limited liability company (“LLC”) and proposed name change to “Nasdaq Texas, LLC;” (2) a change in address of the registered office for the Exchange; (3) certain changes to the Bylaws due to the proposed conversion of the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Exchange to a Texas LLC that are substantive but not material; and (4) certain non-substantive conforming changes.

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/bx/rulefilings>, and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to convert the Exchange from a corporation organized under the laws of the state of Delaware to a limited liability company organized under the laws of the state of Texas. Specifically, the Exchange proposes to repeal the Restated Certificate of Incorporation of Nasdaq BX, Inc. ("Certificate of Incorporation"), adopt the Certificate of Formation ("Certificate of Formation") and the Limited Liability Company Agreement of Nasdaq Texas, LLC ("LLC Agreement"), as well as amend the Bylaws of the Exchange ("Bylaws") to reflect (1) the proposed conversion of the Exchange to a Texas limited liability company ("LLC") and proposed name change to "Nasdaq Texas, LLC"; (2) a change in address of the registered office for the Exchange; (3) certain changes to the Bylaws due to the

proposed conversion of the Exchange to a Texas LLC that are substantive but not material; and (4) certain non-substantive conforming changes.

The Exchange is proposing to convert to an LLC to more closely conform its organizational structure to that of other Nasdaq, Inc. entities.<sup>3</sup> To effect such change, the Exchange proposes to repeal the Certificate of Incorporation and file the Certificate of Formation with the Texas Secretary of State, together with a Certificate and Plan of Conversion. By virtue of the conversion, the Exchange will convert from a corporation organized under the laws of the state of Delaware to an LLC organized under the laws of the state of Texas and all rights, privileges, powers, property and liabilities shall vest in the LLC at the time of conversion.

All changes described herein would become operative upon the filing of the Certificate Conversion with the Delaware Secretary of State and the filing of the Certificate of Formation, Certificate of Conversion and Plan of Conversion with the Texas Secretary of State.

The Exchange is not proposing to affect the duties of the Exchange's role as a "national securities exchange" registered under Section 6 of the Act.<sup>4</sup> The Exchange's proposed formation documents, including the Certificate of Formation, Limited Liability Agreement and Bylaws, are consistent in form and scope with the governing documents of other Nasdaq, Inc. entities.<sup>5</sup> The proposed changes will not substantively impact the Exchange's existing rules or its current obligations and requirements under its governing documents or the Act. The Exchange is not

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<sup>3</sup> See Nasdaq Stock Market LLC governing documents, available at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>; see also Nasdaq PHLX, LLC governing documents available at <https://listingcenter.nasdaq.com/rulebook/phlx/rules> and Nasdaq ISE, LLC governing documents available at <https://listingcenter.nasdaq.com/rulebook/bx/rules>.

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> See supra note 4.

proposing any changes to its rules or various fee schedules other than the technical amendments to implement the conversion to a Texas corporation and the name change, as set forth below.

To effect the changes, the Exchange proposes the following amendments, as reflected in Exhibit 5.

#### Certificate of Formation

In order to convert from a Delaware corporation to a Texas LLC, a Certificate of Conversion will be filed with the Secretary of State of the State of Delaware in addition to a Certificate of Conversion and a Certificate of Formation which will be filed with the Secretary of State of the State of Texas. The conversion certificates are necessary to effect the conversion of the Exchange from a Delaware corporation to a Texas LLC pursuant to the Texas Business Organizations Code (“BOC”) and the Delaware Limited Liability Company Act however, all current rights, privileges, powers, property and liabilities of the Exchange shall carry over to the new limited liability company.

Further, the BOC requires that a Certificate of Formation be filed to accomplish the formation of the LLC. Unlike a Certificate of Incorporation which may contain actual governing provisions, a Certificate of Formation typically only sets forth limited pieces of information. As such, only the information in Articles First, Second, Third and Fifth of the Exchange Certificate of Incorporation are reflected in the Certificate of Formation, with certain changes.

More specifically, current Article First states the name of the Exchange. As required by Form 205,<sup>6</sup> the name set forth in Article 1 of the Certificate of Formation reflects the new name

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<sup>6</sup> See Form 205 of the Secretary of State of the State of Texas, Article 1, Entity Name and Type.

“Nasdaq Texas, LLC” rather than “Nasdaq BX, Inc.” The LLC is referred to as a “limited liability company” in this provision rather than a “corporation.”

Current Article Second provides the name and address of the Exchange’s registered agent and the registered office address in Delaware. As required by Form 205,<sup>7</sup> Article 2 of the Certificate of Formation will set forth the change in the address of the Exchange’s registered office address from Delaware to Texas. The registered agent will remain unchanged,<sup>8</sup> and the new Texas address will be located at 1999 Bryan Street, Suite 900, Dallas, TX 75201.

As required by Form 205,<sup>9</sup> Article 3 will list the names of the Exchange’s initial managers. The managers set forth in Article 3 are the same as the directors that are currently serving on the Board and they have the same term, so there would be no change to the Board.

As required by Form 205,<sup>10</sup> Article 4 will specify that the purpose for which the Exchange is formed “is for the transaction of any and all lawful business for which a limited liability company may be organized under the BOC.” The purpose enumerated in current Article Third, includes: “(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

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<sup>7</sup> See Form 205 of the Secretary of State of the State of Texas, Article 2, Registered Agent and Registered Office.

<sup>8</sup> The Certificate of Formation reflects the registered agent’s name as CT Corporation System, but the agent is the same entity as The Corporation Trust Company, which is reflected in Article Second of the Certificate of Incorporation.

<sup>9</sup> See Form 205 of the Secretary of State of the State of Texas, Article 3, Governing Authority.

<sup>10</sup> See Form 201 of the Secretary of State of the State of Texas, Article 4, Purpose.

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 may deem appropriate.”<sup>11</sup>

The Exchange’s initial mailing address, as required by Form 205,<sup>12</sup> Article 5, will be the same as the registered office address provided in Article 2.

As required by Form 205,<sup>13</sup> Article 6, the name and address of the Organizer will be Erika Moore, 1100 New York Avenue, NW, 3<sup>rd</sup> Floor, Washington, DC 20005.

The governing provisions of a Texas LLC must be set forth in the company agreement of such Texas LLC. Therefore, the remaining provisions of the repealed Restated Certificate of Incorporation will be reflected in the LLC Agreement and Bylaws, as together, these documents are considered the company agreement of the Exchange for purposes of the BOC (the “Company Agreement”).<sup>14</sup>

### Exchange Bylaws

Following the conversion of the Exchange, it is proposed that the Exchange adopt the Company Agreement. As noted above, the Company Agreement will consist of an LLC Agreement and the Bylaws. Currently, the Bylaws are based on Delaware corporate

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<sup>11</sup> As noted below, language substantially similar to this is included in Section 7 of the LLC Agreement.

<sup>12</sup> See Form 201 of the Secretary of State of the State of Texas, Article 5, Initial Mailing Address.

<sup>13</sup> See Form 201 of the Secretary of State of the State of Texas, Article 6, Organizer.

<sup>14</sup> The BOC requires a company agreement for an entity to be duly formed (see BUS ORG § 101.631). Additionally, a limited liability company agreement is defined in Section 101.001 as an agreement that governs the affairs or the conduct of the limited liability company. Both the Exchange Bylaws and the Exchange LLC Agreement together constitute the limited liability company agreement for purposes of the BOC.

requirements; however, once the Exchange converts to an LLC, the Bylaws will be structured to align with the requirements of a Texas LLC and are attached as Exhibit A to the LLC Agreement. The proposed Bylaws are substantially similar to the structure of the bylaws of Nasdaq ISE, LLC (“ISE Bylaws”), with certain modifications to reflect that the Exchange is a Texas LLC, whereas ISE is a Delaware LLC, as further explained below.<sup>15</sup> As a result, there are significant differences between the current and the proposed Bylaws.

For example, the Exchange intends to add language to the Preamble of the proposed Bylaws that pairs the Bylaws with the proposed LLC Agreement which will reflect that the two documents work together to form the Company Agreement. The Exchange also proposes to add the term “Executive Representative,” which is defined in proposed Article I(k) and used in proposed Article II, Section 1(b), to clarify the procedures and individuals involved with annual elections of Member Representatives, and to conform the proposed Bylaws to the ISE Bylaws. Additionally, the Exchange proposes to amend the Bylaws to reflect provisions that are not applicable to a manager-managed LLC. First, the Exchange proposes to amend current Section 4.5 regarding the basis for removing or disqualifying a Director<sup>16</sup> to more closely align with Section 9(i) of the proposed LLC Agreement. The Exchange also proposes to add a requirement to Article II, Section 3 that the sole member of the LLC (“Sole LLC Member”) shall select a Director. The proposed change also will effectively eliminate stockholders, and responsibilities formerly held by the sole stockholder of the Exchange would shift to the Sole LLC Member. This proposed change also conforms to how limited liability companies typically operate, and the

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<sup>15</sup> Similar to BX, Nasdaq ISE, LLC is a national securities exchange that has Nasdaq, Inc as its ultimate parent entity.

<sup>16</sup> Pursuant to the Bylaws “Director” shall mean the Persons (as defined in the LLC Agreement) elected or appointed to the Board of Directors from time to time in accordance with the LLC Agreement and the Bylaws, in their capacity as managers of the Company.

language conforms to the ISE Bylaws. Second, the Exchange will remove Article III (Meeting of Stockholders), Article IX (Capital Stock) Article X Section 10.1 (Corporate Seal) of the current Bylaws in its entirety because the proposed conversion to an LLC will effectively eliminate the Exchange's stockholders and the Exchange will no longer have capital stock and will no longer need to hold annual or special stockholder meetings. Rather, the Exchange will continue as a manager-managed entity. Third, the Exchange will remove certain provisions of current Bylaws Section 4.4 related to the annual election of directors by stockholder vote, current Bylaws Section 4.10 related to annual meetings and current Bylaws Section 4.15(b) related to the approval of a conflict transaction by the stockholders because the Exchange will no longer have stockholders or annual stockholder meetings following its conversion to an LLC. Rather, Article II and Article III, Section 1 of the proposed LLC Agreement will provide for the election/selection of directors, and proposed Article III, Section 7 will address how conflicts of interest are handled. The language in those provisions conform to the LLC Agreement of Nasdaq ISE, LLC ("ISE LLC Agreement").

The Exchange proposes removing certain portions of the current Bylaws to align with the ISE Bylaws. First, the Exchange is proposing to remove the conflict of interest provision in current Section 4.15(b) of the Bylaws which states that no contract or transaction is void solely because an interested party is present at the meeting or votes. Similarly, the Exchange proposes removing current Bylaws Section 10.2 (Fiscal Year) because the ISE Bylaws do not specifically define the fiscal year. Additionally, the Exchange proposed to move current Section 4.12 (Committees) to Section 9(g) of the proposed LLC Agreement. The Exchange is also proposing to remove the Arbitration and Mediation Committee provisions in current Bylaws Section 4.14(e) because no other Nasdaq-operated exchange, including ISE, currently has an Arbitration

and Mediation Committee, and this committee is no longer part of the typical governance structure for the Nasdaq-operated exchanges. Additionally, the Exchange proposes moving the indemnification clauses in current Section 8.1 of the Bylaws to the proposed LLC Agreement with the exception of certain provisions, including: (i) disallowing advancement of expenses under certain circumstances; (ii) extension of indemnification rights to heirs, successors, executors, and administrators; (iii) reservation of indemnification for the time prior to repeal, in the event the indemnification provision is repealed; (iv) right to recover advancement of expenses if not paid in full within 60 days of a claim. These proposed changes to the Bylaws are intended to conform with the ISE Bylaws, which do not contain such specific or inclusive indemnification rights. The Exchange also proposes removing the provision regarding indemnification insurance, or current Bylaws Section 8.2 to conform with the ISE Bylaws, which also do not contain this specific provision.

As noted above, the Exchange's proposed updated Bylaws are in substantially the same form as the ISE Bylaws, with certain modifications to reflect the conversion to a Texas LLC. Generally, the Exchange proposes to replace all references to ISE with Nasdaq Texas and all references to Delaware law with references to the corresponding Texas law in addition to the following amendments described below.

The proposed Preamble language mirrors the language used in the ISE Bylaws. The Exchange proposes non-substantive changes to Article I (Definitions) to clarify certain defined terms and to align the terms to be consistent with the terms used in the LLC Agreement. Also, while ISE and BX both have Review Councils, ISE does not have a Listing Hearing Review Council. Therefore, the Exchange proposes to modify the definitions to add an Exchange Listing Hearing Review Council member to the definitions of "Industry member," "Member

Representative Member” and “Public member.” The Exchange also proposes to amend the name of the Company Member or Sole LLC Member, as defined in Article 1(e) to mean Nasdaq, Inc. rather than International Securities Exchange Holdings, Inc. to align with the corporate structure of the Exchange.

Article II (Annual Election of Member Representative Directors and Other Actions By Exchange Members), Article III (Board of Directors) and Article IV (Officers, Agents, and Employees), as proposed are substantively identical to the ISE Bylaws. However, the Exchange is proposing to make a substantive but non-material change to Article III, Sections 6, 7 and 8 to add a reference to the Exchange Listing and Hearing Review Council.

As discussed above, while ISE and BX both have Review Councils, ISE does not currently have a Listing and Hearing Review Council. Therefore, the Exchange has added Article V (Exchange Listing and Hearing Review Council) to describe the Listing and Hearing Review Council, which is substantively identical to the current description in the BX bylaws.

Article VI (Exchange Review Council) as proposed, is substantially similar to the current ISE requirements and substantially identical to the current BX bylaws. However, the rule references in Section 9 are modified to conform to the Exchange rules.

As proposed, Article VII (Miscellaneous Provisions), Article VIII (Amendments; Emergency Bylaws) and Article IX (Exchange Authorities) are substantively identical to the ISE Bylaws.

#### Exchange Limited Liability Company Agreement

Similar to the Bylaws, the LLC Agreement proposed by the Exchange is based on, and substantially similar to, the current ISE LLC Agreement with certain modifications as discussed below. Because the LLC Agreement and the Bylaws act together to form the Company

Agreement, certain governing provisions in the current Bylaws will appear in the LLC Agreement instead. For example, the provisions related to books and records, which appear as Section 10.5 in the current Bylaws, will be discussed in Section 16 of the proposed LLC Agreement.

Generally, the proposed LLC Agreement will contain non-substantive and non-material differences from the ISE LLC Agreement such as (1) replacing any reference to ISE with Nasdaq Texas, (2) removing all references to Delaware state law and replacing them with references to Texas state law, where applicable, (3) describing the Exchange as a newly formed company rather than a company continuing from a merger, where applicable and (4) capitalizing all terms that are capitalized within the proposed Bylaws.

The preamble of the ISE LLC Agreement discusses the entity's original corporate structure and the subsequent merger and conversion into a Delaware LLC. The proposed preamble of the Exchange's LLC Agreement differs from the ISE LLC Agreement because the Exchange's LLC Agreement describe the formation of BX as a Delaware corporation and its conversion into a Texas LLC.

The name of the Exchange in Section 1 will reflect the newly formed Nasdaq Texas, LLC. The Exchange is not changing the principal business office in Section 2 which shall be located at 151 W 42nd Street, New York, NY 10036. While the registered agent is unchanged, Sections 3 and 4 of the LLC Agreement will reflect the new registered office and new registered agent address, respectively.

The Exchange is not proposing to include references to a merger and merger documents as discussed in Section 6 (currently titled Certificates). Instead, the Exchange is proposing to rename the section "Duration" and only include the discussion addressing circumstances that

could affect the length of the Exchange's existence. Additionally, to align with the BOC, the Exchange is proposing to incorporate winding up and revocation within this section as additional reasons that may affect the Exchange's existence.

Unlike the ISE Bylaws, only the Sole LLC Member is required to adopt the proposed Bylaws. Therefore, the Exchange is not proposing to include references to the Exchange and the Board from Section 9(c) (Management) of the ISE LLC Agreement. However, the Exchange is proposing to add clarifying language to Section 9(c) of the LLC Agreement to explain that the Company Agreement consists of the Bylaws and LLC Agreement.

Proposed Schedule A attached to the LLC Agreement, which provides definitions not otherwise defined within the Company Agreement, will have the following non-material differences from the current Schedule A of the ISE LLC Agreement: (1) include the word "exhibit" to the list of documents that define the term Agreement; (2) for the definition of "bankruptcy," and "company," remove references to Delaware law and replace it with references to Texas law; (3) remove the term "certificate of formation" and replace it with the term and definition for Certificate of Conversion; (4) remove the term "Certificate of Merger" and replace it with the term "Certificate of Incorporation; (5) replace Nasdaq ISE with the name Nasdaq Texas; (6) remove reference to "ISE Member" and replace the definition with the term "Nasdaq Texas Member;" (7) replace International Securities Exchange Holdings, Inc. with Nasdaq, Inc. within the definition of "Sole LLC Member."

Schedule B of the ISE LLC Agreement includes the name, mailing address of the Sole LLC Member and its total interest in ISE. The Exchange is proposing to include a similar Schedule B to the proposed LLC Agreement to reflect Nasdaq, Inc. as the Sole LLC Member

with a mailing address of 151 West 42<sup>nd</sup> Street, New York, NY 10036 with 100 percentage interest in the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(1)<sup>18</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>19</sup> in that it is designed 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 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. In addition, the proposed changes are consistent with Section 6(b)(3) of the Act,<sup>20</sup> which requires the rules of the Exchange to provide a fair representation and requirements as to the selection of the directors of the Exchange.

In addition to converting to a Texas entity as discussed above, the Exchange is also proposing to convert its corporate structure from a corporation to an LLC. As such, pursuant to the BOC, the Exchange is required to have a Certificate of Formation in lieu of a Certificate of

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(1).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 15 U.S.C. 78f(b)(3).

Incorporation. The differences in the certificates are intended to reflect the conversion of the Exchange facilitate the Exchange's compliance with Texas law, which enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed changes will not substantively impact the Exchange's existing rules and all rights, privileges, powers, property and liabilities shall vest in the LLC at the time of conversion. The Exchange is not proposing to affect the duties of the Exchange's role as a "national securities exchange" registered under Section 6 of the Act.<sup>21</sup> Moreover, the Commission has allowed for another national securities exchange to be registered in Texas.<sup>22</sup>

The Company Agreement, which includes Schedules A and B, is modeled primarily after the ISE governing documents because ISE's corporate structure is substantially similar to the Exchange's proposed structure as an LLC. The proposed differences between the ISE documents and the Company Agreement are non-substantive and non-material changes that do not change or implicate the Exchange's governance as an "exchange" within the meaning of the Act. The proposed name changes in the Company Agreement and the Certificate of Formation aligns certain provisions with the BOC and facilitates compliance with Texas law, update addresses, and effect non-substantive and non-material changes removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from corporate governance provisions that are either unclear or inconsistent with the governing law. The Exchange also believes that the proposed the Company Agreement provides a fair

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<sup>21</sup> 15 U.S.C. 78f.

<sup>22</sup> See Securities Exchange Act Release No. 34-102507 (Feb. 28, 2025) 90 FR 11445 (March 6, 2025) (SR-NYSECHX-2025-01).

representation and requirements as to the directors and removes impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the governing documents. The Company Agreement along with the Certificate of Formation would accurately reflect that, by virtue of the conversion, the Exchange will convert from a corporation organized under the laws of the state of Delaware to an LLC organized under the laws of the state of Texas.

The addition of the Exchange Listing and Hearing Review Council to Article V of the Bylaws maintains consistency with the current BX compliance requirements. Similarly, the proposed additions to Article III Sections 6,7 and 8 of the Bylaws to add a reference to the Exchange Listing and Hearing Review Council are not material and ensure consistency with the LLC Agreement and existing obligations and requirements for the Exchange Board, as specified elsewhere in the proposed Bylaws, its other governing documents and its rules. Adding the references will remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that investors and market participants can more easily navigate, understand and comply with the Bylaws in addition to further enabling the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

Not including references to a merger and merger documents as discussed in Section 6 of the LLC Agreement, will accurately reflect the history of the formation of the Exchange. Similarly, removal of references to the Exchange and the Board throughout the LLC Agreement

will accurately reflect the requirements for adopting the Bylaws. Moreover, these proposed changes to the LLC Agreement will reduce potential investor and market participant confusion and therefore remove impediments to and perfect the mechanism of a free and open market and a national market system. Additionally, these proposed amendments would facilitate the Exchange's compliance with Texas law, which would further enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange is not proposing to affect the corporate governance of the Exchange as an "national securities exchange" registered under Section 6 of the Act and its existing governance requirements, including as to membership of the Board, will not change and will remain consistent with Section 6(b)(3) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with repealing the Exchange Certificate of Incorporation, adopting the Exchange Certificate of Formation and updating the Exchange to reflect the corporate organizational changes and name change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>23</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>24</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

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<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>24</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-BX-2026-005 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-BX-2026-005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BX-2026-005 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>25</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5A**

All text is deleted.

**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.

**EXHIBIT 5B**

All text is deleted.

**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 (v) 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.

**EXHIBIT 5C**

All text is new.

**CERTIFICATE OF FORMATION  
OF  
NASDAQ TEXAS, LLC**

**ARTICLE 1  
Entity Name and Type**

The filing entity being formed is a limited liability company. The name of the entity is Nasdaq Texas, LLC (the “Company”).

**ARTICLE 2  
Registered Agent and Registered Office**

The initial registered agent is an organization by the name of CT Corporation System. The business address of the registered agent and the registered office address is 1999 Bryan Street, Suite 900, Dallas, TX 75201.

**ARTICLE 3  
Governing Authority**

The Company initially has managers, constituting the Company’s initial board of directors. The names and addresses of the person or persons who are to serve as directors until their successors are qualified and duly appointed are as follows:

<b><u>Name</u></b>	<b><u>Address</u></b>
Thomas A. Kloet	151 W 42nd Street, New York, NY 10036
Kathlyn Card Beckles	151 W 42nd Street, New York, NY 10036
Kevin Kennedy	151 W 42nd Street, New York, NY 10036
Michael J. Curran	151 W 42nd Street, New York, NY 10036
Anne Marie W. Darling	151 W 42nd Street, New York, NY 10036
Thomas Wittman	151 W 42nd Street, New York, NY 10036
Anita Lynch	151 W 42nd Street, New York, NY 10036
David Rosato	151 W 42nd Street, New York, NY 10036
Andrew Schultz	151 W 42nd Street, New York, NY 10036

Elizabeth Wideman

151 W 42nd Street, New York, NY 10036

**ARTICLE 4**  
**Purpose**

The purpose for which the Company is formed is for the transaction of any and all lawful purposes for which a limited liability company may be organized under the Texas Business Organizations Code.

**ARTICLE 5**  
**Initial Mailing Address**

The initial mailing address for the Company is 1999 Bryan Street, Suite 900, Dallas, TX 75201.

**ARTICLE 6**  
**Organizer**

The name and address of the organizer is as follows:

**Name****Address**

Erika Moore

1100 New York Avenue, NW, 3rd Floor,  
Washington, DC 20005

**ARTICLE 7**  
**Effectiveness of Filing**

This document becomes effective when the document is filed by the Secretary of State of the State of Texas.

**EXECUTION**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned also affirms that, to the best knowledge of the undersigned, the name provided as the name of the filing entity does not falsely imply an affiliation with a governmental entity. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of organizer

Erika Moore

Printed or typed name of organizer

**EXHIBIT 5D**

All text is new.

**BY-LAWS OF NASDAQ TEXAS, LLC**

These By-Laws have been established as the By-Laws of Nasdaq Texas, LLC, a Texas limited liability company (the "Company" or the "Exchange"), pursuant to the Limited Liability Company Agreement of the Company, dated as of [ ], 2026 (as amended from time to time, the "LLC Agreement"), and, together with the LLC Agreement, constitute the company agreement of the Company within the meaning of the LLC Act (as defined in the LLC Agreement). In the event of any inconsistency between the LLC Agreement and these By-Laws, the provisions of the LLC Agreement shall control.

Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the LLC Agreement.

**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) "Affiliate" has the meaning ascribed to that term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of the LLC Agreement.
- (b) "Board" or "Board of Directors" means the Board of Directors of the Company.
- (c) "broker" shall have the same meaning as in Section 3(a)(4) of the Exchange Act.
- (d) "Commission" means the Securities and Exchange Commission.
- (e) "Company Member" or "Sole LLC Member" means Nasdaq, Inc., a Delaware corporation, as the sole member of the Company.
- (f) "Contested Election" means an election for 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.
- (g) "day" means calendar day.
- (h) "dealer" shall have the same meaning as in Section 3(a)(5) of the Exchange Act.
- (i) "Directors" means the Persons (as defined in the LLC Agreement) elected or appointed to the Board of Directors from time to time in accordance with the LLC Agreement and these By-Laws, in their capacity as managers of the Company.
- (j) "Election 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 election.

(k) "Executive Representative" means an individual appointed by an Exchange Member to represent, vote, and act for the Exchange Member in all the affairs of the Exchange; provided, however, that other representatives of an Exchange Member may also serve on the Board or committees of the Exchange or otherwise take part in the affairs of the Exchange. If an Exchange Member is also a member of FINRA, the Exchange Executive Representative shall be the same person appointed to serve as the FINRA Executive Representative. An Exchange Member may change its Executive Representative or appoint a substitute for its Executive Representative upon giving notice thereof to the Exchange Secretary via electronic process or such other process as the Exchange may prescribe. An Executive Representative of an Exchange Member or a substitute shall be a member of senior management and registered principal of the Exchange Member. Each Executive Representative shall maintain an Internet electronic mail account for communication with the Exchange and shall update firm contact information as prescribed by the Exchange. Each Exchange Member shall review and, if necessary, update its Executive Representative designation and contact information in the manner prescribed by the Exchange.

(l) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(m) "Exchange Member" means any registered broker or dealer that has been admitted to membership in the national securities exchange operated by the Company. An Exchange Member is not a member of the Company by reason of being an Exchange Member.

(n) "FINRA" means the Financial Industry Regulatory Authority, Inc. and its Affiliates.

(o) "Industry Director" means a Director (excluding any two officers of the Company, 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 20 percent or more of the professional revenues received by the Director or 20 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 50 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 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership;

or (vi) has a consulting or employment relationship with or provides professional services to the Company or any Affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

(p) "Industry member" means an Exchange Listing and Hearing Review Council member, Exchange Review Council member, or a 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 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 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 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any Affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

(q) "investment banking or securities business" means the business, carried on by a broker or dealer, of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others.

(r) "List of Candidates" means the list of candidates for Member Representative Director positions to be elected on an Election Date.

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

(t) "Member Representative Director" means a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to these By-Laws. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member.

(u) "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.

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

(w) "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 Company or one of its affiliates; or (iii) any other individual who would not be an Industry Director.

(x) "Non-Industry member" means an Exchange Review Council member or a 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 Company or one of its affiliates; or (iii) any other individual who would not be an Industry member.

(y) "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.

(z) "Public Director" means a Director who has no material business relationship with a broker or dealer, the Company 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 Company or one of its affiliates shall not be precluded from being considered a "Public Director" solely on the basis of such directorship.

(aa) "Public member" means an Exchange Listing and Hearing Review Council member, Exchange Review Council member, or a member of any other committee appointed by the Board who has no material business relationship with a broker or dealer, the Company 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 Company or one of its affiliates shall not be precluded from being considered a "Public member" solely on the basis of such directorship.

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

(cc) "registered broker or dealer" means any registered broker or dealer, as defined in Section 3(a)(48) of the Exchange Act, that is registered with the Commission under the Exchange Act.

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

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

## **Article II ANNUAL ELECTION OF MEMBER REPRESENTATIVE DIRECTORS AND OTHER ACTIONS BY EXCHANGE MEMBERS**

### Section 1. Record and Election Date

(a) The Member Representative Directors shall be elected to the Board on an annual basis. For each annual election of Member Representative Directors, the Board shall select a Record Date and an Election Date. The Record Date shall be at least 10 days but not more than 60 days prior to the Election 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 on the Election Date. Promptly after selection of the Election Date, in a Notice to Members and in a prominent location on a publicly accessible website, the Company (i) shall announce the Election Date and the List of Candidates, and (ii) shall describe the procedures for Exchange Members to nominate candidates for election at the next annual meeting. In the event of a Contested Election, the Company shall also send Exchange Members the formal notice described in Section 1(c).

(b) An additional candidate may be added to the List of Candidates by any Exchange Member that submits a timely and duly executed written nomination to the Secretary of the Company. To be timely, an Exchange Member's notice shall be delivered to the Secretary at the principal executive offices of the Company not later than the close of business on the 90<sup>th</sup> day nor earlier than the close of business on the 120<sup>th</sup> day prior to the first anniversary of the preceding year's Election Date (provided, however, that in the event that the Election 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 120<sup>th</sup> day prior to such Election Date and not later than the close of business on the later of the 90<sup>th</sup> day prior to such Election Date or the tenth day following the day on which public announcement of such Election Date is first made by the Company). Such Exchange Member's notice shall set forth: (i) as to the person whom the Exchange Member proposes to nominate 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 Exchange Act and the rules thereunder (and such person's written consent to be named in the List of Candidates as a nominee and to serving as a Director if elected); (ii) a petition in support of the nomination duly executed by the Executive Representatives of 10% or more of all Exchange Members; and (iii) the name and address of the Exchange Member making the nomination. The Company may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a Member Representative Director. For purposes of determining whether a person has been nominated for election by petition by the requisite percentage, no Exchange Member, alone or together with its Affiliates, may account for more than 50% of the signatures endorsing a particular candidate, and any such signatures by such Exchange Member, alone or together with its Affiliates, in excess of such 50% limitation shall be disregarded.

(c) If, by the date on which an Exchange Member may no longer submit a timely

nomination under paragraph (b), there is only one candidate for each Member Representative Director position to be elected on the Election Date, the Member Representative Directors shall be elected by the Sole LLC Member from the List of Candidates. If there is a Contested Election, a formal notice of the Election Date and the List of Candidates shall be sent by the Company at least 10 days but no more than 60 days prior to the Election Date to the Exchange Members who were Exchange Members on the Record Date, by any means, including electronic transmission, as determined by the Board or committee thereof.

#### Section 2. Voting

In the event of a Contested Election, 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 Company prior to the Election Date. Only votes received prior to 11:59 p.m. Eastern Time on the Election Date shall count for the election of a Member Representative Director. The Persons on the List of Candidates who receive the most votes shall be elected to the Member Representative Director positions.

#### Section 3. Filling of Vacancies

If a Member Representative Director position shall become vacant prior to the expiration of such person's term, or if an increase in the size of the Board results in the creation of a new Member Representative Director position, the Sole LLC Member shall elect a Person from a list of candidates prepared by the Member Nominating Committee 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. Member Meetings

The Company shall not be required to hold meetings of the Exchange Members.

### **Article III BOARD OF DIRECTORS**

#### Section 1. Selection

Whenever any Director position other than a Member Representative Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee shall nominate, and the Sole LLC Member shall select, a person satisfying the classification (Industry, Non-Industry, or Public Director), if applicable, for the directorship as provided in Article III, Section 2 to fill such vacancy.

#### Section 2. Qualifications

(a) 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 to be elected under the terms of the LLC Agreement. A Director may not be subject to a statutory disqualification.

(b) A Director shall be removed 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 Article III, Section 2(a). If the term of office of 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 article III, Section 2(a) by virtue of such vacancy.

### Section 3. Regulation

(a) The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of the Company, not inconsistent with law, the LLC Agreement 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 Company by any of its officers, by an independent certified public accountant, by an appraiser selected with reasonable care by the Board or any committee of the Board or by any agent of the Company, or in relying in good faith upon other records of the Company.

(b) In light of the unique nature of the Company and its operations and in light of the Company'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, (i) the potential impact thereof on the integrity, continuity and stability of the national securities exchange operated by the Company and the other operations of the Company, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

### Section 4. Committees

(a) Upon request of the Secretary of the Company, 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 Company 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 Company, and shall report immediately to the Secretary any change in such information.

(b) 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 5. Committees Composed Solely of Directors

(a) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Texas 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 Company 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.

(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 Company, including recommendations for the Company's annual operating and capital budgets and proposed changes to the rates and fees charged by the Company. A Finance Committee member shall hold office for a term of one year.

(c) The Board shall appoint a Regulatory Oversight Committee. The Committee shall oversee the adequacy and effectiveness of the Company's regulatory and self-regulatory organization responsibilities; assess the Company's regulatory performance; and assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Company's regulatory functions. In furtherance of its functions, the Regulatory Oversight Committee shall (A) review the Company'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 LLC.

#### Section 6. 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 V and VI 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 that is to be elected by Exchange Members or the Sole LLC Member under the terms of the LLC Agreement and 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 Company 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. Each member of the Member Nominating Committee shall be a current associated person of an 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 national securities exchange operated by the Company from the perspective of investors, both individual and institutional, retail firms, market making firms, Nasdaq-listed companies, and other market participants; and (B) to advise the Board with respect to national market system plans and linkages between the facilities of the Company and other markets.
- (ii) The Quality of Markets Committee shall include broad representation of participants in the national securities exchange operated by the Company, 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 20 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 50 percent of the Non-Industry members. If at least 50 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 50 percent of the Non-Industry members be present to constitute the quorum shall be waived.

#### Section 7. 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 committee member shall recuse himself or herself or shall be disqualified.

(b) No contract or transaction between the Company and one or more of its Directors or officers, or between the Company 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 if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a

quorum.

#### Section 8. 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 Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the Company.

### **Article IV OFFICERS, AGENTS, AND EMPLOYEES**

#### Section 1. Delegation of Duties of Officers

The Board may delegate the duties and powers of any officer of the Company to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient.

#### Section 2. 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 Company may be removed, with or without cause, by the Board. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with the Company.

#### Section 3. 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 4. 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 Company and shall have general supervision over the business and affairs of the Company. 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. 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 Company. The President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board. The President shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board.

#### Section 6. 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 7. Chief Regulatory Officer

An officer of the Company shall be designated as the Chief Regulatory Officer of the Company. The Chief Regulatory Officer shall have general supervision of the regulatory operations of the Company, 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 Company is a party. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Company 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 Company.

#### Section 8. 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 Company, and shall have supervision over the care and custody of the books and records of the Company. The Secretary shall be empowered to affix the Company's seal, if any, to documents, the execution of which on behalf of the Company under its seal is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board. The Secretary shall exercise such other powers and perform such other duties as may be assigned to the Secretary from time to time by the Board, the Chief Executive Officer or the President.

#### Section 9. 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 10. Treasurer

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

#### Section 11. Assistant Treasurer

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

### **Article V EXCHANGE LISTING AND HEARING REVIEW COUNCIL**

#### Section 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 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 50 percent may be engaged in market-making activity or employed by an Exchange Member whose revenues from market-making activity exceed 10 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 20 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 3. Nomination Process

The Secretary of the Company 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 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 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. 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 7. Disqualification

Notwithstanding Article V, Section 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 Article V, Section 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 Article V, Section 2 by virtue of such vacancy.

#### Section 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 Article V, Section 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 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 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 VI EXCHANGE REVIEW COUNCIL**

#### Section 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 Company. The Board may delegate such other powers and duties to the Exchange Review Council as the Board deems appropriate.

#### Section 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 50 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.

#### Section 3. Nomination Process

The Secretary of the Company 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 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 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 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. Disqualification

Notwithstanding Article VI, Section 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 Article VI, Section 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 Article VI, Section 2 by virtue of such vacancy.

#### Section 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 Article VI, Section 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 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 50 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.

#### Section 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 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 50 percent of the members of the Review Subcommittee, including not less than 50 percent of the Non-Industry members of the Review Subcommittee and one Member Representative member of the Review Subcommittee.

### **Article VII MISCELLANEOUS PROVISIONS**

#### Section 1. Waiver of Notice

- (a) Whenever notice is required to be given by law, the LLC Agreement 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 2. Execution of Instruments, Contracts, etc.

(a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of the Company by such officer or officers or Person or Persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board, any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board may authorize any officer, employee, or agent, in the name of and on behalf of the Company, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

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

## **Article VIII AMENDMENTS; EMERGENCY BY-LAWS**

### Section 1. By the Company Member or Board

These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, by a resolution adopted by the Board at any regular or special meeting of the Board or a written agreement executed and delivered by the Company Member. Amendments to these By-Laws shall not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Exchange Act and the rules promulgated thereunder.

### Section 2. Emergency By-Laws

The Board may adopt emergency By-Laws subject to repeal or change by action of the Company Member which shall, notwithstanding any different provision of law, the LLC Agreement, 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 Company conducts its business or customarily holds meetings of the Board, any catastrophe, or other emergency condition, as a

result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency.

## **Article IX EXCHANGE AUTHORITIES**

### **Section 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 Company and of the Exchange 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 Exchange Act, they shall become effective Rules as of the date of Commission approval or effectiveness under the Exchange Act. The Board is hereby authorized, subject to the provisions of these By-Laws and the Exchange Act, to administer, enforce, and interpret any Rules adopted hereunder.

### **Section 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 Company 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 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 a Company market maker, shall be promulgated and applied on a consistent basis, and the Company shall institute safeguards to ensure fair and evenhanded access to all of its services and facilities.

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

The Board shall have authority to fix and levy the amount of fees, dues, assessments, and other charges to be paid by Exchange Members and issuers and any other persons using any facility or system that the Company 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 Company operates or controls.

### Section 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 Company or any other organized securities markets that may be operated by the Company, the operation of any automated system owned or operated by the Company, 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.

**EXHIBIT 5E**

All text is new.

**Limited Liability Company Agreement of  
Nasdaq Texas, LLC**

This Limited Liability Company Agreement (together with the exhibit and schedules attached hereto, this "Agreement") of Nasdaq Texas, LLC (the "Company" or the "Exchange") is entered into by Nasdaq, Inc., a Delaware corporation (the "Sole LLC Member"). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

WHEREAS, Nasdaq BX, Inc. (the "Pre-Conversion Corporation") was formed pursuant to the General Corporation Law of the State of Delaware ("DGCL") by filing a Certificate of Incorporation of the Pre-Conversion Corporation with the office of the Secretary of State of the State of Delaware on August 13, 1976, as amended and restated (the "Certificate of Incorporation"), and such Pre-Conversion Corporation was converted to a Texas limited liability company by filing a Certificate of Conversion with the office of the Secretary of State of the State of Delaware pursuant to DGCL Section 266, and by entering into a Plan of Conversion and filing a Certificate of Conversion of a Foreign Entity Converting to a Texas Filing Entity (Texas Form 647) with the office of the Secretary of State of the State of Texas on [ ], 2026 to form the Company as a limited liability company pursuant to Texas Business Organizations Code, Title 3, Chapter 101 (the "LLC Act");

WHEREAS, the Sole LLC Member desires to enter into this Agreement.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

Section 1. Name.

The name of the limited liability company formed hereby is Nasdaq Texas, LLC.

Section 2. Principal Business Office.

The principal business office of the Company shall be located at 151 W 42nd Street, New York, NY 10036 or such other location as may hereafter be determined by the Board of Directors.

Section 3. Registered Office.

The address of the registered office of the Company in the State of Texas is c/o C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201.

#### Section 4. Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Texas is C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201.

#### Section 5. Sole LLC Member.

The mailing address of the Sole LLC Member is set forth on Schedule B attached hereto. The Sole LLC Member agrees to act as a member of the Company upon its execution of a counterpart signature page to this Agreement.

#### Section 6. Duration.

The existence of the Company as a separate legal entity shall continue until the winding up, revocation, or cancellation of the Company as provided in the LLC Act. Upon the winding up, revocation, or cancellation of the Company in accordance with the LLC Act, this Agreement and the Company shall terminate.

#### Section 7. 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 LLC 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 the national securities exchange 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 Company's self-regulatory responsibilities as set forth in the Exchange Act, and (v) supporting such other initiatives as the Board may deem appropriate.

#### Section 8. Powers.

The Company, and the Board of Directors 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 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the LLC Act.

#### Section 9. Management.

- (a) Board of Directors. The business and affairs of the Company shall be managed

by or under the direction of a Board of Directors. Each Director is hereby designated as a "manager" within the meaning of the LLC Act. The Sole LLC Member may determine at any time in its sole and absolute discretion the number of Directors to constitute the Board. The authorized number of Directors may be increased or decreased by the Sole LLC Member at any time in its sole and absolute discretion, upon notice to all Directors, but no decrease in the number of Directors shall shorten the term of any incumbent Member Representative Director. At least twenty percent (20%) of the Directors shall be Member Representative Directors. All Directors other than the Member Representative Directors shall be elected by the Sole LLC Member in the manner described in the By-Laws. Each Director elected, designated or appointed by the Sole LLC Member shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal. Member Representative Directors shall be elected in accordance with the By-Laws. Each Director shall execute and deliver an instrument accepting such appointment and agreeing to be bound by all the terms and conditions of this Agreement and the By-Laws. A Director need not be a member of the Company.

(b) Powers. The Board of Directors shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. The Board of Directors has the authority to bind the Company. To the fullest extent permitted by applicable law, the By-Laws, and this Agreement, the Board may delegate any of its powers to a committee appointed pursuant to Section 9(g) or to any Officer, employee or agent of the Company.

(c) By-Laws. The Sole LLC Member hereby adopts the By-Laws of the Company in the form attached hereto as Exhibit A, as the same may be amended from time to time in accordance with the terms therein and in this Agreement (the "By-Laws," and the By-Laws, together with this Agreement, constitute the company agreement of the Company within the meaning of the LLC Act). The Board, each Officer and the Sole LLC Member shall be subject to the express provisions of this Agreement and of the By-Laws. In case of any conflict between the provisions of this Agreement and any provisions of the By-Laws, the provisions of this Agreement shall control.

(d) Meeting of the Board of Directors. The Board of Directors of the Company may hold meetings, both regular and special, within or outside the State of Texas. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board. Special meetings of the Board may be called by the Chair of the Board, the Chief Executive Officer, or the President on not less than one day's notice to each Director by telephone, facsimile, mail, telegram or any other means of communication, and special meetings shall be called by the Chair of the Board, the Chief Executive Officer, the President or Secretary in like manner and with like notice upon the written request of at least one-third of the Directors.

All meetings of the Board of Directors of the Exchange (and any committees of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters) or relating to the structure of the market which the Exchange regulates shall be closed to all Persons other than members of the Board of Directors and Officers, staff, counsel or other advisors whose participation is necessary or appropriate to the proper discharge of such

regulatory functions and any representatives of the Commission. In no event shall members of the Board of Directors of the Sole LLC Member who are not also members of the Board of Directors of the Exchange or any officers, staff, counsel or advisors of the Sole LLC Member who are not also Officers, staff, counsel or advisors of the Exchange be allowed to participate in any meetings of the Board of Directors of the Exchange (or any committees of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters) or relating to the structure of the market which the Exchange regulates.

(e) Quorum; LLC Acts of the Board. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and, except as otherwise provided in any other provision of this Agreement, the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the Directors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Any action required or permitted to be taken at a meeting of the Board or any committee thereof may be taken without a meeting and without prior notice if written consents (including consents transmitted by electronic transmission), setting forth the action so taken, are executed by all members of the Board or committee, as the case may be.

(f) Electronic Communications. Members of the Board, or any committee designated by the Board, may participate in meetings of the Board, or any committee, by means of telephone conference or other communications equipment that allows all Persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in person at the meeting. 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 Company.

(g) Committees.

(i) The Board may designate one or more committees, each committee to consist of one or more of the Directors or other Persons. The By-Laws may establish the initial committees, which may be altered, eliminated or restructured by an amendment to the By-Laws. 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.

(ii) 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. Vacancies in the membership of any committee shall be filled by the Board.

(iii) 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 meetings and report the same to the Board when required.

- (iv) Unless otherwise required by the 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.
- (v) To the extent provided in the resolution of the Board, any committee that consists solely of one or more Directors shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company, except that such committee shall not have the powers of the Board with respect to approving any matters pertaining to the self-regulatory function of the Exchange or relating to the structure of the market which the Exchange regulates. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. In the absence or disqualification of a member of a committee composed solely of Directors, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

(h) Compensation of Directors; Expenses. The Board shall have the authority to fix the compensation of Directors. 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 Company in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

(i) Removal and Resignation of Directors. Unless otherwise restricted by law, any Director may be removed or expelled for cause by the Sole LLC Member, and may be removed by the Board of Directors in the manner provided by the By-Laws. Any vacancy caused by any such removal or expulsion may be filled in the manner provided in 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 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.

(j) Directors as Agents. To the extent of their powers set forth in this Agreement, the Directors are agents of the Company for the purpose of the Company's business, and the actions of the Directors taken in accordance with such powers set forth in this Agreement shall bind the Company. Except as provided in this Agreement or in a resolution of the Directors, a Director may not bind the Company.

#### Section 10. Officers.

- (a) Except as provided herein, the Board may, from time to time as it deems

advisable, select natural persons who are employees or agents of the Company 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. Any number of offices may be held by the same person. The Board may appoint such other Officers and agents 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 the Board. The salaries of all Officers and agents of the Company shall be fixed by or in the manner prescribed by the Board. The Officers of the Company shall hold office until their successors are chosen and qualified. Any Officer may be removed at any time, with or without cause, by the Board. Any vacancy occurring in any office of the Company shall be filled by the Board.

(b) Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Board 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.

(c) Duties of Board and Officers. Except to the extent otherwise modified herein, each Director and Officer shall have a fiduciary duty of loyalty and care similar to that of directors and officers of business corporations organized under the General Corporation Law of the State of Delaware.

#### Section 11. Limited Liability.

Except as otherwise expressly provided by the LLC Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Sole LLC Member nor any Director shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Sole LLC Member or Director of the Company.

#### Section 12. Capital Contributions.

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

#### Section 13. Additional Contributions.

The Sole LLC Member is not required to make any additional capital contribution to the Company. However, the Sole LLC Member may make additional capital contributions to the Company at any time upon the consent of such Sole LLC Member. To the extent that the Sole LLC Member makes an additional capital contribution to the Company, the Sole LLC Member shall revise the books and records of the Company. The provisions of this Agreement, including this Section 13, are intended to benefit the Sole LLC Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third-party beneficiary of this Agreement), and the Sole LLC Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

#### Section 14. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Sole LLC Member.

#### Section 15. Distributions.

Distributions shall be made to the Sole LLC Member at the times and in the aggregate amounts determined by the Board. Notwithstanding any provision to the contrary contained in this Agreement, (i) the Company shall not be required to make a distribution to the Sole LLC Member on account of its interest in the Company if such distribution would violate the LLC Act or any other applicable law or is otherwise required to fulfill the regulatory functions or responsibilities of the Company, 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 Company and the Company shall not make a distribution to the Sole LLC Member using Regulatory Funds.

#### Section 16. 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 Company's business. The books of the Company shall at all times be maintained by the Board. The Company's books of account shall be kept using the method of accounting determined by the Sole LLC Member. The Company's independent auditor shall be an independent public accounting firm selected by the Board.

Other than as provided in this Section 16 with respect to the Commission (defined below), all confidential information pertaining to the self-regulatory function of the Company (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Company shall: (i) not be made available to any Persons other than to those Officers, Directors, employees and agents of the Company that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Company and the Officers, Directors, employees and agents of the Company; and (iii) not be used for any non-regulatory purposes. Nothing in this LLC Agreement shall be interpreted as to limit or impede the rights of the U.S. Securities and Exchange Commission (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 Company to disclose such confidential information to the Commission.

#### Section 17. Reports.

The Board shall, after the end of each fiscal year, use reasonable efforts to cause the Company's independent accountants, if any, to prepare and transmit to the Sole LLC Member as promptly as possible any such tax information as may be reasonably necessary to enable the Sole LLC Member to prepare its federal, state and local income tax returns relating to such fiscal year.

#### Section 18. Other Business.

Unless otherwise restricted by law, the Sole LLC Member, and any Officer, Director, employee or agent of the Company and any Affiliate of the Sole LLC Member may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 19. Exculpation and Indemnification.

(a) Neither the Sole LLC Member nor any Officer, Director, employee or agent of the Company nor any employee, representative, agent or Affiliate of the Sole LLC Member (collectively, the "Covered Persons") shall be liable to the Company or any other Person who is bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 19 by the Company shall be provided out of and to the extent of Company assets only, and the Sole LLC Member shall not have personal liability on account thereof.

(c) To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 19.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities or any other facts pertinent to the existence and amount of assets from which distributions to the Sole LLC Member might properly be paid.

(e) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person who is bound by this Agreement for its good faith reliance on the

provisions of this Agreement or any approval or authorization granted by the Company or any other Covered Person.

(f) The foregoing provisions of this Section 19 shall survive any termination of this Agreement.

#### Section 20. Assignments.

The Sole LLC Member may not transfer or assign in whole or in part its limited liability company interest in the Company, unless such transfer or assignment is filed with and approved by the Commission pursuant to the rule filing procedure under Section 19 of the Exchange Act.

#### Section 21. Dissolution.

(a) The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following: (i) the consent of the Sole LLC Member and a majority of the whole Board, (ii) the termination of the legal existence of the Sole LLC Member or the occurrence of any other event that terminates the continued membership of the Sole LLC Member in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the LLC Act or (iii) the entry of a decree of judicial dissolution under Section 11.301 et. seq. of the LLC Act.

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

(c) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 11.053 of the LLC Act.

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

#### Section 22. Benefits of Agreement; No Third-Party Rights.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Sole LLC Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons and, to the extent provided in Article II of the By-Laws, Nasdaq Texas Members) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (other than the Covered Persons and, to the extent provided in Article II of the By-Laws, Nasdaq Texas Members).

Section 23. Severability of Provisions.

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

Section 24. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 25. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Sole LLC Member agrees that this Agreement constitutes a legal, valid and binding agreement of the Sole LLC Member and is enforceable against the Sole LLC Member, in accordance with its terms.

Section 26. Governing Law.

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

Section 27. Amendments.

This Agreement may be modified, altered, supplemented or amended by a resolution adopted by the Board and a written agreement executed and delivered by the Sole LLC Member. Amendments to this Agreement shall not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Exchange Act and the rules promulgated thereunder.

Section 28. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (i) in the case of the Company, to the Company at its address in Section 2, (ii) in the case of the Sole LLC Member, to the Sole LLC Member at its address as listed on Schedule B attached hereto and (iii) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement as of the [ ] day of [ ], 2025.

SOLE LLC MEMBER:

**NASDAQ, INC.**

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Name: Erika Moore  
Title: Corporate Secretary

## SCHEDULE A

### Definitions

#### A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

"Affiliate" has the meaning ascribed to that term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of this Agreement.

"Agreement" means this Limited Liability Company Agreement of the Company, together with the exhibit and schedules attached hereto, as amended, restated, supplemented or otherwise modified from time to time.

"Bankruptcy" means, with respect to any Person, if (A) such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties; or (B)

(i) 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or (ii) within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in the Texas Business Organizations Code.

"Board" or "Board of Directors" means the Board of Directors of the Company.

"By-Laws" has the meaning set forth in Section 9.

"Certificate of Conversion" means a certificate filed for the purpose of converting a Delaware entity to a non-Delaware entity, as contemplated by § 266 of the DGCL, or a certificate filed for the purpose of converting a non-Texas entity to a Texas entity, as contemplated by § 10.102 of the Texas Business Organizations Code, as applicable.

"Certificate of Incorporation" has the meaning set forth in the preamble to this Agreement.

"Company" means Nasdaq Texas, LLC, a Texas limited liability company.

"Covered Persons" has the meaning set forth in Section 19.

"Directors" means the Persons elected/appointed to the Board of Directors from time to time in accordance with this Agreement and the By-Laws, in their capacity as managers of the Company.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"LLC Act" has the meaning set forth in the preamble to this Agreement.

"Member Representative Director" means a Director who has been elected or appointed in accordance with the procedures established by Article II of the By-Laws.

"Nasdaq Texas Member" means any registered broker or dealer that has been admitted to membership in the national securities exchange operated by the Company. A Nasdaq Texas Member is not a member of the Company by reason of being a Nasdaq Texas Member.

"Officer" means an officer of the Company described in Section 10.

"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.

"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.

"Sole LLC Member" means Nasdaq, Inc., a Delaware corporation, as the sole member of the Company.

## B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

**SCHEDULE B****Sole LLC Member**

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<b>Name</b>	<b>Mailing Address</b>	<b>Limited Liability Company Interest</b>
Nasdaq, Inc.	151 West 42nd Street, New York, New York 10036	100%

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**EXHIBIT A**

**Bylaws of Nasdaq Texas, LLC**

(Attached)