

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

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):
January 28, 2014 (January 24, 2014)

The NASDAQ OMX Group, Inc.
(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
(Address of principal executive offices)

10006
(Zip code)

Registrant's telephone number, including area code: +1 212 401 8700

No change since last report
(Former Name or Former Address, if Changed Since Last Report)

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

(a) Amended and Restated Certificate of Incorporation.

On January 24, 2014, The NASDAQ OMX Group, Inc. (“NASDAQ OMX” or the “Company”) filed with the Delaware Secretary of State an Amended and Restated Certificate of Incorporation, following approval by the United States Securities and Exchange Commission (the “SEC”). NASDAQ OMX’s stockholders previously approved the amendment and restatement at the annual meeting held on May 22, 2013.

In response to feedback from stockholders, the amendment and restatement removes each supermajority voting requirement in the certificate of incorporation and replaces it with a “majority of outstanding shares” voting requirement. The supermajority voting requirements required the affirmative vote of at least 66 2/3% of the total voting power of NASDAQ OMX’s capital stock entitled to vote generally in the election of directors (the “Voting Stock”), voting together as a single class, to take certain actions. These actions include: removal of directors; adoption, alteration, amendment and repeal of By-Laws; and adoption, alteration, amendment and repeal of certain provisions of the certificate of incorporation. The amendment and restatement also includes other non-substantive changes that, among other things, delete obsolete references, clarify language and correct a typographical error.

The text of the Amended and Restated Certificate of Incorporation is attached to this Current Report on Form 8-K as Exhibit 3.1 and incorporated herein by reference.

(b) Certificate of Elimination.

On January 27, 2014, NASDAQ OMX eliminated its Certificate of Designation, Preferences and Rights of Series A Convertible Preferred Stock by filing with the Delaware Secretary of State a Certificate of Elimination, following SEC approval. There were no shares of the Series A Convertible Preferred Stock outstanding. The text of the Certificate of Elimination is attached to this Current Report on Form 8-K as Exhibit 3.1.1 and incorporated herein by reference.

(c) By-Law Amendments.

On February 20, 2013 and November 19, 2013, NASDAQ OMX’s board of directors approved amendments to the Company’s By-Laws that took effect on January 24, 2014, following SEC approval.

The By-Law amendments, which also respond to feedback from stockholders, include the following.

- Special Meeting of Stockholders. Section 3.2 was amended to allow stockholders holding at least 15% of NASDAQ OMX’s voting power to call a special meeting under the following circumstances.
 - The stockholders calling the special meeting must be record holders and must have held a “net long position” equivalent to 15% of the outstanding common stock entitled to vote continuously for one year prior to the request to call a special meeting.
 - Upon receipt of a stockholder request to call a special meeting, NASDAQ OMX’s board of directors must set the meeting within 120 days.
 - A special meeting request will not be valid if it relates to an item of business that is not a proper subject for stockholder action under applicable law.
 - A special meeting request will not be valid if it is delivered: (i) within 90 days before an annual meeting; (ii) within 120 days after a meeting at which a similar item was considered; or (iii) when a similar item is to be presented at a meeting that has been called by NASDAQ OMX, but not yet held.

- i To be in proper form, a special meeting request must include certain disclosures about the proposing stockholders, any proposed nominees for director and any proposed items of business to be brought before a meeting.
- Annual Meetings of Stockholders. Section 3.1 was amended to revise the procedures through which stockholders may notify NASDAQ OMX, during a specified period in advance of an annual meeting, of their intention to nominate one or more persons for election to the board of directors or to present a business proposal for consideration by the stockholders at the meeting. Generally, the amendments add requirements for disclosures by proposing stockholders about themselves, any proposed nominees for director and any proposed items of business to be brought before a meeting.
 - Questionnaire, Representation and Agreement for Director-Nominees. New Section 3.5 was added to require nominees for director to deliver to NASDAQ OMX, in accordance with the time periods prescribed for delivery of a stockholder's notice: (i) a written questionnaire with respect to the background and qualifications of the nominee; and (ii) a written representation and agreement as to certain matters.
 - Removal and Replacement of Supermajority Voting Provisions. Consistent with the changes to the certificate of incorporation discussed above, Sections 4.6 and 11.1 were amended to remove each supermajority voting requirement in the By-Laws and replace it with a "majority of outstanding shares" voting requirement. The supermajority voting requirements required the affirmative vote of at least 66 2/3% of the total voting power of the Voting Stock, voting together as a single class, to remove directors or adopt, alter, amend or repeal any By-Law.
 - Procedures for Filling Board Vacancies. Section 4.8 was amended to state explicitly that vacancies on the board of directors are to be filled by a majority vote of the directors then in office, even if there is less than a quorum, or by the sole remaining director, if there is only one director remaining on the board.
 - Use of Electronic Means for Certain Notices and Related Waivers. Sections 4.12(a) and (b) were amended to provide that both notices of board meetings and waivers of such notices can be given by e-mail or other means of written electronic transmission.
 - Composition of the Management Compensation Committee. Section 4.13(f), which relates to the composition of the management compensation committee of NASDAQ OMX's board of directors, was amended to conform to recent amendments to the listing rules of The NASDAQ Stock Market.
 - No Amendment or Repeal of Certain By-Law Amendments. Section 11.2 was amended to state that no By-Law adopted by the stockholders shall be amended or repealed by NASDAQ OMX's board of directors if the By-Law so adopted so provides.

The remaining By-Law amendments include non-substantive changes that, among other things, delete obsolete references, ensure consistent use of certain terminology and correct typographical errors. The text of the By-Laws is attached to this Current Report on Form 8-K as Exhibit 3.2 and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.**(d) Exhibits.**

<u>Exhibit No.</u>	<u>Exhibit Description</u>
3.1	Amended and Restated Certificate of Incorporation of NASDAQ OMX.
3.1.1	Certificate of Elimination of NASDAQ OMX's Series A Convertible Preferred Stock.
3.2	By-Laws of NASDAQ OMX.

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 OMX GROUP, INC.

Dated: January 28, 2014

By: /S/ EDWARD S. KNIGHT

Edward S. Knight

Executive Vice President and General Counsel

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF THE NASDAQ OMX GROUP, INC.**

The undersigned, Joan C. Conley, Senior Vice President and Corporate Secretary of The NASDAQ OMX Group, Inc. ("Nasdaq"), a Delaware corporation, does hereby certify:

FIRST: That the name of the corporation is The NASDAQ OMX Group, Inc. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was November 13, 1979. The name under which Nasdaq was originally incorporated was "NASD Market Services, Inc."

SECOND: Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation further amends and restates the provisions of Nasdaq's Restated Certificate of Incorporation filed on May 11, 2009, to read in its entirety as follows:

ARTICLE FIRST

The name of the corporation is The NASDAQ OMX Group, Inc.

ARTICLE SECOND

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

ARTICLE THIRD

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE FOURTH

- A. The total number of shares of Stock which Nasdaq shall have the authority to issue is Three Hundred Thirty Million (330,000,000), consisting of Thirty Million (30,000,000) shares of Preferred Stock, par value \$.01 per share (hereinafter referred to as "Preferred Stock"), and Three Hundred Million (300,000,000) shares of Common Stock, par value \$.01 per share (hereinafter referred to as "Common Stock").

- B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of Nasdaq (the "Board") is hereby authorized to provide for the issuance of shares of Preferred Stock in one or more series and, by filing a certificate pursuant to the applicable law of the State of Delaware (hereinafter referred to as "Preferred Stock Designation"), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations and restrictions thereof. The authority of the Board with respect to each series shall include, but not limited to, determination of the following:
- (1) The designation of the series, which may be by distinguishing number, letter or title.
 - (2) The number of shares of the series, which number the Board may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding).
 - (3) The amounts payable on, and the preferences, if any, of shares of the series in respect of dividends, and whether such dividends, if any, shall be cumulative or noncumulative.
 - (4) Dates at which dividends, if any, shall be payable.
 - (5) The redemption rights and price or prices, if any, for shares of the series.
 - (6) The terms and amount of any sinking fund provided for the purchase or redemption of shares of the series.
 - (7) The amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of Nasdaq.
 - (8) Whether the shares of the series shall be convertible into or exchangeable for shares of any other class or series, or any other security, of Nasdaq or any other corporation, and, if so, the specification of such other class or series or such other security, the conversion or exchange price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible or exchangeable and all other terms and conditions upon which such conversion or exchange may be made.
 - (9) Restrictions on the issuance of shares of the same series or of any other class or series.
 - (10) The voting rights, if any, of the holders of shares of the series.
- C. 1. Except as may otherwise be provided in this Restated Certificate of Incorporation (including any Preferred Stock Designation) or by applicable law, each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote, and no holder of any series of Preferred Stock, as such, shall be entitled to any voting powers in respect thereof.

2. Notwithstanding any other provision of this Restated Certificate of Incorporation, but subject to subparagraph 6 of this paragraph C. of this Article Fourth, in no event shall any record owner of any outstanding Common Stock or Preferred Stock which is beneficially owned, directly or indirectly, as of any record date for the determination of stockholders entitled to vote on any matter, by a person (other than an Exempt Person) who beneficially owns shares of Common Stock and/or Preferred Stock in excess of five percent (5%) of the then-outstanding shares of stock generally entitled to vote as of the record date in respect of such matter ("Excess Shares"), be entitled or permitted to vote any Excess Shares on such matter. For all purposes hereof, any calculation of the number of shares of stock outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding shares of stock of which any person is the beneficial owner, shall be made in accordance with the last sentence of Rule 13d-3(d)(1)(i) of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as in effect on the date of filing this Restated Certificate of Incorporation.
3. The following definitions shall apply to this paragraph C. of this Article Fourth:
- (a) "Affiliate" shall have the meaning ascribed to that term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of filing this Restated Certificate of Incorporation.
 - (b) A person shall be deemed the "beneficial owner" of, shall be deemed to have "beneficial ownership" of and shall be deemed to "beneficially own" any securities:
 - (i) which such person or any of such person's Affiliates is deemed to beneficially own, directly or indirectly, within the meaning of Rule 13d-3 of the General Rules and Regulations under the Exchange Act as in effect on the date of the filing of this Restated Certificate of Incorporation;
 - (ii) which such person or any of such person's Affiliates has (A) the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the beneficial owner of, or to beneficially own, securities tendered pursuant to a tender or exchange offer made by or on behalf of such person or any of such person's Affiliates until such tendered securities are accepted for purchase; or (B) the right to vote pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the beneficial owner of, or to beneficially own, any security by reason of such

agreement, arrangement or understanding if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given to such person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations promulgated under the Exchange Act and (2) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report); or

- (iii) which are beneficially owned, directly or indirectly, by any other person and with respect to which such person or any of such person's Affiliates has any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities) for the purpose of acquiring, holding, voting (except to the extent contemplated by the proviso to (b)(ii)(B) above) or disposing of such securities; provided, however, that no person who is an officer, director or employee of an Exempt Person shall be deemed, solely by reason of such person's status or authority as such, to be the "beneficial owner" of, to have "beneficial ownership" of or to "beneficially own" any securities that are "beneficially owned" (as defined herein), including, without limitation, in a fiduciary capacity, by an Exempt Person or by any other such officer, director or employee of an Exempt Person.
- (c) A "person" shall mean any individual, firm, corporation, partnership, limited liability company or other entity.
- (d) "Exempt Person" shall mean Nasdaq or any Subsidiary of Nasdaq, in each case including, without limitation, in its fiduciary capacity, or any employee benefit plan of Nasdaq or of any Subsidiary of Nasdaq, or any entity or trustee holding stock for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of Nasdaq or of any Subsidiary of Nasdaq.
- (e) "Subsidiary" of any person shall mean any corporation or other entity of which securities or other ownership interests having ordinary voting power sufficient to elect a majority of the board of directors or other persons performing similar functions are beneficially owned, directly or indirectly, by such person, and any corporation or other entity that is otherwise controlled by such person.
- (f) The Board shall have the power to construe and apply the provisions of this paragraph C. of this Article Fourth and to make all determinations necessary or desirable to implement such provisions, including, but not limited to, matters with respect to (1) the number of shares of stock beneficially owned by any person, (2) whether a person is an Affiliate of another, (3) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in the definition of beneficial ownership, (4) the application of any other definition or operative provision hereof to the given facts, or (5) any other matter relating to the applicability or effect of this paragraph C. of this Article Fourth.

4. The Board shall have the right to demand that any person who is reasonably believed to hold of record or beneficially own Excess Shares supply Nasdaq with complete information as to (a) the record owner(s) of all shares beneficially owned by such person who is reasonably believed to own Excess Shares, and (b) any other factual matter relating to the applicability or effect of this paragraph C. of this Article Fourth as may reasonably be requested of such person.
5. Any constructions, applications, or determinations made by the Board, pursuant to this paragraph C. of this Article Fourth, in good faith and on the basis of such information and assistance as was then reasonably available for such purpose, shall be conclusive and binding upon Nasdaq and its stockholders.
6. Notwithstanding anything herein to the contrary, subparagraph 2 of this paragraph C. of this Article Fourth shall not be applicable to any Excess Shares beneficially owned by any person as may be approved for such exemption by the Board prior to the time such person beneficially owns more than five percent (5%) of the outstanding shares of stock entitled to vote on the election of a majority of directors at such time. The Board, however, may not approve an exemption under Section 6(b): (i) for a registered broker or dealer or an Affiliate thereof or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act. The Board may approve an exemption for any other stockholder if the Board determines that granting such exemption would (A) not reasonably be expected to diminish the quality of, or public confidence in, Nasdaq or The NASDAQ Stock Market LLC or the other operations of Nasdaq and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.
7. In the event any provision (or portion thereof) of this paragraph C. of this Article Fourth shall be found to be invalid, prohibited or unenforceable for any reason, the remaining provisions (or portions thereof) of this paragraph C. of this Article Fourth shall remain in full force and effect, and shall be construed as if such invalid, prohibited or unenforceable provision (or portion hereof) had been stricken herefrom or otherwise rendered inapplicable, it being the intent of Nasdaq and its stockholders that each such remaining provision (or portion thereof) of this paragraph C. of this Article Fourth remains, to the fullest extent permitted by law, applicable and enforceable as to all stockholders, including stockholders that beneficially own Excess Shares, notwithstanding any such finding.

ARTICLE FIFTH

- A. The business and affairs of Nasdaq shall be managed by, or under the direction of, the Board. The total number of directors constituting the entire Board shall be fixed from time to time by the Board.
- B. The directors (other than those directors elected by the holders of any series of Preferred Stock provided for, or fixed pursuant to the provisions of Article Fourth hereof (the "Preferred Stock Directors")) shall be elected at an annual meeting of stockholders, or at a special meeting called for such purpose in lieu of the annual meeting, by the holders of the Voting Stock (as hereinafter defined) and shall hold office until the next annual meeting of stockholders and until their respective successors shall have been duly elected and qualified, subject, however, to prior death, resignation, retirement, disqualification or removal from office.
- C. Subject to the rights of the holders of any one or more series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause shall only be filled by the Board. No decrease in the number of directors shall shorten the term of any incumbent director.
- D. Except for Preferred Stock Directors, any director, or the entire Board, may be removed from office at any time, but only by the affirmative vote of a majority of the outstanding shares of capital stock of Nasdaq entitled to vote generally in the election of directors ("Voting Stock"), voting together as a single class.
- E. During any period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to the provisions of Article Fourth hereof, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of Nasdaq shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his earlier death, disqualification, resignation or removal. Except as otherwise provided by the Board in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from death, resignation, disqualification or removal of such additional directors, shall forthwith terminate and the total authorized number of directors of Nasdaq shall automatically be reduced accordingly.

ARTICLE SIXTH

- A. A director of Nasdaq shall not be liable to Nasdaq or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended.
- B. Any repeal or modification of paragraph A shall not adversely affect any right or protection of a director of Nasdaq existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

ARTICLE SEVENTH

No action that is required or permitted to be taken by the stockholders of Nasdaq at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting of stockholders.

ARTICLE EIGHTH

- A. In furtherance of, and not in limitation of, the powers conferred by law, the Board is expressly authorized and empowered to adopt, amend or repeal the By-Laws of Nasdaq; provided, however, that the By-Laws adopted by the Board under the powers hereby conferred may be amended or repealed by the Board or by the stockholders having voting power with respect thereto, provided further that, notwithstanding any other provision of this Restated Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the stock required by law or this Restated Certificate of Incorporation, the affirmative vote of the holders of a majority of the outstanding Voting Stock, voting together as a single class, shall be required in order for the stockholders to adopt, alter, amend or repeal any By-Law.
- B. For so long as Nasdaq 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 Exchange Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the Securities and Exchange Commission (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.

ARTICLE NINTH

- A. Nasdaq reserves the right to amend, alter, change, or repeal any provisions contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred herein are granted subject to this reservation; provided, however, that the affirmative vote of the holders of a majority of the outstanding Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with paragraph C. of Article Fourth, Article Fifth, Article Seventh, Article Eighth or this Article Ninth.
- B. For so long as Nasdaq shall control, directly or indirectly, The NASDAQ Stock Market LLC, any proposed amendment of any provisions contained in this Restated Certificate of Incorporation shall be submitted to the Exchange Board, and if the Exchange Board determines that such amendment is required, under Section 19 of the Exchange Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be filed with the Secretary of State of the State of Delaware until filed with, or filed with and approved by, the Commission, as the case may be.

ARTICLE TENTH

Nasdaq shall have perpetual existence.

ARTICLE ELEVENTH

In light of the unique nature of Nasdaq and its subsidiaries, including the status of The NASDAQ Stock Market LLC as a self regulatory organization, the Board of Directors, when evaluating (A) any tender or exchange offer or invitation for tenders or exchanges, or proposal to make a tender or exchange offer or request or invitation for tenders or exchanges, by another party, for any equity security of Nasdaq, (B) any proposal or offer by another party to (1) merge or consolidate Nasdaq or any subsidiary with another corporation or other entity, (2) purchase or otherwise acquire all or a substantial portion of the properties or assets of Nasdaq or any subsidiary, or sell or otherwise dispose of to Nasdaq or any subsidiary all or a substantial portion of the properties or assets of such other party, or (3) liquidate, dissolve, reclassify the securities of, declare an extraordinary dividend of, recapitalize or reorganize Nasdaq, (C) any action, or any failure to act, with respect to any holder or potential holder of Excess Shares subject to the limitations set forth in subparagraph 2 of paragraph C. of Article Fourth, (D) any demand or proposal, precatory or otherwise, on behalf of or by a holder or potential holder of Excess Shares subject to the limitations set forth in subparagraph 2 of paragraph C. of Article Fourth or (E) any other issue, shall, to the fullest extent permitted by applicable law, take into account all factors that the Board of Directors deems relevant, including, without limitation, to the extent deemed relevant, (i) the potential impact thereof on the integrity, continuity and stability of Nasdaq and The NASDAQ Stock Market LLC and the other operations of Nasdaq and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

IN WITNESS WHEREOF, the undersigned has executed this certificate this 24th day of January, 2014.

THE NASDAQ OMX GROUP, INC.

By:

A handwritten signature in black ink, appearing to read "Joan C. Conley". The signature is written in a cursive style with a large loop at the beginning.

Name: Joan C. Conley

Office: Senior Vice President and Corporate Secretary

Attached hereto as Exhibit A is a copy of the Certificate of Designation of Series A Convertible Preferred Stock of The NASDAQ OMX Group, Inc.

**EXHIBIT A TO AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF THE NASDAQ OMX GROUP, INC.**

CERTIFICATE OF DESIGNATION OF SERIES A CONVERTIBLE PREFERRED STOCK OF THE NASDAQ OMX GROUP, INC.

The NASDAQ OMX Group, Inc. (the “Company”) certifies that pursuant to the authority contained in its Restated Certificate of Incorporation (the “Certificate of Incorporation”) and in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors of the Company (the “Board”), acting by unanimous written consent, has duly adopted the following resolution, which resolution remains in full force and effect as of the date hereof:

WHEREAS, the Certificate of Incorporation authorizes 30,000,000 shares of preferred stock, par value \$0.01 per share (the “Preferred Stock”), issuable from time to time in one or more series; and

WHEREAS, the Certificate of Incorporation authorizes the Board to provide by resolution for the issuance of the shares of Preferred Stock in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations and restrictions thereof.

NOW, THEREFORE, BE IT RESOLVED, that a series of Preferred Stock with the powers, designations, preferences and rights and the qualifications, limitations and restrictions thereof, as provided herein, is hereby authorized and established as set forth in the following Certificate of Designation of Series A Convertible Preferred Stock (this “Certificate of Designation”):

Section 1. Number; Designation; Rank.

- (a) This series of convertible Preferred Stock is designated as the “Series A Convertible Preferred Stock” with par value \$0.01 per share (the “Series A Preferred Stock”). The number of shares constituting the Series A Preferred Stock is 2,000,000 shares.
- (b) The Series A Preferred Stock ranks, with respect to dividend rights and rights upon liquidation, dissolution or winding up of the Company:
 - (i) senior in preference and priority to the common stock of the Company, par value \$0.01 per share (the “Common Stock” or the “Junior Securities”); and
 - (ii) on parity, without preference and priority, with each other class or series of preferred stock of the Company (collectively, the “Parity Securities”).

Section 2. Dividends. Commencing on the Shareholder Vote Date, and provided that a mandatory conversion pursuant to Section 5(a) shall not have occurred on such date, and so long as any shares of the Series A Preferred Stock remain outstanding, the Company shall pay to holders of then outstanding shares of Series A Preferred Stock cumulative dividends, accrued with respect to each share of Series A Preferred Stock on the Liquidation Preference on a daily basis and compounded quarterly, at a per annum rate equal to 12%, which shall be accreted to, and increase, the outstanding Liquidation Preference in arrears on the last day of March, June, September and December of each year (each, a "Dividend Payment Date"), commencing on the first Dividend Payment Date immediately succeeding the Shareholder Vote Date. For the avoidance of doubt, with respect to any provision of this Certificate of Designation that provides for dividends to be paid and/or to cease to accrue upon the occurrence of a specified event, dividends shall accrue through and including the day immediately preceding the day as of which such event occurs.

Section 3. Liquidation Preference.

- (a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company, each share of Series A Preferred Stock entitles the holder thereof to receive and to be paid out of the assets of the Company available for distribution, before any distribution or payment may be made to a holder of any Junior Securities, an amount of Ten U.S. Dollars (\$10.00) plus any accrued and unpaid dividends thereon in funds consisting of cash or cash equivalents (collectively, the "Liquidation Preference").
- (b) If upon any such liquidation, dissolution or winding up of the Company, the assets of the Company available for distribution are insufficient to pay in full the holders of Series A Preferred Stock the amount to which they are entitled pursuant to Section 3(a) above and the holders of all Parity Securities the full liquidation preferences to which they are entitled, the holders of Series A Preferred Stock and such Parity Securities will share ratably in any such distribution of the assets of the Company in proportion to the full respective amounts to which they are entitled.
- (c) For the purposes of this Section 3, a Fundamental Change (in and of itself) shall be deemed not to be a liquidation, dissolution or winding-up of the Company subject to this Section 3 (it being understood that an actual liquidation, dissolution or winding up of the Company in connection with a Fundamental Change will be subject to this Section 3).

Section 4. Voting Rights. So long as any shares of Series A Preferred Stock are outstanding, the Company may not amend, modify or waive (by merger, consolidation or otherwise) the provisions of the Certificate of Incorporation, the Company's bylaws or this Certificate of Designation in a way that would adversely affect the rights, preferences or privileges of the Series A Preferred Stock without the prior vote or written consent of holders representing at least a majority of the then outstanding shares of Series A Preferred Stock, voting together as a separate class; provided, however, that any (i) amendment (A) reducing the dividend rate, rate of accretion or manner of payment of dividends or (B) the definitions of the Dividend Payment Date, the Mandatory Redemption Date, the Liquidation Preference, the Fundamental Change Redemption Amount, the Settlement Rate or any of the defined terms used therein, (ii) increase in the number of authorized shares of Series A Preferred Stock or split, reverse split, subdivision, reclassification (other than resulting from a Fundamental Change) or combination of the Series A Preferred Stock or (iii) change to Section 3(a) or 3(b) or this Section 4 shall require the written consent of 75% of the then outstanding shares of Series A preferred Stock, voting together as a single class.

Section 5. Conversion.

Each share of Series A Preferred Stock is convertible into shares of Common Stock as provided in this Section 5.

- (a) Mandatory Conversion. The Company shall seek such approval of the holders of the Company's Common Stock as may be required under law or the primary exchange listing standards applicable to the Company to permit the conversion of the Series A Preferred Stock into shares of Common Stock at the regularly scheduled 2010 annual meeting of the shareholders of the Company or at such earlier date as the Company and a majority of the holders of the Series A Preferred Stock may agree (such approval, the "Shareholder Approval" and such meeting, the "Annual Meeting"). On the date on which the Shareholder Approval is obtained (the "Conversion Date"), each of the Series A Preferred Stock will automatically, and without any further action required by any holder, be converted into a number of duly authorized, validly issued, fully paid and nonassessable shares of Common Stock determined by dividing the Liquidation Preference by the Reference Price (the "Settlement Rate"); provided that, for purposes of this Section 5(a), (i) if the Reference Price is less than the Floor Price, then the Settlement Rate will be the Liquidation Preference divided by the Floor Price, and (ii) if the Reference Price is greater than the Ceiling Price, then the Settlement Rate will be the Liquidation Preference divided by the Ceiling Price, in each case, with the Floor Price and the Ceiling Price being subject to appropriate adjustments set forth in Section 5(d) below.
- (b) Fractional Shares. No fractional shares of Common Stock will be issued upon conversion of the Series A Preferred Stock. In lieu of fractional shares, the Company shall, with respect to each fractional share otherwise deliverable (and subject to the next sentence), deliver a whole share of Common Stock or pay cash (subject to compliance with all laws, rules and regulations applicable to the Company (and including, for the avoidance of doubt, any Exchange listing requirements then applicable to the Company) and any debt instruments the Company is then party to, including the Credit Agreement, dated as of February 27, 2008, among the Company, as borrower, the lenders party thereto, JP Morgan Chase, N.A., as syndication

agent, and Bank of America, N.A., as administrative agent, collateral agent, swingline lender and issuing bank), as in effect on the date of this Certificate of Designation (the "Credit Agreement"). If more than one share of Series A Preferred Stock is being converted at one time by the same holder, then the number of full shares issuable upon conversion will be calculated on the basis of the aggregate number of shares of Series A Preferred Stock converted by such holder at such time.

(c) Mechanics of Conversion.

- (i) In the event of mandatory conversion pursuant to Section 5(a), the Company shall deliver as promptly as practicable (but in no event later than three (3) Business Days after the Conversion Date) written notice to each holder of the Series A Preferred Stock specifying: (A) the Conversion Date; (B) the number of shares of Common Stock to be issued in respect of each share of Series A Preferred Stock that is converted; and (C) the place or places where the shares are to be surrendered for issuance of shares of Common Stock, which date shall be as soon as practicable following the Conversion Date.
- (ii) As promptly as practicable (but in no event later than three (3) Business Days) following the later of the Conversion Date and the delivery by a holder thereof of the Series A Preferred Stock to the Company, the Company shall issue and deliver to such holder a number of shares of Common Stock to which such holder is entitled, together with a check or cash for payment of fractional shares, if any, in exchange for the shares of Series A Preferred Stock. Such conversion will be deemed to have been made on the Conversion Date, and the person (as defined in Section 7) entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such Conversion Date. The Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of Common Stock upon conversion.
- (iii) The Company shall take any corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock issuable upon conversion as set forth in this Section 5, which shares of Common Stock shall be issued free of any preemptive rights arising under law or contract and free from all taxes, liens and charges with respect to the issuance thereof.
- (iv) From and after the Conversion Date, the shares of Series A Preferred Stock converted as of such Conversion Date will no longer be deemed to be outstanding, dividends will cease to accrue on the Series A Preferred Stock, and all rights of the holders of the Series A Preferred Stock will terminate except for the right to receive the number of whole shares of Common Stock issuable upon conversion thereof at the Settlement Rate then in effect and

cash or whole shares in lieu of any fractional shares of Common Stock. Any shares of Series A Preferred Stock that have been converted will, after such conversion, be deemed cancelled and retired.

- (v) The Company shall comply with all federal and state laws, rules and regulations and applicable rules and regulations of the Exchange on which shares of the Common Stock are then listed. So long as the Common Stock into which the shares of Series A Preferred Stock are then convertible is then listed on an Exchange, the Company shall list and keep listed on such Exchange, upon official notice of issuance, all shares of such Common Stock issuable upon conversion.
 - (vi) Issuances of shares of Common Stock upon conversion of the Series A Preferred Stock shall be made without charge to any holder of shares of Series A Preferred Stock for any issue or transfer tax (other than taxes in respect of any transfer occurring contemporaneously therewith or as a result of the holder being a non-U.S. person) or other incidental expense in respect of the issuance of such shares, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance or delivery of shares of Common Stock in a name other than that of the holder of the Series A Preferred Stock to be converted, and no such issuance or delivery shall be made unless and until the person requesting such issuance or delivery has paid to the Company the amount of any such tax or has established, to the reasonable satisfaction of the Company, that such tax has been paid.
- (d) Adjustments to Floor Price and Ceiling Price. The Floor Price and the Ceiling Price shall be adjusted from time to time by the Company, without duplication with Section 7(g), as follows (each event resulting in such adjustment pursuant to this Section 5(d), an “Adjustment Event”):
- (i) Stock Splits, Subdivisions, Reclassifications or Combinations. If the Company shall (A) declare a dividend or make a distribution on its Common Stock in shares of Common Stock, (B) subdivide or reclassify the outstanding shares of Common Stock into a greater number of shares or (C) combine or reclassify the outstanding Common Stock into a smaller number of shares, each of the Floor Price and the Ceiling Price in effect at the time of the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification shall be adjusted to the number obtained by multiplying each of the Floor Price and the Ceiling Price in effect at the time of the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such action, and the denominator of which shall be the number of shares of Common Stock outstanding immediately following such action.

- (ii) Statement Regarding Adjustments. Whenever either of the Floor Price or the Ceiling Price shall be adjusted as provided in this Section 5(d), the Company shall forthwith file, at the principal office of the Company, a statement showing in reasonable detail the facts requiring such adjustment, and each of the Floor Price or the Ceiling Price that shall be in effect after such adjustment and the Company shall also cause a copy of such statement to be sent by mail, first class postage prepaid, to each holder of shares of Series A Preferred Stock at the address appearing in the Company's records.

Section 6. Redemption.

Each share of Series A Preferred Stock is redeemable as provided in this Section 6.

- (a) Mandatory Redemption.
 - (i) On the fourth (4th) anniversary of the Initial Issuance Date, or, if not a Business Day, the first Business Day thereafter (the "Mandatory Redemption Date"), the Company shall redeem, by payment in cash on such date (subject to the legal availability of funds therefor), all, but not less than all, of the outstanding shares of Series A Preferred Stock at a redemption price per share equal to the Liquidation Preference (the "Mandatory Redemption Price").
 - (ii) The Company shall deliver a notice of redemption not less than 10 nor more than 60 days prior to the Mandatory Redemption Date, addressed to the holders of record of the Series A Preferred Stock as they appear in the records of the Company as of the date of such notice. Each notice shall state the following: (A) the Mandatory Redemption Date; (B) the Mandatory Redemption Price; (C) the name of the redemption agent to whom, and the address of the place to where, the shares of Series A Preferred Stock are to be surrendered for payment of the Mandatory Redemption Price; and (D) that dividends on the shares of Series A Preferred Stock to be redeemed will cease to accrue on such Mandatory Redemption Date, provided that the Mandatory Redemption Price and the dividends accrued through, and including, the day immediately preceding the Mandatory Redemption Date, shall have been paid on the Mandatory Redemption Date.
- (b) Optional Redemption.
 - (i) If Shareholder Approval at the Annual Meeting is not obtained, all, but not less than all of the shares of the Series A Preferred Stock will become redeemable by the Company, by payment in cash on such applicable date, at the following applicable "Optional Redemption Price":

- (1) 110% of the Liquidation Preference for redemption occurring prior to the first anniversary of the Annual Meeting;
 - (2) 105% of the Liquidation Preference for redemption occurring on or after the first anniversary but prior to the second anniversary of the Annual Meeting; or
 - (3) 100% of the Liquidation Preference for redemption occurring on or after the second anniversary of the Annual Meeting.
- (ii) If the Company elects to redeem the Series A Preferred Stock pursuant to Section 6(b)(i), the Company shall designate the date on which Optional Redemption Date shall occur by delivering a notice of redemption not less than 10 nor more than 30 Business Days prior to the Optional Redemption Date, addressed to the holders of record of the Series A Preferred Stock as they appear in the records of the Company as of the date of such notice. Each notice must state the following: (A) the Optional Redemption Date; (B) the Optional Redemption Price; (C) the name of the redemption agent to whom, and the address of the place to where, the Series A Preferred Stock are to be surrendered for payment of the Optional Redemption Price; and (D) that dividends, if any, on the shares of Series A Preferred Stock to be redeemed will cease to accrue on such Optional Redemption Date; provided that the Optional Redemption Price and dividends accrued through, and including, the day immediately preceding the Optional Redemption Date shall have been paid on the Optional Redemption Date.
- (c) Redemption Upon a Fundamental Change.
- (i) No later than fifteen (15) Business Days after the occurrence of a Fundamental Change, the Company shall notify (such notice, the "Fundamental Change Notice") of such occurrence each of the holders of record of the Series A Preferred Stock as they appear in the records of the Company as of the date of the Fundamental Change Notice. Upon the occurrence of a Fundamental Change, any holder of the Series A Preferred Stock may elect to require the Company (subject to the Company's compliance with the Credit Agreement) to redeem the Series A Preferred Stock held by such holder at an amount per share of Series A Preferred Stock equal to 101% of the Liquidation Preference (the "Fundamental Change Redemption Amount") by delivering a notice of redemption to the Company not less than 10 nor more than 30 Business Days (subject to extension to comply with applicable law) following the delivery of the Fundamental Change Notice to such holder; provided that, subject to the limitations below, the Company may elect, solely at its option, to pay the Fundamental Change Redemption Amount in cash or, to the extent permissible under the Exchange listing requirements then applicable to the Company, in shares of Common Stock (or, if applicable, Reference Property in lieu thereof). To the extent that the Company elects to pay the

Fundamental Change Redemption Amount in shares of Common Stock, the Company shall, per each share of Series A Preferred Stock, issue a number of shares of Common Stock equal to (or, if applicable and subject to the limitations below, Reference Property received by holders of the Common Stock with respect to shares of Common Stock in the Fundamental Change transaction with Fair Market Value equivalent to) 101% of the Settlement Rate (determined for the purposes of this Section 6(c)(i) (x) by substituting the date of consummation of the Fundamental Change transaction for the Conversion Date and (y) without regard to any Floor Price or Ceiling Price). In lieu of fractional shares, the Company shall, with respect to each fractional share otherwise deliverable (and subject to the next sentence), deliver a whole share of Common Stock or pay cash (subject to compliance with all laws, rules and regulations applicable to the Company (and including, for avoidance of doubt, any Exchange listing requirements then applicable to the Company and any debt instruments the Company is then party to, including the Credit Agreement). As promptly as practicable (but in no event later than two (2) Business Days) following the delivery of the notice of redemption to the Company by a holder, the Company shall redeem such holder's shares of Series A Preferred Stock requested to be redeemed (the "Fundamental Change Redemption Date").

- (ii) Each Fundamental Change Notice shall state the following: (A) the events causing the Fundamental Change; (B) the date of the Fundamental Change; (C) the last date on which a holder may exercise the redemption right; (D) the Fundamental Change Redemption Amount; (E) the name of the redemption agent to whom, and the address of the place to where, the Series A Preferred Stock are to be surrendered for payment of the Fundamental Change Redemption Amount; and (F) that dividends on the shares of Series A Preferred Stock to be redeemed will cease to accrue on such Fundamental Change Redemption Date, provided that the Fundamental Change Redemption Amount and the dividends accrued through, and including, the day immediately preceding the Fundamental Change Redemption Date, shall have been paid on the Fundamental Change Redemption Date.
- (iii) If the holders of the Series A Preferred Stock elect to redeem the Series A Preferred Stock pursuant to Section 6(c)(i), the consummation of the redemption and the payment of the Optional Redemption Price shall be subject to the occurrence of the Fundamental Change.
- (iv) In the case of any Fundamental Change in connection with which holders of less than all of the shares of Series A Preferred Stock then outstanding elect to be redeemed pursuant to this Section 6(c), the Company or the entity formed by the consolidation or resulting from the merger or which acquires such assets or which acquires the Company's shares, as the case may be, shall make provisions in its certificate or articles of incorporation or other constituent documents to establish such rights and to ensure that the dividend, voting and other rights of the holders of Series A

Preferred Stock established herein are unchanged, except as required by applicable law. The certificate or articles of incorporation or other constituent documents shall provide for adjustments, which, for events subsequent to the effective date of the certificate or articles of incorporation or other constituent documents, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 6(c). Lawful provision shall be made as part of the terms of such Fundamental Change to effect the foregoing.

Section 7. Additional Definitions. For purposes of this Certificate of Designation, the following terms shall have the following meanings:

- (a) “Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or obligated to close.
- (b) “Ceiling Price” means 120% of the Fair Market Value of Common Stock as of the Initial Issuance Date.
- (c) “Daily VWAP” for (i) the Common Stock means the per share volume-weighted average price on The NASDAQ Global Select Market as displayed under the heading “Bloomberg VWAP” on Bloomberg page “NDAQ.UQ <equity> AQR” (or any successor page thereto) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day and (ii) other security traded or quoted on an Exchange means the per share volume-weighted average price on such Exchange; provided that, in each case, (A) if such volume-weighted average price is unavailable, the market value of one share of the Common Stock or such other security on such Trading Day as determined in a commercially reasonable manner by the Board using a volume-weighted method and (B) Daily VWAP will be determined without regard to after hours trading or any other trading outside of the regular trading session.
- (d) “Deemed Conversion Ratio” means, with respect to any particular date of determination, a ratio determined by dividing the Liquidation Preference as of the date as of which such determination is made by the Fair Market Value of Common Stock on the date as of which such determination is made.
- (e) “Exchange” means, with respect to the Common Stock, The NASDAQ Stock Market or any successor thereto or any other national securities exchange on which the Common Stock is listed and, with respect to other security that is listed on a national securities exchange, such exchange.
- (f) “Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.
- (g) “Fair Market Value” of any asset on any date of determination means the fair market value thereof as determined in good faith by the Company assuming a willing buyer and a willing seller in an arms’-length transaction; provided that with respect to any Common Stock or other security traded or quoted on an Exchange, the Fair Market Value shall be the average of the Daily VWAP of such security on such Exchange over a ten (10)

consecutive Trading Day period, ending on the Trading Day immediately prior to the date of determination (appropriately adjusted for any Adjustment Event effected in such ten (10) consecutive Trading Day period).

- (h) “Floor Price” means 80% of the Fair Market Value of Common Stock as of the Initial Issuance Date.
- (i) “Fundamental Change” means the occurrence of any of the following:
 - (i) any person or group, other than the Company, its subsidiaries or the employee benefit plans of the Company or any such subsidiary, acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act), directly or indirectly, through purchase, merger or other acquisition transaction, of (A) 50% or more of the Common Stock or (B) shares of the Company’s capital stock entitling such person or group to exercise 50% or more of the total voting power of all shares of the Company’s capital stock that are entitled to vote generally in the election of directors;
 - (ii) consummation of any share exchange, exchange offer, tender offer, consolidation, merger or similar business combination of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its subsidiaries, taken as a whole, to any person other than one of the Company’s subsidiaries; or
 - (iii) the directors who were members of the Board on the date of this Certificate of Designation (the “Continuing Directors”), or who become directors subsequent to such date and whose election, appointment or nomination for election by the shareholders of the Company is duly approved by a majority of the Continuing Directors on the Board at the time of such approval, either by a specific vote or by approval of the proxy statement issued by the Company on behalf of the entire Board in which such directors are named as nominees for directors, cease to constitute at least a majority of the Board.
- (j) “group” has the meaning assigned to such term in Section 13(d)(3) of the Exchange Act.
- (k) “hereof,” “herein” and “hereunder” and words of similar import refer to this Certificate of Designation as a whole and not merely to any particular clause, provision, section or subsection.
- (l) “Initial Issuance Date” means the date on which the first share of Series A Preferred Stock was issued.

- (m) “Market Disruption Event” means (a) a failure by the primary exchange or quotation system on which the Common Stock trades or is quoted, as the case may be, to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m. New York City time, on any Trading Day for the Common Stock for an aggregate one-half hour period of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock.
- (n) “Nasdaq” means The NASDAQ Stock Market or any successor thereto.
- (o) “person” means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, any agency or political subdivisions thereof or other “person” as contemplated by Section 13(d) of the Exchange Act.
- (p) “Reference Price” means, with respect to the Conversion Date, the Fair Market Value of Common Stock as of such date.
- (q) “Reference Property” means cash, cash equivalents or publicly traded securities.
- (r) “Shareholder Vote Date” means the date on which the results of the shareholder vote occurring pursuant to Section 5(a) are determined.
- (s) “Trading Day” means a day during which trading in the Common Stock generally occurs and there is no Market Disruption Event.

Section 8. Miscellaneous. For purposes of this Certificate of Designation, the following provisions shall apply:

- (a) Status of Cancelled Shares. No share or shares of Series A Preferred Stock acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued, and all of such shares shall be cancelled, retired and eliminated from the shares that the Company is authorized to issue.
- (b) Severability. If any right, preference or limitation of the Series A Preferred Stock set forth in this Certificate of Designation (as such Certificate of Designation may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designation (as so amended) which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

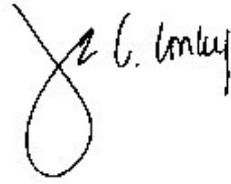
- (c) Impairment of Series A Preferred Stock. The Company shall not, by amendment of the Certificate of Incorporation or this Certificate of Designation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company but shall at all times in good faith assist in the carrying out of all of the provisions of this Certificate of Designation and in taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Series A Preferred Stock against impairment.
- (d) Headings. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

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IN WITNESS WHEREOF, the Company has caused this Certificate of Designation to be executed by a duly authorized officer of the Company as of October 1, 2009.

THE NASDAQ OMX GROUP, INC.

By:

A handwritten signature in black ink, appearing to read "Joan C. Conley". The signature is stylized, with a large loop at the bottom and a flourish at the end.

Name: Joan C. Conley
Title: Corporate Secretary

Certificate of Elimination of the Series A Convertible Preferred Stock of The NASDAQ OMX Group, Inc.

Pursuant to Section 151(g) of the General Corporation Law of the State of Delaware, The NASDAQ OMX Group, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Company"), in accordance with the provisions of Section 151(g) of the General Corporation Law of the State of Delaware (the "General Corporation Law"), hereby certifies as follows:

1. That, pursuant to Section 151 of the General Corporation Law and authority granted in the Restated Certificate of Incorporation of the Company, as theretofore amended, the Board of Directors (the "Board") of the Company, by resolution duly adopted, authorized the issuance of a series of preferred stock of the Company as Series A Convertible Preferred Stock, par value \$.01 per share (the "Series A Convertible Preferred Stock"), and established the voting powers, designations, preferences and relative, participating and other rights, and the qualifications, limitations or restrictions thereof, and, on October 1, 2009, filed a Certificate of Designation with respect to such Series A Convertible Preferred Stock in the office of the Secretary of State of the State of Delaware (the "Secretary of State").

2. That no shares of such Series A Convertible Preferred Stock are outstanding and no shares thereof will be issued subject to such Certificate of Designation.

3. That the Board of the Company has adopted the following resolutions:

BE IT RESOLVED, that recognizing that no shares of Series A Convertible Preferred Stock are outstanding and no shares of such series shall be issued subject to the Certificate of Designation, Preferences and Rights of Series A Convertible Preferred Stock filed with the Delaware Secretary of State, the elimination of such Certificate of Designation and of all matters set forth therein is hereby approved; and

BE IT FURTHER RESOLVED, that the amendment of the Company's Restated Certificate of Incorporation to eliminate the matters set forth therein relating to the Series A Convertible Preferred Stock is hereby approved; and

BE IT FURTHER RESOLVED, that staff is hereby authorized to make all necessary filings with the State of Delaware to effectuate the foregoing resolutions.

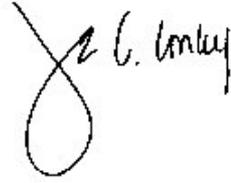
4. That, accordingly, the Certificate of Designation with respect to such Series A Convertible Preferred Stock, and all matters set forth therein with respect to such Series A Convertible Preferred Stock, be, and hereby are, eliminated from the Restated Certificate of Incorporation of the Company.

[Signature Page Follows]

IN WITNESS WHEREOF, The NASDAQ OMX Group, Inc. has caused this Certificate to be executed by its duly authorized officer this 27th day of January, 2014.

THE NASDAQ OMX GROUP, INC.

By:

A handwritten signature in black ink, appearing to read "Joan C. Conley". The signature is stylized, with a large loop at the beginning and a cursive style for the rest of the name.

Name: Joan C. Conley

Title: Senior Vice President and Corporate Secretary

BY-LAWS OF THE NASDAQ OMX GROUP, 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) An “affiliate” of, or a person “affiliated” with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;
- (c) “Board” means the Board of Directors of the Corporation;
- (d) “broker” shall have the same meaning as in Section 3(a)(4) of the Act;
- (e) “Commission” means the Securities and Exchange Commission;
- (f) “Corporation” means The NASDAQ OMX Group, Inc.;
- (g) “day” means calendar day;
- (h) “dealer” shall have the same meaning as in Section 3(a)(5) of the Act;
- (i) “Delaware law” means the General Corporation Law of the State of Delaware;
- (j) “Director” means a member of the Board;
- (k) An “Executive Officer” of a member or member organization means those officers covered in Rule 16a-1(f) under the Act, as if the member or member organization were an issuer within the meaning of such Rule.
- (l) “Immediate family member” means a person’s spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person’s home;
- (m) “Industry Director” or “Industry committee member” means a Director (excluding any Staff Directors or committee member who (1) is, or within the last year was, or has an immediate family member who is, or within the last year was, a member of a Self-Regulatory Subsidiary; (2) is, or within the last year was, employed by a member or a member organization of a Self-Regulatory Subsidiary; (3) has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization of a Self-Regulatory Subsidiary; (4) has within the last year received from any member or member organization of a Self-Regulatory Subsidiary more than \$100,000 per year in direct compensation, or received from such members or member organizations in the aggregate an amount of direct compensation that in any one year is more than 10 percent of the Director’s annual gross compensation for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); or (5) is affiliated, directly or indirectly, with a member or member organization of a Self-Regulatory Subsidiary;

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

(o) "Issuer Director" or "Issuer committee member" means a Director (excluding any Staff Director) or committee member who is an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary, excluding any Director or committee member who is a director of such an issuer but is not also an officer or employee of such an issuer;

(p) "Nominating & Governance Committee" means the Nominating & Governance Committee appointed pursuant to these By-Laws;

(q) "Non-Industry Director" or "Non-Industry committee member" means a Director (excluding any Staff Director) or committee member who is (1) a Public Director or Public committee member; (2) an Issuer Director or Issuer committee member; or (3) any other individual who would not be an Industry Director or Industry committee member;

(r) "Public Director" or "Public committee member" means a Director or committee member who (1) is not an Industry Director or Industry committee member, (2) is not an Issuer Director or Issuer committee member, and (3) has no material business relationship with a member or member organization of a Self-Regulatory Subsidiary, the Corporation or its affiliates, or FINRA; and

(s) "Self-Regulatory Subsidiary" means each of (i) The NASDAQ Stock Market LLC; (ii) NASDAQ OMX BX, Inc.; (iii) Boston Stock Exchange Clearing Corporation; (iv) NASDAQ OMX PHLX LLC; and (v) Stock Clearing Corporation of Philadelphia.

(t) "Staff Director" means an officer of the Corporation that is serving as a Director.

Article II Offices

Sec. 2.1 Location

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

Sec. 2.2 Change of Location

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

Article III Meetings of Stockholders

Sec. 3.1 Annual Meetings of Stockholders

(a) Nominations of persons for election to the Board and the proposal of other 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 & Governance Committee or (iii) by any stockholder of the Corporation who (A) is a stockholder of record of the Corporation (and, with respect to any beneficial owner, if such person is different from the shareholder of record, on whose behalf such nomination or other business is made or proposed to be brought, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time the notice provided for in this Section 3.1 is delivered to the Secretary of the Corporation and at the time of the meeting, (B) is entitled to vote at the meeting and (C) 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 (including, in the case of a nomination, timely delivery of the completed and signed questionnaire, representation and agreement required by Section 3.1(b)(i)(D)), and timely updates or supplements to such notice, in writing and in proper form 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. In addition, to be timely, a stockholder's notice shall further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the annual meeting and as of the 10th business day prior to the annual meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered in writing to the Secretary at the principal executive offices of the Corporation not later than the fifth business day after the record date for the annual meeting (in the case of the update and supplement required to be made as of the record date), and not later than the eighth business day prior to the date for the annual meeting or, if practicable, any adjournment or postponement thereof and, if not practicable, on the first practicable date prior to the date to which the annual meeting has been adjourned or postponed (in the case of the update and supplement required to be made as of the 10th business day prior to the annual meeting or any adjournment or postponement thereof). Such stockholder's notice shall set forth:

(i) as to each person, if any, whom a Proposing Person proposes to nominate for election or reelection as a director, (A) all information with respect to such proposed nominee that would be required to be disclosed pursuant to clause (iii) of this Section 3.1(b) if such proposed nominee were a Proposing Person, (B) all information relating to such proposed nominee 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 Section 14(a) under the Act and the rules thereunder (including such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected),

(C) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among any Proposing Person, on the one hand, and such proposed nominee and any of his or her respective affiliates and associates, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Requesting Person were the “registrant” for purposes of such rule and the proposed nominee were a director or executive officer of such registrant, and (D) a completed and signed questionnaire, representation and agreement in accordance with Section 3.5. The Corporation may require any proposed nominee to furnish such other information (i) as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation or (ii) that could be material to a reasonable stockholder’s understanding of the independence, or lack of independence, of such proposed nominee;

(ii) as to any other business that the stockholder proposes to bring before the meeting, (A) a reasonably detailed description of such business, the reason or reasons for conducting such business at such meeting and any material interest in such business of each Proposing Person, (B) 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), and (C) a reasonably detailed description of all contracts, agreements, arrangements and understandings (1) between or among any of the Proposing Persons or (2) between or among any Proposing Person and any other person or persons (including their names) in connection with the proposal of such business; and

(iii) as to each Proposing Person

(A) the name and address of such Proposing Person (including, if applicable as they appear on the Corporation’s books);

(B) the class or series and number of shares of capital stock of the Corporation which are owned beneficially (within the meaning of Rule 13d-3 under the Act) and of record by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such person has a right to acquire beneficial ownership at any time in the future;

(C) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing;

(D) any derivative, swap or other transaction (including any short positions, profit interest, options, warrants, convertible securities, stock appreciation or similar rights) or series of transactions engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to give such Proposing Person economic risk similar to ownership of shares of any class or series of the Corporation, including due to the fact that the value of such derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any shares of any class or series of the Corporation, or which derivative, swap or other transaction or series of transactions

provides, directly or indirectly, the opportunity to profit from any increase in the price or value of shares of any class or series of the Corporation (any of the foregoing, a “Synthetic Equity Interest”), which Synthetic Equity Interest shall be disclosed without regard to whether (1) the derivative, swap or other transaction or series of transactions conveys any voting rights in such shares to such Proposing Person, (2) the derivative, swap or other transaction or series of transactions is required to be, or is capable of being, settled through delivery of such shares or (3) such Proposing Person may have entered into other transactions that hedge or mitigate the economic effect of such derivative, swap or other transaction or series of transactions;

(E) any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Act by way of a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person has or shares a right to vote any shares of any class or series of the Corporation;

(F) any proportionate interest in shares of the Corporation or Synthetic Equity Interest held, directly or indirectly, by a general or limited partnership in which such Proposing Person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner;

(G) any agreement, arrangement, understanding or relationship, including any repurchase or similar so-called “stock borrowing” agreement or arrangement, entered into or engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Proposing Person with respect to shares of any class or series of the Corporation, or that provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of shares of any class or series of the Corporation (any of the foregoing, a “Short Interest”);

(H) any performance-related fees (other than an asset-based fee) to which such Proposing Person is entitled based on any increase or decrease in the price or value of shares of any class or series of the Corporation, or any Synthetic Equity Interest or Short Interest;

(I) any significant equity interest or any Synthetic Equity Interest or Short Interest in any principal competitor of the Corporation held by such Proposing Person;

(J) any direct or indirect interest of such Proposing Person in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement);

(K) any pending or threatened litigation in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or Directors, or any affiliate of the Corporation;

(L) any material transaction occurring, in whole or in part, during the then immediately preceding 12-month period between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation, on the other hand;

(M) any other information relating to the Proposing Person required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of Directors in an election contest pursuant to and in accordance with Section 14(a) of the Act and the rules and regulations promulgated thereunder (the disclosures to be made pursuant to the foregoing clauses (C) through (M) are referred to as “Disclosable Interests”); provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these By-Laws on behalf of a beneficial owner;

(N) 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

(O) a representation whether the Proposing Person 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 foregoing notice requirements of this Article III shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Act and such stockholder’s proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(c) For purposes of this Section 3.1, the term “Proposing Person” shall mean (i) the stockholder providing the notice of business or the notice of the nomination, as applicable, proposed to be brought before an annual meeting, (ii) any beneficial owner or beneficial owners, if different, on whose behalf such business is proposed to be brought before the meeting or the notice of the nomination proposed to be made at the meeting is made, as applicable, and (iii) any affiliate or associate (each within the meaning of Rule 12b-2 under the Act for purposes of these By-Laws) of such stockholder or beneficial owner.

(d) 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 effective at the annual meeting 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.

Sec. 3.2 Special Meetings of Stockholders

(a) Special meetings of the stockholders of the Corporation may only be called (i) at any time by the Board pursuant to a resolution adopted by a majority of the total number of directors the Corporation would have if there were no vacancies and (ii) by the Secretary following his or her receipt of a written request in proper form for a special meeting (a “Special Meeting Request”) by one or more stockholders holding of record, in the aggregate, at least 15 percent of the outstanding shares of capital stock of the Corporation entitled to vote on the matter or matters to be brought before the proposed special meeting (the “Requisite Percentage”), which shares are determined to be “Net Long Shares” in accordance with this Section 3.2, and having held such Net Long Shares continuously for at least one year as of the date of such request (the “Requisite Holders”). For purposes of determining Requisite Holders under this Section 3.2, “Net Long Shares” shall be limited to the number of shares beneficially owned, directly or indirectly, by any stockholder or beneficial owner that constitute such person’s “net long position” as defined in Rule 14e-4 under the Act, provided that (A) for the purposes of such definition, references in such Rule to “the date the tender offer is first publicly announced or otherwise made known by the bidder to the holders of the security to be acquired” shall be the date of the relevant Special Meeting Request and all dates in the one year period prior thereto, the “highest tender offer price or stated amount of the consideration offered for the subject security” shall refer to the closing sales price of the Corporation’s capital stock on the NASDAQ Stock Market on such date (or, if such date is not a trading day, the next succeeding trading day), the “person whose securities are the subject of the offer” shall refer to the Corporation, a “subject security” shall refer to the issued and outstanding voting stock of the Corporation; and (B) the net long position of such stockholder shall be reduced by any shares as to which such person does not have the right to vote or direct the vote at the proposed special meeting or as to which such person has entered into a derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares. In addition, to the extent any affiliates of the stockholder or beneficial owner are acting in concert with the stockholder or beneficial owner with respect to the calling of the special meeting, the determination of Net Long Shares may include the effect of aggregating the Net Long Shares (including any negative number) of such affiliate or affiliates. Whether shares constitute Net Long Shares shall ultimately be decided by the Board in its reasonable determination. In determining whether a special meeting of stockholders has been requested by the Requisite Holders representing in the aggregate at least the Requisite Percentage, multiple Special Meeting Requests delivered to the Secretary will be considered together only if (i) each Special Meeting Request identifies substantially the same purpose or purposes of the special meeting and substantially the same matters proposed to be acted on at the requested special meeting (in each case as determined in good faith by the Board) and (ii) such Special Meeting Requests have been dated and delivered to the secretary within 60 days of the earliest dated Special Meeting Request. To be in proper form, a Special Meeting Request must comply with this Section 3.2. The Board shall determine whether a Special Meeting Request is in proper form and such determination shall be binding on the Corporation and the stockholders.

(b) If a Special Meeting Request is in proper form, the Board shall determine the place, if any, date and time of the special meeting requested in such Special Meeting Request and the Secretary shall call such special meeting; provided, however, that the date of the special meeting requested in such Special Meeting Request shall not be more than 120 days after the date on which such Special Meeting Request was delivered to the Secretary; provided, further, that the Board may (in lieu of calling the special meeting requested in such Special Meeting Request) present an identical or substantially similar item of business (a “Similar Item”; the election of directors shall be deemed a “Similar Item” with respect to all items of business involving the nomination, election or removal of directors), as determined in good faith by the Board, for stockholder approval at any other meeting of the stockholders that is held not less than 120 days after the date on which such Special Meeting Request was delivered to the Secretary. In fixing the place, if any, date and time for any special meeting, the Board may consider such factors as it deems relevant in its business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for a meeting and any plan of the Board to call an annual meeting or a special meeting.

(c) Notwithstanding anything in these By-Laws to the contrary, a Special Meeting Request shall not be valid and the special meeting requested in such Special Meeting Request shall not be called by the Secretary if (i) such Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law, (ii) such Special Meeting Request is delivered to the Secretary during the period commencing 90 days prior to the one-year anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting, (iii) a Similar Item was presented at any meeting of stockholders held within 120 days prior to the date on which such Special Meeting Request was delivered to the Secretary or (iv) a Similar Item is included in the Corporation’s notice of meeting as an item of Business to be presented at a stockholder’s meeting that has been called but not yet held. The Board may adjourn or reschedule any previously scheduled special meeting of the stockholders.

(d) To be in proper form for purposes of this Section 3.2, a Special Meeting Request shall:

(i) Be in writing, signed by each Requesting Person (as defined in Section 3.2(e)) and delivered to the Secretary at the principal executive offices of the Corporation;

(ii) Set forth the information described in Section 3.1(b)(i), Section 3.1(b)(ii) and, as to each Requesting Person, the information described in Section 3.1(b)(iii) (except that, for purposes of this Section 3.2(d)(ii), the term “Requesting Person” shall be substituted for the term “Proposing Person” in all places it appears in Section 3.1(b)(i), Section 3.1(b)(ii) and Section 3.1(b)(iii)); and

(iii) Include (A) an agreement by each Requisite Holder to immediately deliver written notice to the Secretary at the principal executive offices of the Corporation in the case of any disposition, on or prior to the record date for the special meeting requested in the Special Meeting Request, of any shares of capital stock of the Corporation held of record by such Requisite Holder and (B) an acknowledgement that (1) any such disposition shall be deemed a revocation of the Special Meeting Request to the extent of such disposition and (2) if, following such deemed revocation, the Requisite Holders hold of record, in the aggregate, less than the Requisite Percentage of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, there shall be no obligation to hold such special meeting.

(e) For purposes of this Section 3.2, the term “Requesting Person” shall mean (i) each Requisite Holder, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the Special Meeting Request is being delivered to the Secretary and (iii) any affiliate or associate of such stockholder or beneficial owner.

(f) At any special meeting of the stockholders, only such business shall be conducted or considered as shall have been specified in the Corporation’s notice of meeting (or any supplement thereto) given by or at the direction of the Board or the Secretary, as the case may be. Notwithstanding anything in these By-Laws to the contrary, the Board may submit its own proposal or proposals for consideration at a special meeting. Except in accordance with this Section 3.2, stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders.

(g) The Requisite Holders giving a Special Meeting Request shall further update and supplement such Special Meeting Request, if necessary, so that the information provided or required to be provided in such Special Meeting Request shall be true and correct as of the record date for the special meeting requested to be called pursuant to such Special Meeting Request and as of the 10th business day prior to the special meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the fifth business day after the record date for the special meeting (in the case of the update and supplement required to be made as of the record date), and not later than the eighth business day prior to the date for the special meeting or, if practical, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the special meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of the 10th business day prior to the special meeting or any adjournment or postponement thereof).

(h) The Requisite Holders may revoke a Special Meeting Request by written revocation delivered to the Corporation at any time prior to the special meeting requested in such Special Meeting Request; provided, however, that the Board shall have the discretion to determine whether or not to proceed with the special meeting.

(i) In the event the Board 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.

Sec. 3.3 General

(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 Proposing Person solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such nomination or proposal in compliance with such Proposing Person's representation as required by Section 3.1(b)(iii)(O)) 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. For purposes of this Section 3.3, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(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; provided however, that any references in these By-Laws to the Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Article III (including Section 3.1(a)(iii) and (b) hereof), and compliance with Section 3.1(a)(iii) and (b) of this Article III shall be the exclusive means for a stockholder to make nominations or submit other business (other than, as provided in the last sentence of Section 3.1(b), matters brought properly under and in compliance with Rule 14a-8 of the Act, as may be amended from time to time). 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.

Sec. 3.4 Conduct of Meetings

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.

Sec. 3.5 Submission of Questionnaire, Representation and Agreement

To be eligible to be a nominee for election or reelection as a director of the Corporation, a proposed nominee must deliver (in accordance with the time periods prescribed for delivery of a stockholder's notice under Section 3.1(b) or Section 3.2(i), as applicable), to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such proposed nominee (which questionnaire shall be provided by the Secretary upon written request), and a written representation and agreement (in form provided by the Secretary upon written request) that such proposed nominee (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been fully disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (ii) is not, and will not become a party to, any agreement, arrangement or understanding with any person other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the Corporation that has not been fully disclosed to the Corporation, (iii) would be in compliance, if elected as a director of the Corporation, and will comply, with Section 4.3 and Section 4.14, and (iv) in such proposed nominee's individual capacity and on behalf of any person on whose behalf the nomination is made, would be in compliance, if elected as a director of the Corporation, and will comply, with the Corporation's Corporate Governance Guidelines, Board of Director Code of Conduct and Code of Ethics, including all applicable, publicly disclosed conflict of interest, confidentiality, stock ownership and insider trading policies and guidelines of the Corporation.

Article IV Board of Directors

Sec. 4.1 General Powers

The property, business, and affairs of the Corporation's staff 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 staff.

Sec. 4.2 Number of Directors

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.

Sec. 4.3 Qualifications

Directors need not be stockholders of the Corporation. The number of Non-Industry Directors shall equal or exceed the number of Industry Directors. The Board shall include at least two Public Directors. The Board shall include at least one, but no more than two, Issuer Directors. The Board shall include no more than one Staff Director, unless the Board consists of ten or more Directors. In such case, the Board shall include no more than two Staff Directors.

Sec. 4.4 Election

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.

Except as otherwise provided by these By-Laws, each Director shall be elected by the vote of the majority of the votes cast with respect to that Director's election at any meeting for the election of Directors at which a quorum is present, provided that if, as of the tenth (10th) day preceding the date the Corporation first mails its notice of meeting for such meeting to the stockholders of the Corporation, the number of nominees exceeds the number of Directors to be elected (a "Contested Election"), the Directors shall be elected by the vote of a plurality of the votes cast. For purposes of this Section 4.4 of these By-Laws, a majority of votes cast shall mean that the number of votes cast "for" a Director's election exceeds the number of votes cast "against" that Director's election (with "abstentions" and "broker nonvotes" not counted as a vote cast either "for" or "against" that Director's election).

In order for any incumbent Director to become a nominee of the Board for further service on the Board, such person must submit an irrevocable resignation, contingent on (i) that person not receiving a majority of the votes cast in an election that is not a Contested Election, and (ii) acceptance of that resignation by the Board in accordance with the policies and procedures adopted by the Board for such purpose. In the event an incumbent Director fails to receive a majority of the votes cast in an election that is not a Contested Election, the Nominating & Governance Committee, or such other committee designated by the Board pursuant to these By-Laws, shall make a recommendation to the Board as to whether to accept or reject the resignation of such incumbent Director, or whether other action should be taken. The Board shall act on the resignation, taking into account the committee's recommendation, and publicly disclose (by a press release and filing an appropriate disclosure with the Commission) its decision regarding the resignation and, if such resignation is rejected, the rationale behind the decision within ninety (90) days following certification of the election results. The committee in making its recommendation and the Board in making its decision each may consider any factors and other information that they consider appropriate and relevant.

If the Board accepts a Director's resignation pursuant to this Section 4.4, or if a nominee for Director is not elected and the nominee is not an incumbent Director, then the Board may fill the resulting vacancy pursuant to Section 4.8 of these By-Laws.

Sec. 4.5 Resignation

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

Sec. 4.6 Removal

Any or all of the Directors may be removed from office at any time by the affirmative vote of a majority 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.

Sec. 4.7 Disqualification

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.

Sec. 4.8 Filling of Vacancies

If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, such vacancy shall be filled only by a majority vote of the Directors then in office, though less than a quorum, or by a vote of the sole remaining Director, and not by the stockholders, for a person nominated by the Nominating & Governance Committee and satisfying the classification (Industry, Non-Industry, Issuer, 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.

Sec. 4.9 Quorum and Voting

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

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

Sec. 4.10 Regulation

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.

Sec. 4.11 Meetings

(a) An annual meeting of the Board shall be held for the purpose of organization, election of officers, and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of the stockholders, no notice of the annual meeting of the Board need be given. Otherwise, such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with Section 4.12.

(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.

Sec. 4.12 Notice of Meetings; Waiver of Notice

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

(b) Notice of any meeting of the Board need not be given to any Director if waived by that Director in writing or by electronic transmission (or by telegram, telefax, cable, radio, wireless, e-mail or other means of written electronic transmission 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.

Sec. 4.13 Committees

(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 Executive Committee shall include at least two Public Directors. 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 consisting of at least two members. The Management Compensation Committee shall consider and recommend compensation policies, programs, and practices for employees of the Corporation. The number of Non-Industry Directors on the Management Compensation Committee shall equal or exceed the number of Industry Directors on the Management Compensation Committee. A Management Compensation Committee member shall hold office for a term of one year. Each member of the Management Compensation Committee shall be an independent director within the meaning of, and shall meet the eligibility requirements set forth in, the rules of the NASDAQ Stock Market.

(g) The Board shall appoint an Audit Committee.

(i) The Audit Committee shall consist of three or more Directors, each of whom shall be an independent director within the meaning of the rules of the NASDAQ Stock Market and Section 10A of the Act. The number of Non-Industry Directors on the Audit Committee shall equal or exceed the number of Industry Directors on the Audit Committee. 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 & Governance Committee. The Nominating & Governance Committee shall nominate Directors for each vacant or new Director position on the Board.

(i) The Nominating & Governance Committee shall consist of two or more Directors, each of whom shall be an independent director within the meaning of the rules of the NASDAQ Stock Market. The number of Non-Industry Directors on the Nominating & Governance Committee shall equal or exceed the number of Industry Directors on the Nominating & Governance Committee. The Nominating & Governance Committee shall include at least two Public Directors.

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

(iii) 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, Issuer, or Public Director, if applicable, and the Secretary shall certify to the Nominating & Governance 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.

Sec. 4.14 Conflicts of Interest; Contracts and Transactions Involving Directors

(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.

Sec. 4.15 Action Without Meeting

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

Article V Reserved

Article VI Compensation

Sec. 6.1 Compensation of Board, Council, and Committee Members

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

Sec. 7.1 Principal Officers

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

Sec. 7.2 Election of Principal Officers; Term of Office

(a) The principal officers of the Corporation shall be elected annually by the Board at the annual meeting of the Board convened pursuant to Section 4.11(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.

Sec. 7.3 Subordinate Officers, Agents, or Employees

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

Sec. 7.4 Delegation of Duties of Officers

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

Sec. 7.5 Resignation and Removal of Officers

(a) Any officer may resign at any time upon notice of resignation to the Board, the Chief Executive Officer, the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer of the Corporation may be removed, with or without cause, by 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.

Sec. 7.6 Bond

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

Sec. 7.7 Chair of the Board

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.

Sec. 7.8 Chief Executive Officer

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.

Sec. 7.9 President

The President shall, in the absence of the Chair of the Board and the Chief Executive Officer, preside at all meetings of the Board 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.

Sec. 7.10 Vice President

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

Sec. 7.11 Secretary

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.

Sec. 7.12 Assistant Secretary

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

Sec. 7.13 Treasurer

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

Sec. 7.14 Assistant Treasurer

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

Article VIII Indemnification

Sec. 8.1 Indemnification of Directors, Officers, Employees, and Agents

(a) The Corporation shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of the Corporation or any wholly owned subsidiary of the Corporation, or is or was a Director, officer, or employee of the Corporation or any wholly owned subsidiary 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 any wholly owned subsidiary of the Corporation or is or was an agent of the Corporation or any wholly owned subsidiary 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 in respect of any proceeding (regardless of when such proceeding is first threatened, commenced or completed) arising out of, or related to 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.

Sec. 8.2 Indemnification Insurance

The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee, or agent of the Corporation or any wholly owned subsidiary 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

Sec. 9.1 Certificates

The shares of capital stock of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Each holder of capital stock in the Corporation represented by certificates 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.

Sec. 9.2 Signatures

(a) Shares of capital stock of the Corporation represented by certificates 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) Any or all signatures on such certificates 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.

Sec. 9.3 Stock Ledger

(a) A record of all certificates for capital stock or uncertificated shares 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 or uncertificated shares 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.

Sec. 9.4 Transfers of Stock

(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 or uncertificated shares 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; or, with respect to uncertificated shares, by delivery of duly executed instructions or in any other manner permitted by applicable law.

Sec. 9.5 Cancellation

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

Sec. 9.6 Lost, Stolen, Destroyed, and Mutilated Certificates

In the event that any certificate for shares of capital stock of the Corporation shall be mutilated, the Corporation shall issue a new certificate or uncertificated shares 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 or uncertificated shares 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 or uncertificated shares. A new certificate or uncertificated shares may be issued without requiring a bond when, in the judgment of the Board, it is proper to do so.

Sec. 9.7 Fixing of Record Date

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

Article X Miscellaneous Provisions

Sec. 10.1 Corporate Seal

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

Sec. 10.2 Fiscal Year

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

Sec. 10.3 Waiver of Notice

(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.

Sec. 10.4 Execution of Instruments, Contracts, Etc.

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

(b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of the Corporation by any 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.

Sec. 10.5 Form of Records

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

Sec. 11.1 By Stockholders

These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any meeting of the stockholders by the affirmative vote of the holders of a majority of the 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.

Sec. 11.2 By Directors

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; but no By-Law adopted by the stockholders shall be amended or repealed by the Board if the By-Law so adopted so provides.

Sec. 11.3 Review by Self-Regulatory Subsidiaries

For so long as the Corporation shall control, directly or indirectly, any Self-Regulatory Subsidiary, any proposed adoption, alteration, amendment, change or repeal (an "amendment") of any By-Law shall be submitted to the Board of Directors of each Self-Regulatory Subsidiary, and if any such proposed amendment must, under Section 19 of the Act and the rules promulgated thereunder, 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.

Sec. 11.4 Emergency By-Laws

The Board may adopt emergency By-Laws subject to repeal or change by action of the stockholders which shall, notwithstanding any different provision of law, the 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 Self-Regulatory Subsidiaries

Sec. 12.1 Self-Regulatory Organization Functions of the Self-Regulatory Subsidiaries

(a) For so long as the Corporation shall control any Self-Regulatory Subsidiary, the Board of Directors, officers, and employees of the Corporation shall give due regard to the preservation of the independence of the self-regulatory function of each such Self-Regulatory Subsidiary 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 any Self-Regulatory Subsidiary relating to its regulatory functions (including disciplinary matters) or the market structures or clearing systems which it regulates or which would interfere with the ability of any Self-Regulatory Subsidiary to carry out its responsibilities under the Act.

(b) All books and records of each Self-Regulatory Subsidiary reflecting confidential information pertaining to the self-regulatory function of such Self-Regulatory Subsidiary (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 each Self-Regulatory Subsidiary shall be maintained in the United States.

(c) To the extent they are related to the activities of a Self-Regulatory Subsidiary, the books, records, premises, officers, Directors, and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors, and employees of such Self-Regulatory Subsidiary for the purposes of, and subject to oversight pursuant to, the Act.

Sec. 12.2 Cooperation with the Commission

(a) The Corporation shall comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the SEC and the Self-Regulatory Subsidiaries pursuant to and to the extent of their respective regulatory authority, and shall take reasonable steps necessary to cause its agents to cooperate, with the SEC and, where applicable, the Self-Regulatory Subsidiaries pursuant to their regulatory authority.

(b) The officers, Directors, and employees of the Corporation, by virtue of their acceptance of such position, shall be deemed to agree to cooperate with the Commission and each Self-Regulatory Subsidiary in respect of the Commission's oversight responsibilities regarding the Self-Regulatory Subsidiaries and the self-regulatory functions and responsibilities of the Self-Regulatory Subsidiaries.

Sec. 12.3 Consent to Jurisdiction

The Corporation and its officers, Directors, and employees, 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 each Self-Regulatory Subsidiary 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 any Self-Regulatory Subsidiary, 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 any Self-Regulatory Subsidiary, 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, and employees shall be deemed to agree that the Corporation may serve as the agent, in the United States, for the service of process of a claim arising out of, or relating to, the activities of each Self-Regulatory Subsidiary.

Sec. 12.4 Further Assurances

The Corporation shall take reasonable steps necessary to cause its current officers, Directors, and employees, to consent in writing to the applicability to them of Sections 12.1, 12.2 and 12.3 of these By-Laws, as applicable, with respect to their activities related to any Self-Regulatory Subsidiary, and shall take reasonable steps necessary to cause prospective officers, Directors, and employees, prior to accepting a position as an officer, Director, or employee, as applicable, of the Corporation, to consent in writing to the applicability to them of Sections 12.1, 12.2 and 12.3 of these By-Laws, as applicable, with respect to their activities related to any Self-Regulatory Subsidiary.

Sec. 12.5 Board Action with Respect to Voting Limitations of the Certificate of Incorporation

For so long as the Corporation shall control, directly or indirectly, any Self-Regulatory Subsidiary, a resolution of the Board to approve an exemption for any person under Article Fourth, Section C.6 of the Restated Certificate of Incorporation (the "Certificate") 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. The Board may not approve an exemption under Article Fourth, Section C.6 of the Certificate: (i) for a registered broker or dealer or an Affiliate thereof (as defined in the Certificate) (provided that, for these purposes, an Affiliate shall not be deemed to include an entity that either owns ten percent or less of the equity of a broker or dealer, or the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity); or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Act. The Board may approve an exemption under Article Fourth, Section C.6 if the Board determines that granting such exemption would (A) not reasonably be expected to diminish the quality of, or public confidence in, the Corporation or the Self-Regulatory Subsidiaries or the other operations of the Corporation and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, (B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating,

clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system, and (C) would promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), would assure the safeguarding of securities and funds in the custody or control of the Self-Regulatory Subsidiaries that are clearing agencies or securities and funds for which they are responsible, would foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

Sec. 12.6 Amendments to the Certificate of Incorporation

For so long as the Corporation shall control, directly or indirectly, any Self-Regulatory Subsidiary, any proposed amendment of any provisions contained in the Corporation's Restated Certificate of Incorporation shall be submitted to the Board of Directors of each Self-Regulatory Subsidiary, and if any such proposed amendment must, under Section 19 of the Act and the rules promulgated thereunder, be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be filed with the Secretary of State of the State of Delaware until filed with, or filed with and approved by, the Commission, as the case may be.

Sec. 12.7 Self-Regulatory Subsidiaries

In light of the unique nature of the Corporation and its subsidiaries, including the status of the Self-Regulatory Subsidiaries as self-regulatory organizations, the Board of Directors, when evaluating (A) any tender or exchange offer or invitation for tenders or exchanges, or proposal to make a tender or exchange offer or request or invitation for tenders or exchanges, by another party, for any equity security of the Corporation, (B) any proposal or offer by another party to (1) merge or consolidate the Corporation or any subsidiary with another corporation or other entity, (2) purchase or otherwise acquire all or a substantial portion of the properties or assets of the Corporation or any subsidiary, or sell or otherwise dispose of to the Corporation or any subsidiary all or a substantial portion of the properties or assets of such other party, or (3) liquidate, dissolve, reclassify the securities of, declare an extraordinary dividend of, recapitalize or reorganize the Corporation, (C) any action, or any failure to act, with respect to any holder or potential holder of Excess Shares (as defined in the Restated Certificate of Incorporation) subject to the limitations set forth in subparagraph 2 of paragraph C. of Article Fourth of the Restated Certificate of Incorporation, (D) any demand or proposal, precatory or otherwise, on behalf of or by a holder or potential holder of Excess Shares subject to the limitations set forth in subparagraph 2 of paragraph C. of Article Fourth of the Restated Certificate of Incorporation or (E) any other issue, shall, to the fullest extent permitted by applicable law, take into account all factors that the Board of Directors deems relevant, including, without limitation, to the extent deemed relevant, (i) the potential impact thereof on the integrity, continuity and stability of the Corporation, the Self-Regulatory Subsidiaries, and the other operations of the Corporation and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system;

and (iii) whether such would promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), would assure the safeguarding of securities and funds in the custody or control of the Self-Regulatory Subsidiaries that are clearing agencies or securities and funds for which they are responsible, would foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.