

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**  
**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 3, 2006 (July 28, 2006)

**THE NASDAQ STOCK MARKET, INC.**

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(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**000-32651**  
(Commission File Number)

**52-1165937**  
(I.R.S. Employer  
Identification No.)

One Liberty Plaza, New York, New York 10006

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(Address of principal executive offices) (Zip code)

Registrant's telephone number, including area code: (212) 401-8700

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01. Entry into a Material Definitive Agreement.**

The Nasdaq Stock Market, Inc. entered into a Letter Agreement with Anna Ewing, its Executive Vice President — Operations & Technology and Chief Information Officer, effective as of July 28, 2006. The Letter Agreement provides enhanced severance benefits upon termination in connection with a change in control of Nasdaq. The Letter Agreement was approved by Nasdaq's Board of Directors, and the terms of the Letter Agreement were previously disclosed on Nasdaq's Form 8-K dated February 9, 2005. That description is incorporated by reference into this Form 8-K. The Letter Agreement contains substantially the same terms and conditions as the revised letter agreements that Nasdaq entered into with six other executive officers, effective as of March 23, 2005, which were previously disclosed on Nasdaq's Form 10-Q for the quarter ended March 31, 2005, filed on May 10, 2005.

A copy of the Letter Agreement is filed herewith and is incorporated herein by reference.

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

At a special meeting of stockholders held on September 14, 2005, Nasdaq's stockholders approved amendments to our Restated Certificate of Incorporation. The amendments were scheduled to take effect upon the implementation of the registration of our wholly owned subsidiary, The NASDAQ Stock Market LLC, as a national securities exchange, which occurred on August 1, 2006. As a result, we filed the amendments with the Secretary of State of the State of Delaware and they were effective as of August 1, 2006. The text of the amendments was included as Annex C to our definitive proxy statement filed on August 22, 2005.

On August 5, 2005, Nasdaq's board of directors approved amendments to Nasdaq's By-Laws that were generally intended to recognize Nasdaq's status as the parent company of a national securities exchange and make conforming changes. The By-Law amendments also took effect upon the implementation of the registration of our exchange subsidiary as a national securities exchange on August 1, 2006. Both the amendments to our Restated Certificate of Incorporation and our By-Laws were approved by the SEC.

Specifically, the By-Law amendments delete provisions that are more appropriate to include in the By-Laws of our exchange subsidiary and add other provisions that are designed to maintain the independence of the exchange's self-regulatory function from Nasdaq, enable the exchange to operate in a manner that complies with the federal securities laws and facilitate the ability of the exchange and the SEC to fulfill their regulatory and oversight obligations under the Exchange Act. For example, the By-Law amendments provide, among other things, that:

- any proposed adoption, alteration, amendment, change or repeal of any of Nasdaq's By-Laws shall be submitted to the Board of Directors of the exchange subsidiary, and if the Board determines that any such action is required to be filed with the SEC under Section 19(b) of the Exchange Act, then it will not be effective until filed with the SEC;
- Nasdaq's board of directors, officers, employees, and agents are required to give due regard to the preservation of the independence of the exchange's self-regulatory function;
- Nasdaq's books and records shall be subject at all times to inspection and copying by the SEC;
- to the extent they are related to the activities of the exchange, the books, records, premises, officers, directors, agents, and employees of Nasdaq shall be deemed to be the books, records, premises, officers, directors, agents and employees of the exchange for the purposes of, and subject to oversight pursuant to, the Exchange Act;
- Nasdaq and its officers, directors, employees and agents shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the SEC, and the exchange for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of the exchange;

- a resolution of Nasdaq's board of directors to approve an exemption for any person under Article Fourth, Section C.6(b) of Nasdaq's Restated Certification Incorporation shall not be permitted to become effective until such resolution has been filed with and approved by the SEC under Section 19 of the Exchange Act.

The text of the amended and restated By-Laws is attached to this Form 8-K as Exhibit 3.2.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

<u>Exhibit No.</u>	<u>Exhibit Description</u>
3.2	By-Laws of The Nasdaq Stock Market, Inc.
99.1	Letter agreement, effective as of July 28, 2006, between The Nasdaq Stock Market, Inc. and Anna Ewing.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

THE NASDAQ STOCK MARKET, INC.

Dated: August 3, 2006

By: /s/ Edward S. Knight

Edward S. Knight

Executive Vice President and General Counsel

**BY-LAWS OF THE NASDAQ STOCK MARKET, INC.****ARTICLE I****DEFINITIONS**

When used in these By-Laws, unless the context otherwise requires, the term:

- (a) "Act" means the Securities Exchange Act of 1934, as amended;
- (b) "Board" means the Board of Directors of the Corporation;
- (c) "broker" shall have the same meaning as in Section 3(a)(4) of the Act;
- (d) "Commission" means the Securities and Exchange Commission;
- (e) "Corporation" means The Nasdaq Stock Market, Inc.;
- (f) "day" means calendar day;
- (g) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act;
- (h) "Delaware law" means the General Corporation Law of the State of Delaware;
- (i) "Director" means a member of the Board;

(j) "Industry Director" or "Industry committee member" 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")) or committee member who (1) 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; (2) 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; (3) 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; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or committee member or 20 percent or more of the gross revenues received by the Director's or committee member's firm or partnership; (5) 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 committee member or 20 percent or more of the gross revenues received by the Director's or committee member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate thereof or to the NASD (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years;

(k) "NASD" means the National Association of Securities Dealers, Inc. and its affiliates;

(l) "Nominating Committee" means the Nominating Committee appointed pursuant to these By-Laws;

(m) "Non-Industry Director" or "Non-Industry committee member" means a Director (excluding the Staff Directors) or committee member who is (1) a Public Director or Public committee member; (2) an officer or employee of an issuer of securities listed on the national securities exchange operated by The NASDAQ Stock Market LLC; or (3) any other individual who would not be an Industry Director or Industry committee member; and

(n) "Public Director" or "Public committee member" means a Director or committee member who has no material business relationship with a broker or dealer, the Corporation or its affiliates, or the NASD.

## **ARTICLE II**

### **OFFICES**

#### **Location**

**Sec. 2.1** 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.

#### **Change of Location**

**Sec. 2.2** 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

#### Annual Meetings of Stockholders

**Sec. 3.1** (a) Nominations of persons for election to the Board and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (i) pursuant to the Corporation's notice of meeting (or any supplement thereto), (ii) by or at the direction of the Board or the Nominating Committee or (iii) by any stockholder of the Corporation who was a stockholder of record of the Corporation at the time the notice provided for in this Section 3.1 is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 3.1.

(b) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 3.1(a)(iii), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such proposed business other than the nominations of persons for election to the Board must constitute a proper matter for stockholder action. To be timely, a stockholder'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 ninetieth day nor earlier than the close of business on the one hundred twentieth day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty days before or more than seventy days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth day prior to such annual meeting and not later than the close of business on the later of the ninetieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (i) as to each person whom the stockholder proposes to nominate for election as a director all information relating to such 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 being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the By-Laws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (A) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (B) the class and number of shares of capital stock

of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (C) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, and (D) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (2) otherwise to solicit proxies from stockholders in support of such proposal or nomination. The Corporation 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 director of the Corporation.

(c) Notwithstanding anything in the second sentence of Section 3.1(b) to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 3.1 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the Corporation.

**Special Meetings of Stockholders**

**Sec. 3.2** Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board or the Nominating Committee or (b) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 3.2 is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 3.2. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder entitled to vote in such election may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by Section 3.1(b) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth day prior to such special meeting and not later than the close of business on the later of the ninetieth day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.



## General

**Sec. 3.3** (a) Only such persons who are nominated in accordance with the procedures set forth in this Article III shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Article III. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (i) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Article III (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by Section 3.1(b)(iii)(D)) and (ii) if any proposed nomination or business was not made or proposed in compliance with this Article III, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Article III, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(b) For purposes of this Article III, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Commission pursuant to Section 13, 14, or 15(d) of the Act.

(c) Notwithstanding the foregoing provisions of this Article III, a stockholder shall also comply with all applicable requirements of the Act and the rules and regulations thereunder with respect to the matters set forth in this Article III. Nothing in Article III shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Act or (ii) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Restated Certificate of Incorporation.

## Conduct of Meetings

**Sec. 3.4** The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem

appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding officer of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

#### **ARTICLE IV**

#### **BOARD OF DIRECTORS**

##### **General Powers**

**Sec. 4.1** The property, business, and affairs of the Corporation shall be managed by or 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 law, the Restated Certificate of Incorporation, or these By-Laws. To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 4.13 or to the Corporation's staff.

##### **Number of Directors**

**Sec. 4.2** The exact number of members of the Board shall be determined by resolution adopted by the Board from time to time. Any new Director position created as a result of an increase in the size of the Board shall be filled in accordance with the Restated Certificate of Incorporation.

##### **Qualifications**

**Sec. 4.3** Directors need not be stockholders of the Corporation. The number of Non-Industry Directors, including at least one Public Director and at least one issuer representative, shall equal or exceed the number of Industry Directors, unless the Board consists of ten or more Directors. In such case at least two Directors shall be issuer representatives.

## **Election**

**Sec. 4.4** Except as otherwise provided by law or these By-Laws, after the first meeting of the Corporation at which Directors are elected, 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.

## **Resignation**

**Sec. 4.5** 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.

## **Removal**

**Sec. 4.6** Any or all of the Directors may be removed from office at any time by the affirmative vote of at least  $66\frac{2}{3}$  percent of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

## **Disqualification**

**Sec. 4.7** The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) the Director no longer satisfies the classification for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. 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 Section 4.3 by virtue of such vacancy.

## **Filling of Vacancies**

**Sec. 4.8** If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee shall nominate, and the Board shall elect 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, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

## **Quorum and Voting**

**Sec. 4.9** (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 a meeting at which a quorum is present shall be the act of the Board.

## **Regulation**

**Sec. 4.10** 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 Restated 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 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.

## **Meetings**

**Sec. 4.11** (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 4.12.

(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 4.12.

(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 4.12.

(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.

## **Notice of Meetings; Waiver of Notice**

**Sec. 4.12** (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 telegraph, telefax, cable, radio, or wireless, 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 (or by telegram, telefax, cable, radio, or wireless and subsequently confirmed 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 Article X, Section 10.3(b).

(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.

## **Committees**

**Sec. 4.13** (a) The Board may, by resolution or resolutions adopted by the Board, appoint one or more committees. Except as herein provided, vacancies in membership of any committee shall be filled by the Board. The Board may designate one or more Directors 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 Director to act at the meeting in the place of any such absent or disqualified member. 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, after appropriate notice.

(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 with regard to: amending the Restated Certificate of Incorporation or the By-Laws of the Corporation; adopting an agreement of merger or

consolidation; recommending to the stockholders the sale, lease, or exchange of all or substantially all the Corporation's property and assets; or recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution. Unless the resolution of the Board expressly so provides, no committee shall have the power or authority to authorize the issuance of stock.

(d) 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, and which may authorize the seal of the Corporation to be affixed to all papers that may require it. 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. An Executive Committee member shall hold office for a term of one year.

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

(f) The Board shall appoint a Management Compensation Committee. The Management Compensation Committee shall consider and recommend compensation policies, programs, and practices for employees of the Corporation. A majority of Management Compensation Committee members shall be Non-Industry Directors. The Chief Executive Officer shall be an ex-officio, non-voting member of the Management Compensation Committee. A Management Compensation Committee member shall hold office for a term of one year.

(g) The Board shall appoint an Audit Committee.

(i) The Audit Committee shall consist of four or five Directors, none of whom shall be officers or employees of the Corporation. A majority of the Audit Committee members shall be Non-Industry Directors. The Audit Committee shall include two Public Directors. A Public Director shall serve as Chair of the Committee. An Audit Committee member shall hold office for a term of one year.

(h) The Board may appoint a Nominating Committee. The Nominating Committee shall nominate Directors for each vacant or new Director position on the Board.

(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 committee members. If the Nominating Committee consists of seven or more members, at least three shall be Public committee 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 committee members shall be current members of the Board.

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

(iv) 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, Non-Industry, or Public Director, if applicable, and the Secretary shall certify to the 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.

(i) 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.

(j) 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.

(k) 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, 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.

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

**Sec. 4.14** (a) A Director shall not directly or indirectly participate in any adjudication of the interests of any party if that Director 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 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 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; (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; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and 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.

### **Action Without Meeting**

**Sec. 4.15** 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 VI**

### **COMPENSATION**

#### **Compensation of Board Members**

**Sec. 6.1** The Board may provide for reasonable compensation of the Chair of the Board and the Directors. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the Corporation.



## **ARTICLE VII**

### **OFFICERS, AGENTS, AND EMPLOYEES**

#### **Principal Officers**

**Sec. 7.1** 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.

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

**Sec. 7.2 (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 4.11(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.

#### **Subordinate Officers, Agents, or Employees**

**Sec. 7.3** 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.

#### **Delegation of Duties of Officers**

**Sec. 7.4** 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.

#### **Resignation and Removal of Officers**

**Sec. 7.5 (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 resolution adopted by a majority of the Directors then in office at any regular or special meeting of the Board or by a written consent signed by all of the Directors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with the Corporation.

#### **Bond**

**Sec. 7.6** The Corporation may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

#### **Chair of the Board**

**Sec. 7.7** The Chair of the Board shall preside at all meetings of the Board and stockholders 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.

#### **Chief Executive Officer**

**Sec. 7.8** The Chief Executive Officer shall, in the absence of the Chair of the Board, preside at all meetings of the Board and stockholders 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.

#### **President**

**Sec. 7.9** The President shall, in the absence of the Chair of the Board and the Chief Executive Officer, preside at all meetings of the Board and stockholders at which the President is present. The President shall have general supervision over the business and affairs 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.

#### **Vice President**

**Sec. 7.10** 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.

#### **Secretary**

**Sec. 7.11** The Secretary shall act as Secretary of all meetings of the stockholders and 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 corporate records and the corporate seal of the Corporation. The Secretary shall be empowered to affix the corporate seal 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.

#### **Assistant Secretary**

**Sec. 7.12** 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.

#### **Treasurer**

**Sec. 7.13** 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.

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**Assistant Treasurer**

**Sec. 7.14** 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 VIII****INDEMNIFICATION****Indemnification of Directors, Officers, Employees, and Agents**

**Sec. 8.1** (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 foregoing 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.

#### **Indemnification Insurance**

**Sec. 8.2** 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**

##### **Certificates**

**Sec. 9.1** 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.

##### **Signatures**

**Sec. 9.2** (a) 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.

(b) If any such certificates are countersigned by a transfer agent other than the Corporation or its employee, or by a registrar other than the Corporation or its employee, any other signature on the certificate may be a facsimile. In the event that any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall cease to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

### **Stock Ledger**

**Sec. 9.3** (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.

### **Transfers of Stock**

**Sec. 9.4** (a) The Board may make such rules and regulations as it may deem expedient, not inconsistent with law, the Restated Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of certificates for shares of capital stock of the Corporation. The Board may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.

(b) Transfers of capital stock shall be made on the books of the Corporation only upon delivery to the Corporation or its transfer 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.

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**Cancellation**

**Sec. 9.5** 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.

**Lost, Stolen, Destroyed, and Mutilated Certificates**

**Sec. 9.6** 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.

**Fixing of Record Date**

**Sec. 9.7** The Board may fix a record date in accordance with Delaware law.

**ARTICLE X****MISCELLANEOUS PROVISIONS****Corporate Seal**

**Sec. 10.1** 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.



## **Fiscal Year**

**Sec. 10.2** 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.

## **Waiver of Notice**

**Sec. 10.3** (a) Whenever notice is required to be given by law, the Restated 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 stockholders, Directors, or members of a committee of Directors 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.

## **Execution of Instruments, Contracts, Etc.**

**Sec. 10.4** (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 principal officer or subordinate 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.

## **Form of Records**

**Sec. 10.5** Any records maintained by the Corporation in the regular course of business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

## **ARTICLE XI**

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

#### **By Stockholders**

**Sec. 11.1** 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 at least  $66\frac{2}{3}$  percent of the voting power of the then outstanding stock entitled to vote, voting together as a single class, provided that, in the case of a special meeting, notice that an amendment is to be considered and acted upon shall be inserted in the notice or waiver of notice of said meeting.

#### **By Directors**

**Sec. 11.2** To the extent permitted by the Restated 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.

#### **Review by The NASDAQ Stock Market LLC**

**Sec. 11.3** For so long as the Corporation shall control, directly or indirectly, The NASDAQ Stock Market, LLC, any proposed adoption, alteration, amendment, change or repeal (an "amendment") of any By-Law shall be submitted to the Board of Directors of The NASDAQ Stock Market LLC (the "Exchange Board"), and if the Exchange Board determines that such amendment is required, under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

#### **Emergency By-Laws**

**Sec. 11.4** 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 Restated 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 or the stockholders, 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

### THE NASDAQ STOCK MARKET LLC

#### Self-Regulatory Organization Function of The NASDAQ Stock Market LLC

**Sec. 12.1** (a) For so long as the Corporation shall control The NASDAQ Stock Market LLC, the Board of Directors, officers, employees and agents of the Corporation shall give due regard to the preservation of the independence of the self-regulatory function of The NASDAQ Stock Market LLC and to its obligations to investors and the general public and shall not take any actions which would interfere with the effectuation of any decisions by the Board of Directors of The NASDAQ Stock Market LLC relating to its regulatory functions (including disciplinary matters) or the structure of the market which it regulates or which would interfere with the ability of The NASDAQ Stock Market LLC to carry out its responsibilities under the Act.

(b) All books and records of The NASDAQ Stock Market LLC reflecting confidential information pertaining to the self-regulatory function of The NASDAQ Stock Market LLC (including but not limited to disciplinary matters, trading data, trading practices and audit information) which shall come into the possession of the Corporation, and the information contained in those books and records, shall be retained in confidence by the Corporation and the Directors, officers, employees and agents of the Corporation and shall not be used for any non-regulatory 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 or impede the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission. The Corporation's books and records shall be subject at all times to inspection and copying by the Commission. The Corporation's books and records relating to The NASDAQ Stock Market LLC shall be maintained in the United States.

(c) To the extent they are related to the activities of The NASDAQ Stock Market LLC, the books, records, premises, officers, Directors, agents, and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors, agents and employees of The NASDAQ Stock Market LLC for the purposes of, and subject to oversight pursuant to, the Act.

#### Cooperation with the Commission

**Sec. 12.2** The officers, Directors, employees, and agents of the Corporation, by virtue of their acceptance of such position, shall be deemed to agree to cooperate with the Commission and The NASDAQ Stock Market LLC in respect of the Commission's oversight responsibilities regarding The NASDAQ Stock Market LLC and the self-regulatory functions and responsibilities of The NASDAQ Stock Market LLC.

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**Consent to Jurisdiction**

**Sec. 12.3** The Corporation and its officers, Directors, employees and agents, by virtue of their acceptance of such position, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the Commission, and The NASDAQ Stock Market LLC for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of The NASDAQ Stock Market LLC, and by virtue of their acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the United States federal courts, the Commission, or The NASDAQ Stock Market LLC, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency. The Corporation and its officers, Directors, employees and agents also agree that they will maintain an agent, in the United States, for the service of process of a claim arising out of, or relating to, the activities of The NASDAQ Stock Market LLC.

**Further Assurances**

**Sec. 12.4.** The Corporation shall take such action as is necessary to insure that its officers, Directors, employees, and agents consent to the applicability of Sections 12.1(c) and 12.3 with respect to activities related to The NASDAQ Stock Market LLC.

**Board Action with Respect to Voting Limitations of the Certificate of Incorporation**

**Sec. 12.5** For so long as the Corporation shall control, directly or indirectly, The NASDAQ Stock Market, LLC, a resolution of the Board to approve an exemption for any person under Article Fourth, Section C.6(b) of the Restated Certification Incorporation of the By-Laws shall not be permitted to become effective until such resolution has been filed with and approved by the Commission under Section 19 of the Act.

July 28, 2006

Ms. Anna M. Ewing  
[Address]

Dear Anna:

As you may be aware, the Compensation Committee of the Board of Directors of The Nasdaq Stock Market, Inc. ("Nasdaq") has recently approved a new policy to provide enhanced severance payments and benefits to all Nasdaq Executive Vice Presidents in the event of certain terminations of employment connected with a change in control of Nasdaq. This letter agreement sets forth your rights under the new policy.

Payments and benefits provided by this letter agreement are in lieu of any payments or benefits to which you may be entitled under any other Nasdaq severance program. Furthermore, this is not a contract of employment and nothing contained herein shall confer on you any right to be retained, in any position, as an employee, consultant or officer of Nasdaq or any of its affiliates (the "Companies"), and you shall remain an employee-at-will.

1. **Definitions.** As used in this letter agreement, the following terms shall have the meanings set forth below:

- (a) "Board" means the Board of Directors of Nasdaq.
- (b) "Cause" means your (i) conviction of, or pleading *nolo contendere* to, a felony; (ii) conviction of, or pleading *nolo contendere* to any misdemeanor involving the purchase or sale of any security, mail or wire fraud, theft, embezzlement, moral turpitude or property of the Companies; (iii) material neglect of, willful misconduct in connection with, or breach of, your duties to the Companies as an employee, including, without limitation, your obligations to protect the confidentiality of material non public information that you have obtained in the course of your employment, as well as your obligations under The Nasdaq Code of Conduct, as may be amended from time to time.

- (c) “Change in Control” means the first to occur of any one of the following events:
- (i) any “Person,” as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) (other than (A) Nasdaq, (B) any Person who becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of Nasdaq’s then outstanding securities eligible to vote in the election of the Board (“Voting Securities”) as a result of a reduction in the number of Voting Securities outstanding due to the repurchase of Voting Securities by Nasdaq unless and until such Person, after becoming aware that such Person has become the beneficial owner of more than 50% of the then outstanding Voting Securities, acquires beneficial ownership of additional Voting Securities representing 1% or more of the Voting Securities then outstanding, (C) any trustee or other fiduciary holding securities under an employee benefit plan of Nasdaq, (D) any entity owned, directly or indirectly, by the stockholders of Nasdaq in substantially the same proportions as their ownership of Voting Securities, and (E) the National Association of Securities Dealers, Inc. or its affiliates or subsidiaries (collectively “NASD”), is or becomes the beneficial owner, directly or indirectly, of more than 50% of the Voting Securities (not including any securities acquired directly (or through an underwriter) from Nasdaq or the Companies);
  - (ii) the following individuals cease for any reason to constitute a majority of the number of directors then serving on the Board: individuals who, on the date hereof, were members of the Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of Nasdaq) whose appointment or election by the Board or nomination for election by Nasdaq’s stockholders was approved or recommended by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors on the date hereof or whose appointment, election or nomination for election was previously so approved or recommended;
  - (iii) there is consummated a merger or consolidation of Nasdaq with any other corporation or entity or Nasdaq issues Voting Securities in connection with a merger or consolidation of any direct or indirect subsidiary of Nasdaq with any other corporation, other than (A) a merger or consolidation that would result in the Voting

Securities outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into Voting Securities of the surviving or parent entity) more than 50% of Nasdaq's then outstanding Voting Securities or more than 50% of the combined voting power of such surviving or parent entity outstanding immediately after such merger or consolidation or (B) a merger or consolidation effected to implement a recapitalization of Nasdaq (or similar transaction) in which no Person, directly or indirectly, acquired more than 50% of Nasdaq's then outstanding Voting Securities (not including any securities acquired directly (or through an underwriter) from Nasdaq or the Companies); or

- (iv) the consummation of a plan of complete liquidation of Nasdaq or the consummation of an agreement for the sale or disposition by Nasdaq of all or substantially all of Nasdaq's assets (or any transaction having a similar effect), other than a sale or disposition by Nasdaq of all or substantially all of Nasdaq's assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned directly or indirectly by stockholders of Nasdaq in substantially the same proportions as their ownership of Nasdaq immediately prior to such sale.

Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (i) as a result of the redemption of Series D Preferred Stock of Nasdaq held by NASD upon the Securities Exchange Commission's approval of Nasdaq's application for registration as a national securities exchange pursuant to Section 19(a) of the Exchange Act or (ii) any other transaction or event which causes the reduction in the Voting Securities held by the NASD below 50% which would not otherwise constitute a Change in Control pursuant to clauses (i) through (iv) above.

- (d) "Disability," shall mean a disability that would qualify as such under Nasdaq's long term disability plan applicable to you at the time of your termination.
- (e) "Good Reason" means, without your express consent, Nasdaq's material reduction of your position, duties or authority as they existed immediately prior to a Change in Control.
- (f) "Qualifying Termination" means a termination of your employment (i) by Nasdaq other than for Cause or (ii) by you

for Good Reason. Termination of your employment on account of death, Disability or Retirement shall not be treated as a Qualifying Termination.

(g) "Retirement" means your voluntary termination of employment at a time when you would be eligible to begin receiving benefits under The National Association of Securities Dealers, Inc. Employees' Retirement Plan (the "Retirement Plan").

2. **Payments Upon Termination of Employment following a Change in Control.** If, within the period beginning on a Change in Control and ending one (1) year following such Change in Control, your employment with Nasdaq terminates pursuant to a Qualifying Termination, then contingent upon your execution of a release in favor of the Companies substantially in the form annexed hereto as Exhibit A, you shall be entitled to the following payments and benefits:

(a) Severance. On the first day of the seventh (7<sup>th</sup>) month following your Qualifying Termination, Nasdaq shall pay you a lump sum cash payment equal to 50% of your annual salary at the rate in effect on the date of your Qualifying Termination. In addition, beginning on the first day of the seventh (7<sup>th</sup>) month following your Qualifying Termination, Nasdaq shall begin making biweekly payments to you in accordance with Nasdaq's regular payroll practices at your rate of annual salary as in effect on the date of your Qualifying Termination and these payments shall continue for a period of eighteen (18) months thereafter.

(b) Incentive Compensation. Notwithstanding any provision of The Nasdaq Stock Market, Inc. Executive Corporate Incentive Plan (the "Incentive Plan") to the contrary, Nasdaq shall pay you on the first day of the seventh (7<sup>th</sup>) month following your Qualifying Termination a lump sum cash payment equal to the sum of (i) any unpaid "Award" (as that term is defined in the Incentive Plan) which has been allocated or awarded to you for a completed "Plan Year" (as that term is defined in the Incentive Plan), and (ii) 100% of your "Individual Target Award" (as that term is defined in the Incentive Plan) for the Plan Year in which your Qualifying Termination occurs, or if such Individual Target Award has not yet been established for such Plan Year, 100% of your Individual Target Award for the Plan Year prior to the year in which the Qualifying Termination occurs.

(c) Equity Compensation. As set forth in The Nasdaq Stock Market, Inc. Equity Incentive Plan ("Equity Plan"), as may be amended, all of your outstanding options which have not vested as of the date of your Qualifying Termination shall become immediately



vested and remain exercisable for the longer of the period provided in the applicable award agreement pursuant to which such options were granted or ninety (90) days, but in no event beyond the Expiration Date of such option. Similarly, all outstanding restricted stock awards shall become immediately vested and nonforfeitable. Other than as provided in this Section 2(c), options and restricted stock awards shall continue to be subject to the applicable terms of the Equity Plan and the agreements pursuant to which they were granted.

(d) Health and Welfare Benefits.

(i) Provided that you timely elect continuation coverage (as defined in the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”)) under Nasdaq’s medical and dental plans as in effect at the time of your Qualifying Termination, Nasdaq shall pay all COBRA premiums for you and your dependents under such plans (or any successor plans) until the earliest of (x) the termination of your COBRA continuation coverage period, (y) the end of the 24th month following the date of your Qualifying Termination, or (z) the date you secure subsequent employment with comparable medical and dental coverage.

(ii) Nasdaq shall continue to provide you, for 24 months following your Qualifying Termination, with the same level of accident (AD&D) and life insurance benefits upon substantially the same terms and conditions (including contributions required by you for such benefits) as existed immediately prior to the date of your Qualifying Termination (or, if more favorable to you, as such benefits and terms and conditions existed immediately prior to the Change in Control).

(e) Retirement Benefits. Your vested accrued benefits under the Retirement Plan and The Nasdaq Stock Market, Inc. Supplemental Executive Retirement Plan (the “SERP”) shall be distributed in the time, form and manner as you elect pursuant to the applicable provisions of such plans.

(f) Outplacement Services. Nasdaq shall provide you with outplacement services suitable to your position for a period of 12 months following your Qualifying Termination or, if earlier, until your first acceptance of an offer of employment.

3. **Payments Upon Termination of Employment in Anticipation of a Change in Control.** If (i) your employment is terminated during the 180 day period immediately prior to a Change in Control under

circumstances that would have constituted a Qualifying Termination if they had occurred following a Change in Control; (ii) you reasonably demonstrate that such termination (or Good Reason event) was at the request of a third party who had indicated an intention or taken steps reasonably calculated to effect a Change in Control; and (iii) a Change in Control involving such third party (or a party competing with such third party to effectuate a Change in Control) does occur (“Anticipatory Termination”), then, contingent upon your execution of a release substantially in the form annexed hereto as Exhibit A in favor of the Companies, you shall be entitled to the payments and benefits set forth in this Section 3.

Notwithstanding the foregoing, if you are terminated by Nasdaq without Cause, and such termination is not an Anticipatory Termination or does not occur within the 12 months following a Change in Control, then Nasdaq’s regular severance policy (“Regular Severance Policy”), including health benefit continuation, shall apply in lieu of this Section 3. If any such termination is later deemed an Anticipatory Termination, the terms of this Section 3 shall apply, but the payments and benefits provided in this Section 3 shall be offset and reduced for any payments or benefits you have already received under the Regular Severance Policy.

- (a) Severance. On the later of (i) the Change in Control occurring after your Anticipatory Termination, and (ii) the first day of the seventh (7<sup>th</sup>) month following your Anticipatory Termination, Nasdaq shall pay you a lump sum cash payment equal to 50% of your annual salary at the rate in effect on the date of your Anticipatory Termination. In addition, beginning on the later of (i) the first day of the seventh (7<sup>th</sup>) month following your Anticipatory Termination or (ii) the Change in Control, Nasdaq shall begin making biweekly payments to you in accordance with Nasdaq’s regular payroll practices at your rate of annual salary as in effect on the date of your Anticipatory Termination and these payments shall continue for a period of eighteen (18) months thereafter.
- (b) Incentive Compensation. Notwithstanding any provision of the Incentive Plan to the contrary, Nasdaq shall pay you no later than the later of (i) the first day of the seventh (7<sup>th</sup>) month following your Anticipatory Termination or (ii) the Change in Control a lump sum cash payment equal to the sum of (i) any unpaid Award which has been allocated or awarded to you for a completed Plan Year and (ii) 100% of your Individual Target Award for the Plan Year in which your Anticipatory Termination occurs, or if such Individual Target Award has not yet been established for such Plan Year, 100% of your Individual Target Award for the Plan Year prior to the year in which the Anticipatory Termination occurs.

- (c) **Equity Compensation.** Your stock options and restricted stock awards under the Equity Plan shall be governed by the Equity Plan and the applicable terms of the agreements pursuant to which they were granted.
  - (d) **Health and Welfare Benefits.**
    - (i) Provided that you timely elect COBRA continuation coverage under Nasdaq's medical and dental plans as in effect at the time of your Anticipatory Termination, Nasdaq shall pay all COBRA premiums for you and your dependents under such plans (or any successor plans) until the earliest of (x) the termination of your COBRA continuation coverage period, (y) the end of the 24th month following the date of your Anticipatory Termination, or (z) the date you secure subsequent employment with comparable medical and dental coverage.
    - (ii) Nasdaq shall continue to provide you, for 24 months following your Anticipatory Termination, with the same level of accident (AD&D) and life insurance benefits upon substantially the same terms and conditions (including contributions required by you for such benefits) as existed immediately prior to the date of your Anticipatory Termination (or, if more favorable to you, as such benefits and terms and conditions existed immediately prior to the Change in Control).
  - (e) **Retirement Benefits.** Your accrued vested benefits under the Retirement Plan and the SERP shall be distributed in the time, form and manner as you elect pursuant to the applicable provisions of such plans.
  - (f) **Outplacement Services.** Nasdaq shall provide you with outplacement services suitable to your position for a period of 12 months following your Anticipatory Termination or, if earlier, until your first acceptance of an offer of employment.
4. **Withholding Taxes.** Nasdaq may withhold from all payments or benefits due to you hereunder or under any other plan or arrangement of the Companies all taxes which, by applicable federal, state, local or other law, Nasdaq determines it is required to withhold therefrom.
5. **Parachute Payment Taxes.** It is the intention of both you and of the Companies that no payments by Nasdaq to or for the benefit of you

under this letter agreement or any other agreement or plan, if any, pursuant to which you are entitled to receive payments or benefits shall be nondeductible to Nasdaq by reason of the operation of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code") relating to parachute payments or be subject to an excise tax by reason of Section 4999 of the Code. Accordingly, and notwithstanding any other provision of this letter agreement or any such agreement or plan, if by reason of the operation of said Section 280G, any such payments or benefits exceed the amount which can be deducted by Nasdaq, such payments or benefits shall be reduced to the maximum amount which can be deducted by Nasdaq. To the extent that there is more than one method of reducing the payments or benefits to bring them within the limitations of said Section 280G, Nasdaq shall determine which method shall be followed.

6. **Covenants.** As a condition precedent to and in consideration of your receipt of the payments and benefits set forth above:

- (a) You agree to return all property of the Companies to your manager. This includes (i) all documents, data, materials, details, and copies thereof in any form (electronic or hard copy) that are the property of the Companies or were created using the Companies resources or during any hours worked for the Companies including, without limitation, any data referred to in Section 6(e) and (ii) all other property of the Companies including, without limitation, all computer equipment, and associated passwords, property passes, keys, hardware keys, credit cards, and identification badges.
- (b) You agree that you shall not directly recruit or solicit any current employee of the Companies to leave the employ of the Companies for one year following the date of your Qualifying Termination or Anticipatory Termination, as applicable. The term "directly" as used in this Section 6(b) shall mean that you shall not initiate such discussions with a current employee of the Companies.
- (c) You agree to cooperate with the Companies and to provide all information that the Companies may hereafter reasonably request with respect to any matter involving your present or former relationship with the Companies, the work you have performed, or present or former employees of the Companies so long as such requests do not unreasonably interfere with any other job or important personal activity in which you are engaged. Nasdaq agrees to reimburse you for all reasonable out-of-pocket costs you incur in connection therewith.

- (d) You agree that, with regard to all confidential technical, business, tax, financial or proprietary knowledge and information you have obtained while employed by any of the Companies ("Proprietary Information"), you will not at any time disclose any such Proprietary Information to any person, firm, corporation, association, governmental agency, employee, or entity or use any such Proprietary Information for your own benefit or for the benefit of any other person, firm, corporation or other entity, except the Companies and except as may be required by court order or subpoena. You agree to notify the Nasdaq Office of General Counsel at the address noted above as soon as practicable after your receipt of such a court order or subpoena. For purposes of this letter agreement, the term "Proprietary Information" does not include information that is in the public domain. For purposes of this letter agreement, the term "Proprietary Information" shall include, but not be limited to, non-public aspects of all information about or relating to the Companies which:
- (i) relates to specific matters such as trade secrets, pricing and advertising techniques or strategies, research and development activities, software development, market development, exchange registration, the Companies' costs, expenses, human resources or other employment issues, matters relating to pending litigation, any matters pertaining to pending, past or future mergers, studies, market penetration plans, listing retention plans and strategies, marketing plans and strategies, financial information, communication and/or public relations products, plans, programs, and strategies, financial formulas and methods relating to the Companies' business, computer software programs, accounting policies and practices, tax information, information from and about tax returns, tax strategies, policies and methods, and all strategic plans or other matters, strategies, and financial or operating information pertaining to clients, lenders, customers, counsel, or transactions as they may exist from time to time which you may have acquired or obtained directly or indirectly by virtue of your employment with any of the Companies; and/or,
  - (ii) is known to you from your confidential employment relationship with the Companies.

The information described above shall be presumed to constitute "Proprietary Information," except to the extent that the same information: (i) was known to you prior to

your employment with the Companies as evidenced by written records in your possession prior to such disclosure; (ii) was lawfully disclosed to you following the end of your employment with the Companies by a third party under no obligation of confidentiality; and (iii) is generally known and available to all persons in the securities industry.

- (e) You agree that you shall not issue, circulate, publish or utter any false or disparaging, statement, remarks, opinions or rumors about Nasdaq or its shareholders or any of the Companies unless giving truthful testimony under subpoena or court order. Notwithstanding the preceding or any other provision of this letter agreement to the contrary, you may provide truthful information to any governmental agency or self-regulatory organization with or without subpoena or court order. With the exception of communications made in a private corporate communication as an employee or consultant with regard to a listing decision of your employer or your consulting client, you agree that public communications regarding a preference for listing a security on a market other than Nasdaq, that the quality of Nasdaq as a securities market is in any way inferior to any other securities market or exchange, and/or that the regulatory efforts and programs of Nasdaq or the NASD are or have been lax in any way, are specifically defined as disparaging and will constitute a material breach of this letter agreement by you. Notwithstanding the foregoing, nothing in this Section 6(e) shall prevent you from making good faith, factual and truthful statements related to listing on Nasdaq as long as your statements are not based on Proprietary Information.
- (f) You agree that for one year following the date of your Qualifying Termination or Anticipatory Termination, as applicable, you will not, directly or indirectly, (i) engage in any "Competitive Business" (as defined below) for your own account, (ii) enter the employ of, or render any services to, any person engaged in a Competitive Business, (iii) acquire a financial interest in, or otherwise become actively involved with, any person engaged in a Competitive Business, directly or indirectly, as an individual, partner, shareholder, officer, director, principal, agent, trustee or consultant, or (iv) interfere with business relationships (whether formed before or after the date of this letter agreement) between Nasdaq and customers or suppliers of Nasdaq. For purposes of this letter agreement, "Competitive Business" shall mean (x) any national securities exchange registered with the Securities and Exchange Commission, (y) any electronic communications network or (z) any other entity that engages in substantially the same business as Nasdaq, in each case in North America or in any other location in which Nasdaq operates.

7. **Breach of Agreement.** If you materially breach or threaten to materially breach this letter agreement, including but not limited to your obligations in Section 6, above and/or commence a suit or action or complaint in contravention of the release attached as Exhibit A, you acknowledge that the Companies' obligation to make the payments and/or provide the benefits referred to above shall immediately cease, and that the Companies shall have, in addition to all other rights or remedies provided in law or in equity by reason of your material breach, the right to seek the return of all payments and benefits paid pursuant to this letter agreement unless prohibited by applicable law or regulation. You specifically agree and acknowledge that the Companies, after affording you reasonable, written notice of the material breach or threatened material breach of this letter agreement and of the reasonable opportunity to cure, has the right to cease performing their obligations under this letter agreement in advance of any determination of material breach by a court of competent jurisdiction. If the Companies cease performing their obligations due to such material breach or threatened material breach and a court of competent jurisdiction later determines that such action was without right, the Companies agree to pay you all monies thus withheld plus simple interest at the prime rate in effect at the time the payments ceased and your reasonable costs and expenses incurred in such action (including attorney fees) and you agree to accept this as your exclusive remedy therefor. If the Companies cease performing their obligations due to such material breach or threatened material breach and a court of competent jurisdiction later determines that a breach occurred and that such action was thus appropriate and permitted under this letter agreement, you agree to pay, in addition to such other costs as the court may direct, all of the Companies' reasonable costs and expenses, including attorney's fees, unless prohibited by applicable law or regulation.
8. **Binding Agreement; Successors.** This letter agreement shall not be terminated by any Change in Control. In the event of any Change in Control, the provisions of this letter agreement shall be binding upon the surviving corporation, and such surviving corporation shall be treated as Nasdaq hereunder. This letter agreement shall inure to the benefit of and be enforceable by your personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If you die while any amounts would be payable to you hereunder had you continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this letter agreement to such person or persons appointed in writing by you to receive such amounts or, if no person is so appointed, to your estate.

9. **Governing Law and Miscellaneous.** The law of the State of New York shall govern this letter agreement without giving effect to its conflict of law principles. Should a court of competent jurisdiction find that any provision of this letter agreement is void, voidable, illegal, or unenforceable, no other provision shall be affected thereby and the balance shall be interpreted in a manner that gives effect to the intent of the parties. The parties agree that the normal rule of construction that holds that all ambiguities are construed against the drafting party will not apply to the interpretation of this letter agreement. You and Nasdaq acknowledge that this, along with the release attached as Exhibit A, and any award agreements you entered into under the Equity Plan, is our entire agreement. We further acknowledge that the headings in this letter agreement are for convenience only and have no bearing on the meaning of this letter agreement.

This letter, effective as of July 28, 2006, supercedes all prior agreements between the parties with respect to the subject matter contained herein. Please sign and date this letter agreement and return the signed copy to: Rosemary Albergo, One Liberty Plaza, 49<sup>th</sup> Floor, New York, NY 10006.

Sincerely,

/s/ ROBERT GREIFELD  
Robert Greifeld  
President & Chief Executive Officer

Agreed and Acknowledged:

/s/ ANNA EWING  
Anna Ewing

July 31, 2006  
Date



## GENERAL EXECUTIVE RELEASE AND WAIVER

Reference is made to that certain Change in Control Severance Agreement (the "CIC Agreement") entered into as of July 28, 2006, by and between The Nasdaq Stock Market, Inc. ("Nasdaq") and you. Capitalized terms not defined herein shall have the meaning ascribed to such terms in the CIC Agreement.

**FOR GOOD AND VALUABLE CONSIDERATION**, as set forth in the CIC Agreement (which is incorporated herein by reference as if set forth fully herein and made a part hereof), the receipt, sufficiency and adequacy of which is hereby acknowledged by your signature below, you agree as follows:

1. **Acknowledgment and Release.** You hereby accept the separation package provided under the CIC Agreement and hereby release, discharge, and agree to hold harmless the Companies, their predecessors, successors, their boards of directors and their members, employees, officers, parent, shareholders, employee benefit plans and their Plan Administrators, trusts, trustees, heirs, successors, and assigns (hereinafter referred to in this Release collectively as the "Releasees"), from all claims, liabilities, demands, and causes of action at law or equity, known or unknown, fixed or contingent, which you have, may have, will have, or claim to have against the Releasees as a result of your employment and/or this separation and the conclusion of your employment with the Releasees at any time up to and including the date of the execution of this letter agreement, excluding all claims that arise out of an asserted breach of the CIC Agreement. Your agreement pursuant to this General Executive Release and Waiver is hereinafter referred to as the "Release". This includes, but is not limited to, claims arising under federal, state, or local laws prohibiting employment discrimination, including Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, as amended (including the Older Workers Benefit Protection Act), the Employment Retirement Income Security Act of 1974, as amended, the Equal Pay Act, the Fair Labor Standards Act, as amended, the District of Columbia Human Rights Act, as amended, the Maryland Human Relations Act, the New York Executive Law, as amended, the New York City Administrative Code, as amended, the New York Labor Law, as amended, the District of Columbia Wage Payment and Wage Collection Law, as amended, the Maryland Wage Payment and Collection Act, as amended, claims growing out of any legal restrictions on an employer's right to terminate its employees in any jurisdiction, such as claims for wrongful or constructive discharge, breach of any express or implied contract, and/or any claims on any

basis whatsoever regarding your status, pay, position, or title while employed by the Releasees. Excluded from this Release are claims which cannot be lawfully waived, including the right to file an administrative charge of discrimination with federal or state agencies. You are, however, waiving all rights to monetary recovery in connection with any such charge.

You specifically promise not to sue the Releasees in any forum for any of the above-mentioned claims, except that you may bring a lawsuit to challenge the validity of this letter agreement under the Age Discrimination in Employment Act ("ADEA"). If you violate this covenant, you will be required to pay the Releasees' defense costs, including its reasonable fees; alternatively, at Nasdaq's option, Nasdaq's remaining obligations to pay severance money and/or benefits under the CIC Agreement shall cease, and you will be required to repay to Nasdaq upon demand all but \$100.00 (one hundred dollars) of the payments and other benefits you received under the CIC Agreement. The above payment/repayment provisions do not apply in the event you sue the Releasees under the ADEA.

2. **Governing Law.** The law of the State of New York shall govern this Release without giving effect to its conflict of law principles. Should a court of competent jurisdiction find that any provision of this Release is void, voidable, illegal, or unenforceable, no other provision shall be affected thereby and the balance shall be interpreted in a manner that gives effect to the intent of the parties. The parties agree that the normal rule of construction that holds that all ambiguities are construed against the drafting party will not apply to the interpretation of this Release.

The parties acknowledge that this, along with the CIC Agreement, and any award agreements you entered into under the Equity Plan, is our entire agreement. We further acknowledge that the headings in this Release are for convenience only and have no bearing on the meaning of this Release.

3. **Time to Consider.** You acknowledge that you have been advised that you have twenty-one (21) days from the date of receipt of this Release to consider all the provisions of the Release and do hereby knowingly and voluntarily waive said given twenty-one day period. YOU FURTHER ACKNOWLEDGE THAT YOU HAVE READ THE RELEASE CAREFULLY, HAVE BEEN ADVISED BY NASDAQ TO, AND HAVE IN FACT, CONSULTED AN ATTORNEY, AND FULLY UNDERSTAND THAT BY SIGNING BELOW YOU ARE GIVING UP CERTAIN RIGHTS WHICH YOU MAY HAVE TO SUE OR ASSERT A CLAIM AGAINST THE RELEASEES AS DESCRIBED HEREIN. YOU ACKNOWLEDGE THAT YOU HAVE NOT BEEN FORCED OR PRESSURED IN ANY MANNER WHATSOEVER TO SIGN THIS RELEASE AND AGREE TO ALL OF ITS TERMS VOLUNTARILY.

4. **Revocation.** You shall have seven (7) days from the date of your execution of the Release to revoke the Release, with respect to all claims referred to herein (including, without limitation, any and all claims arising under ADEA). If you revoke the Release, Nasdaq will not be obligated to honor its obligations under the CIC Agreement.
5. **No Admission.** This Release does not constitute an admission of liability or wrongdoing of any kind by you or the Releasees.

If you agree to the foregoing, please sign the enclosed copy of this Release in the space provided below and return it to me.

Very truly yours,

The Nasdaq Stock Market, Inc.

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

By signing below, I, \_\_\_\_\_, certify that I have read, carefully reviewed, fully understand, and agree to all the provisions of this Release, which, along with the CIC Agreement, any award agreements I entered into under the Equity Plan sets forth the entire agreement and understanding between Nasdaq and me. I acknowledge that I have not relied upon any representation or statement, written or oral, not set forth in such documents.

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

cc: Nasdaq Human Resources  
Nasdaq Office of General Counsel