

## By-Laws of Nasdaq BX, Inc.

### Article I Definitions

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

- (a) "Act" means the Securities Exchange Act of 1934, as amended.
- (b) "affiliate" has the meaning ascribed to that term in Rule 12b-2 of the General Rules and Regulations under the Act, as in effect on the date of initial adoption of these By-Laws.
- (c) "Board" or "Board of Directors" means the Board of Directors of the Corporation.
- (d) Reserved.
- (e) Reserved.
- (f) Reserved.
- (g) Reserved.
- (h) Reserved.
- (i) "broker" shall have the same meaning as in Section 3(a)(4) of the Act.
- (j) "Commission" means the Securities and Exchange Commission.
- (k) "Contested Vote" means a process for selection of one or more Member Representative Directors for which the number of candidates on the List of Candidates exceeds the number of positions to be elected by the stockholders.
- (l) "Corporation" means Nasdaq BX, Inc.
- (m) "day" means calendar day.
- (n) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act.
- (o) "Delaware law" means the General Corporation Law of the State of Delaware.
- (p) "Director" means a member of the Board.
- (q) "Exchange" means the national securities exchange operated by the Corporation.
- (r) "Exchange Member" means any registered broker or dealer that has been admitted to membership in the Exchange.
- (s) "FINRA" means the Financial Industry Regulatory Authority, Inc. and its affiliates and includes, where relevant, the National Association of Securities Dealers, Inc. as predecessor to the Financial Industry Regulatory Authority, Inc.
- (t) "Industry Director" means a Director (excluding any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")),

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

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

- (v) "List of Candidates" means the list of candidates for Member Representative Director positions to be voted upon by Exchange Members on a Voting Date.
- (w) "Member Nominating Committee" means the Member Nominating Committee appointed pursuant to these By-Laws.
- (x) "Member Representative Director" means a Director who has been elected by the stockholders after having been nominated by the Member Nominating Committee or voted upon by Exchange Members pursuant to these By-Laws (or elected by the stockholders without such nomination or voting in the case of the Member Representative Directors elected pursuant to Section 4.3(b)). A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member.
- (y) "Member Representative member" means an Exchange Listing and Hearing Review Council member, Exchange Review Council member, or member of any other committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to these By-Laws.
- (z) "Member Voting Record Date" means a date selected by the Board for the purpose of determining the Exchange Members entitled to vote for Member Representative Directors on a Voting Date in the event of a Contested Vote.
- (aa) "Nominating Committee" means the Nominating Committee of the Board appointed pursuant to these By-Laws.
- (bb) "Non-Industry Director" means a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry Director.
- (cc) "Non-Industry member" means an Exchange Listing and Hearing Review Council member, Exchange Review Council member, or member of any other committee appointed by the Board who is (i) a Public member; (ii) an officer or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry member.
- (dd) "Officer" means an officer of the Corporation described in Article V.
- (ee) "Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization or other organization, whether or not a legal entity, and any governmental authority.
- (ff) "person associated with an Exchange Member" or "associated person of an Exchange Member" means any partner, officer, director, or branch manager of an Exchange Member (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Exchange Member, or any employee of such Exchange Member, except that any person associated with an Exchange Member whose functions

are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these By-Laws.

(gg) "Public Director" means a Director who has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA.

(hh) "Public member" means an Exchange Listing and Hearing Review Council member, Exchange Review Council member, or member of any other committee appointed by the Board who has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA.

(ii) "Regulatory Funds" means fees, fines, or penalties derived from the regulatory operations of the Corporation. "Regulatory Funds" shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Corporation, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Corporation.

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

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

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

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

## **Article II Offices**

### **Section 2.1 Location**

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

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

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

## **Article III Meetings of Stockholders**

### **Section 3.1 Annual Meetings**

Annual meetings of stockholders for the election of Directors, and for such other business as may be stated in the notice of the meeting, shall be held at such place, either within or without the

State of Delaware, and at such time and date as the Board, by resolution, shall determine and as set forth in the notice of the meeting. At each annual meeting, the stockholders entitled to vote shall elect a Board of Directors and may transact such other corporate business as shall be stated in the notice of the meeting. Only such persons as are nominated or voted upon in accordance with the procedures set forth in Article IV shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as Directors. The stockholders shall elect all persons nominated or voted upon in accordance with the procedures set forth in Article IV except in the event that any such person is not eligible for service under Section 4.3 of these By-Laws.

**Amended.**

October 27, 2008.

**Section 3.2 Special Meetings**

Special meetings of stockholders of the Corporation may be called at any time by the holders of a majority of the voting power entitled to vote for the election of Directors, by the Board acting pursuant to a resolution adopted by a majority of the Directors then in office, or by the Chairman of the Board, the Chief Executive Officer, the President or the Secretary.

**Section 3.3. Voting**

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

**Section 3.4 Quorum**

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

**Section 3.5 Notice of Meetings**

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

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

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

## **Article IV Board of Directors**

### **Section 4.1 General Powers**

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

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

The exact number of Directors shall be fixed from time to time by the stockholders of the Corporation, but shall in no event be fixed at less than ten Directors. No decrease in the number of Directors shall shorten the term of any incumbent Director.

### **Section 4.3 Qualifications**

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

### **Amended.**

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

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

### **Section 4.4 Election**

**(a)** Except as otherwise provided by law or these By-Laws, Directors of the Corporation shall be elected each year at the annual meeting of the stockholders, or at a special meeting called for such purpose in lieu of the annual meeting. If the annual election of Directors is not held on the date designated therefor, the Directors shall cause such election to be held as soon thereafter as convenient.

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

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

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

may require any proposed candidate to furnish such other information as it may reasonably require to determine the eligibility of such person to serve as a Member Representative Director.

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

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

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

**Amended.**

October 27, 2008.

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

**Section 4.5 Removal and Disqualification**

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

**(b)** A Director shall be disqualified and his or her term of office as a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, (a) that the Director no longer satisfies the classification for which the



Director was elected; and (b) that the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If a Director is disqualified and his or her term of office as a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy.

#### **Section 4.6 Resignation**

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

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

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

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

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

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

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

#### **Section 4.9 Regulation**

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

Board or any committee of the Board or by any agent of the Corporation, or in relying in good faith upon other records of the Corporation.

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

#### **Section 4.10 Meetings**

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

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

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

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

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

**(a)** Notice of any meeting of the Board shall be deemed to be duly given to a Director if: (i) mailed to the address last made known in writing to the Corporation by such Director as the address to which such notices are to be sent, at least seven days

before the day on which such meeting is to be held; (ii) sent to the Director at such address by any form of electronic transmission, not later than the day before the day on which such meeting is to be held; or (iii) delivered to the Director personally or orally, by telephone or otherwise, not later than the day before the day on which such meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

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

**(c)** Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present thereat, except when a Director attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

#### **Section 4.12 Committees**

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

**(b)** The Board may, by resolution or resolutions adopted by the Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of the Corporation to the extent permitted by law. A committee, to the extent permitted by law and provided in the resolution or resolutions creating such committee, may authorize the seal of the Corporation to be affixed to all papers that may require it.

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

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

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

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

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

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

**(a)** The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation between meetings of the Board. The number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors on the Executive Committee. The percentage of Public Directors on the Executive Committee shall be at least as great as the percentage of Public Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee shall be at least as great as the percentage of Member Representative Directors on the whole Board. An Executive Committee member shall hold office for a term of one year or until his or her successor is elected and qualified, and subject to such Director's earlier resignation, removal, disqualification, or death.

**(b)** The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of

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

**(c)** The Board shall appoint a Regulatory Oversight Committee. The Committee shall oversee the adequacy and effectiveness of the Corporation's regulatory and self-regulatory organization responsibilities; assess the Corporation's regulatory performance; and assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Corporation's regulatory functions. In furtherance of its functions, the Regulatory Oversight Committee shall (A) review the Corporation's regulatory budget and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (B) meet regularly with the Chief Regulatory Officer in executive session; and (C) be informed about the compensation and promotion or termination of the Chief Regulatory Officer and the reasons therefore. The Regulatory Oversight Committee shall consist of three members, each of whom shall be a Public Director and an "independent director" as defined in Rule 4200 of the Rules of The Nasdaq Stock Market.

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

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

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

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

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

Committee in any voting or non-voting capacity. No more than three of the Nominating Committee members and no more than two of the Industry members shall be current Directors.

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

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

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

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

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

**(i)** The Quality of Markets Committee shall have the following functions: (A) to provide advice and guidance to the Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of the Exchange from the perspective of investors, both individual and institutional, retail firms, market making firms, companies on the Exchange, and other market participants; and (B) to advise the Board with respect to national market system plans and linkages between the facilities of the Corporation and other markets.

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

**(iii)** At all meetings of the Quality of Markets Committee, a quorum for the transaction of business shall consist of a majority

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

**(d)** Reserved.

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

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

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

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

**(f)** Reserved.

**Amended.**

October 27, 2008

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

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

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

**(a)** A Director or a member of the Exchange Listing and Hearing Review Council, the Exchange Review Council, or any other committee shall not directly or indirectly participate in any adjudication of the interests of any party if that Director or Exchange Listing and Hearing Review Council member, Exchange Review Council member, or other committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or

her fairness might reasonably be questioned. In any such case, the Director or Exchange Listing and Hearing Review Council member, Exchange Review Council member, or other committee member shall recuse himself or herself or shall be disqualified.

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

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

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

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

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

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

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

The principal officers of the Corporation shall be elected by the Board and shall include a Chair, a Chief Executive Officer, a President, a Secretary, a Treasurer, and such other officers as may be designated by the Board. One person may hold the offices and perform the duties of any two or more of said principal offices, except the offices and duties of President and Vice President or of



President and Secretary. None of the principal officers, except the Chair of the Board, need be Directors of the Corporation.

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

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

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

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

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

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

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

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

### **Section 5.5 Resignation and Removal of Officers**

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

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

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

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

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

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

supervision over the business and affairs of the Corporation. The Chief Executive Officer shall have all powers and duties usually incident to the office of the Chief Executive Officer, except as specifically limited by a resolution of the Board. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to the Chief Executive Officer from time to time by the Board.

#### **Section 5.8 President**

The President shall, in the absence of the Chair of the Board and the Chief Executive Officer, preside at all meetings of the Board at which the President is present. The President shall have general supervision over the operations of the Corporation. The President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board. The President shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board.

#### **Section 5.9 Vice President**

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

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

An officer of the Corporation with the position of Executive Vice President or Senior Vice President shall be designated as the Chief Regulatory Officer of the Corporation. The Chief Regulatory Officer shall have general supervision of the regulatory operations of the Corporation, including responsibility for overseeing the Exchange's surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another self-regulatory organization to which the Corporation is a party. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Corporation in executive session at regularly scheduled meetings of such committee, and at any time upon request of the Chief Regulatory Officer or any member of the Regulatory Oversight Committee. The Chief Regulatory Officer may also serve as the General Counsel of the Corporation.

#### **Section 5.11 Secretary**

The Secretary shall act as Secretary of all meetings of the Board at which the Secretary is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of the Corporation,

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

#### **Section 5.12 Assistant Secretary**

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

#### **Section 5.13 Treasurer**

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

#### **Section 5.14 Assistant Treasurer**

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

### **Article VI Exchange Listing and Hearing Review Council**

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

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

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

**(a)** The Exchange Listing and Hearing Review Council shall consist of no fewer than 8 and no more than 18 members, of which not more than fifty percent may be engaged in market-making

activity or employed by an Exchange Member whose revenues from market-making activity exceed ten percent of its total revenues. The Exchange Listing and Hearing Review Council shall include at least five Non-Industry members (including at least two Public members), and a number of Member Representative members that is equal to at least twenty percent of the total number of members of the Exchange Listing and Hearing Review Council.

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

### **Section 6.3 Nomination Process**

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

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

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

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

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

### **Section 6.5 Resignation**

A member of the Exchange Listing and Hearing Review Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of

such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

### **Section 6.6 Removal**

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

### **Section 6.7 Disqualification**

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

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

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

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

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

### **Section 6.10 Meetings**

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

## **Article VII Exchange Review Council**

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

The Board shall appoint an Exchange Review Council. The Exchange Review Council may be authorized to act for the Board in a manner consistent with these By-Laws and the Exchange Rules with respect to an appeal or review of a disciplinary proceeding, a

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

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

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

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

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

### **Section 7.3 Nomination Process**

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

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

(a) Except as otherwise provided in this Article, each Exchange Review Council member shall hold office for a term of three years

or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

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

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

### **Section 7.5 Resignation**

A member of the Exchange Review Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

### **Section 7.6 Removal**

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

### **Section 7.7 Disqualification**

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

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

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

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

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

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

### **Section 7.10 Meetings**

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

### **Section 7.11 Review Subcommittee**

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

## **Article VIII Indemnification**

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

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



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

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

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

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

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

**(e)** Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by the Corporation to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such

determination is made: (1) The person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Corporation; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to the Corporation.

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

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

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

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

**(j)** If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by the Corporation, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, the Corporation shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

### **Section 8.2 Indemnification Insurance**

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

have the power to indemnify such person against such liability hereunder.

## **Article IX Capital Stock**

### **Section 9.1 Certificates**

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

### **Section 9.2 Signatures**

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

### **Section 9.3 Stock Ledger**

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

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

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

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

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

**(c)** All of the authorized shares of Common Stock initially shall be issued and outstanding, and shall initially be held by The NASDAQ OMX Group, Inc., a Delaware corporation, which was renamed Nasdaq, Inc. effective September 8, 2015. Nasdaq, Inc. may not transfer or assign any shares of stock of the Corporation,

in whole or in part, to any entity, unless such transfer or assignment shall be filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder.

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

#### **Section 9.5 Cancellation**

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

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

In the event that any certificate for shares of capital stock of the Corporation shall be mutilated, the Corporation shall issue a new certificate in place of such mutilated certificate. In the event that any such certificate shall be lost, stolen, or destroyed, the Corporation may, in the discretion of the Board or a committee appointed thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or the owner's representatives, to furnish to the Corporation a bond with an acceptable surety or sureties and in such sum as will be sufficient to indemnify the Corporation against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board, it is proper to do so.

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

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

#### **Section 9.8. Dividends**

Subject to the provisions of the Certificate of Incorporation, the Board may, out of funds legally available therefor at any regular or special meeting, declare dividends upon stock of the Corporation as and when they deem appropriate. Notwithstanding the foregoing, dividends shall not be paid using Regulatory Funds.

### **Article X Miscellaneous Provisions**

#### **Section 10.1 Corporate Seal**

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

#### **Section 10.2 Fiscal Year**

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

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

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

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

### **Section 10.4 Execution of Instruments, Contracts, etc.**

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

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

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

### **Section 11.1 By Stockholders**

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

### **Section 11.2 By Directors**

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

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

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

## **Article XII Exchange Authorities**

### **Section 12.1 Rules**

To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among Exchange Members, to collaborate with governmental and other agencies in the promotion of fair practices and the elimination of fraud, and in general to carry out the purposes of the Corporation and of the Act, the Board is hereby authorized to adopt such rules and such amendments thereto as it may, from time to time, deem necessary or appropriate, including, but not limited to, rules for the required or voluntary arbitration of controversies between members and between members and customers or others. If any such rules or amendments thereto are approved by the Commission or otherwise become effective as provided in the Act, they shall become effective Exchange Rules as of the date of Commission approval or effectiveness under the Act. The Board is hereby authorized, subject to the provisions of these By-Laws and the Act, to administer, enforce, and interpret, any Rules adopted hereunder.

### **Section 12.2 Disciplinary Proceedings**

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

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

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

**(ii)** violation by an Exchange Member or a person associated with an Exchange Member of any of the terms,

conditions, covenants, and provisions of the By-Laws, the Rules, or the federal securities laws, including the rules and regulations adopted thereunder;

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

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

### **Section 12.3 Membership Qualifications**

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

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

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

### **Section 12.4 Fees, Dues, Assessments, and Other Charges**

The Board shall have authority to fix and levy the amount of fees, dues, assessments, and other charges to be paid by Exchange Members and issuers and any other persons using any facility or system that the Corporation operates or controls; provided, however, that such fees, dues, assessments, and other charges shall be equitably allocated among Exchange Members and issuers and any other persons using any facility or system that the Corporation operates or controls.

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

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

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

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

Copyright ©2018 Nasdaq, Inc. All rights reserved.