

SUBMISSION COVER SHEET

Registered Entity Identifier Code (optional) SR-NQF-2013-26 Date: December 16, 2013

IMPORTANT: CHECK BOX IF CONFIDENTIAL TREATMENT IS REQUESTED.

ORGANIZATION NASDAQ Futures, Inc.

FILING AS A: DCM SEF DCO SDR ECM/SPDC

TYPE OF FILING

- **Rules and Rule Amendments**

- Certification under § 40.6 (a) or § 41.24 (a)
- “Non-Material Agricultural Rule Change” under § 40.4 (b)(5)
- Notification under § 40.6 (d)
- Request for Approval under § 40.4 (a) or § 40.5 (a)
- Advance Notice of SIDCO Rule Change under § 40.10 (a)

- **Products**

- Certification under § 39.5(b), § 40.2 (a), or § 41.23 (a)
- Swap Class Certification under § 40.2 (d)
- Request for Approval under § 40.3 (a)
- Novel Derivative Product Notification under § 40.12 (a)

RULE NUMBERS

Certificate of Incorporation
By-Laws
Rules at Chapter I, Sections 1, 7, 8 and 9

DESCRIPTION

A proposal to convert NQF from a Pennsylvania to a Delaware corporation and transfer interest in the Exchange to the ultimate parent.



Rule Self-Certification

December 16, 2013

Office of the Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

Re: Adoption of Certificate of Incorporation, By-Laws and Amendment to Rules
Reference File SR-NQF-2013-26

Ladies and Gentlemen:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and §40.6 of the regulations promulgated by the Commodity Futures Trading Commission under the Act, NASDAQ Futures, Inc. (“Exchange”) submits this self-certification to adopt a new Certificate of Incorporation and revised By-Laws to incorporate the Exchange in Delaware as of January 1, 2014. The Exchange also desires to transfer interest in the Exchange from NASDAQ OMX PHLX LLC (“Phlx”), the current stock holder, to The NASDAQ OMX Group, Inc. (“NASDAQ OMX”), the Exchange’s ultimate parent as of January 1, 2014.

Today, the Exchange is a Pennsylvania corporation whose shareholder is NASDAQ OMX PHLX LLC. The Exchange desires to re-domesticate the Exchange in Delaware. The Exchange will file Articles of Dissolution with the Commonwealth of Pennsylvania to be effective on January 1, 2014 and also file Certificates of Conversion and Incorporation with the State of Delaware on to be effective on January 1, 2014. The Exchange will also transfer the capital stock of the Exchange from its current stockholder, Phlx, to NASDQAQ OMX effective January 1, 2014. In converting the domicile of the Exchange from a Pennsylvania corporation to a Delaware corporation pursuant to 8 Del. C. §265(e), the re-domestication shall not be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion to a Delaware corporation or the personal liability of any person incurred prior to such conversion. Further, pursuant to 8 Del. C. §265(f), when an entity has been converted to a Delaware corporation, the corporation shall for all purposes of the laws of the State of Delaware be deemed to be the same entity as the converting other entity.

Board Composition

In adopting a new Certificate of Incorporation and amending its By-Laws, the Exchange will amend requirements related to its board composition. Today, the Exchange’s By-Laws at

Article III require ten members to serve on the Board of Directors. These ten members consist of the Chairman, the President, four Public Directors and four who shall qualify as commercial interest representatives pursuant to Commodity Futures Trading Commission Regulation 1.64. Currently, Article III of the By-Laws provides a process for nomination of five directors by permit holders. The By-Laws currently state that the common shareholder has the exclusive right to elect directors. Also, today, Trustees, pursuant to an Amended Voting Trust Agreement, shall act in concert to cast votes for the office of director pursuant to Article III, Section 9.

The Exchange will adopt a new Certificate of Incorporation in Delaware in lieu of its current Articles of Incorporation which are required in Pennsylvania. The new Certificate of Incorporation will require the business and affairs of the Exchange to be managed by, or under the direction of, the Board. In addition, the new Certificate of Incorporation as well as the amended By-Laws at Article IV will provide that the stockholders may determine at any time in their sole and absolute discretion the number of directors to constitute the Board. The Certificate of Incorporation states the authorized number of directors may be increased or decreased by the stockholders at any time in their sole and absolute discretion, upon a resolution duly adopted by the stockholders at a meeting of stockholders or by written consent of the stockholders and notice of such action shall be given to all directors. The Exchange will continue to require that at least thirty-five percent (35%) of the directors, but no fewer than two (2) directors shall be Public Directors (as defined below). The Certificate of Incorporation will state that all directors shall be elected by the stockholders. The Certificate of Incorporation will continue to require that each director elected by the stockholder shall hold office until a successor is elected and qualified or until such director's earlier death, resignation, disqualification or removal. The Certificate of Incorporation and By-Laws state that any person serving as a director must meet the fitness standards set forth in the Certificate of Incorporation which standards are now included in the Certificate of Incorporation.

Voting Trust Agreement

The By-Laws are amended to eliminate the right of Futures Participants to nominate persons to serve on the Board. The Exchange will terminate the Amended Voting Trust Agreement ("Voting Agreement") which was entered into in order to ensure that the NASDAQ Futures shares are voted in accordance with the director nomination rights of the holders of outstanding preferred membership shares of NASDAQ Futures. The preferred membership shares ceased to exist at the time the Exchange converted from a "seat" market to a permit market. All of the preferred shares were redeemed by NASDAQ Futures. Accordingly, the Voting Agreement no longer has a purpose to serve and will be terminated effective January 1, 2014. Likewise, Article III, Section 6(d) of the current By-Laws (Article III, Section 6(d)) provides permit holders with certain nomination rights. Article III, Section 9 of the By-Laws requires the voting trustees to vote in favor of director candidates nominated by the membership in accordance with Section 3-6(d). Since the preferred shares have been redeemed, such By-Law provisions are no longer necessary they are not included as a right in the amended By-Laws. The other provisions in the Certificate of Incorporation are substantially similar to those in the By-Laws today.

Other By-Law Amendments

The Exchange is amending the By-Laws at Article I to add definitions. Article III shall now specify that the annual meeting of shareholders shall be held on a date that is no earlier than 45 days prior to, and no later than 45 days subsequent to, the anniversary of the prior year's annual meeting at 4:30 P.M., when a Board of Directors shall be elected and such other business as may properly be brought before the meeting shall be transacted. If the annual meeting shall not be called and held during any calendar year, any shareholder may call such meeting at any time thereafter. The other provisions related to the meetings of stockholders are substantially similar to provisions contained in the By-Laws.

Article VI of the By-Laws specifies the various standing committees of the Exchange, which are consistent with the committees which exist today. With respect to the Business Conduct Committee ("BCC"), today, the BCC as a whole is required to be comprised of three Public Directors and two other directors who represent the interests of Futures Participants. The Exchange proposes to amend the composition of the BCC to require that the BCC shall be comprised at least 50% of persons representing the interest of Futures Participants other than that of the subject of the disciplinary proceeding and, if the subject of the disciplinary action is a member of the Exchange's Board of Directors or any major disciplinary committee, or whenever any of the rule violations involved pertain to manipulation or attempted manipulation of the price of a commodity, futures contract or option on a futures contract, or to conduct which directly results in financial harm to a non-Futures Participants, at least one person who is not a Futures Participants of the Exchange. The BCC shall not include any Exchange regulatory staff. At least one member of the BCC and of each BCC Panel shall be an individual who would qualify as a Public Director. No group or class of industry participants shall dominate or exercise inappropriate influence on the BCC or any BCC Panel. No member of the BCC Panel that considers the authorization of charges or whether to accept a settlement or letter of consent in a disciplinary matter pursuant to Chapter VI shall be a member of the BCC Panel that conducts a hearing or summary proceeding in that matter. No BCC Panel shall include any member of the BCC that has a financial, personal or other direct interest in the matter under consideration. At Article VIII of the By-Laws the Exchange added various provisions that are related to Capital Stock and other provisions which are common to other existing corporations owned and operated by The NASDAQ OMX Group, Inc.

Rule Amendments

The Exchange is amending the definition of Exchange in Chapter I, Section I to include the acronym "NQF" in the definition. The Exchange is also amending Chapter I, Section 7 entitled "Disclosure and Trading by Exchange Employees, Consultants, Directors and Committee Members" to utilize the term "Futures Participant" instead of "member." Chapter I, Section 8 entitled "Voting by Board of Directors and Certain Committees" is being relocated from the By-Laws. The Exchange is adopting a revised indemnification provision at Section 9 entitled "Indemnification of Directors, Officers, Employees and Agents."

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The Certificate of Conversion is attached as Exhibit A. The Certificate of Incorporation and By-Laws are attached as Exhibit B. The Amended Rules are attached as Exhibit C. The Termination Agreement is attached as Exhibit D.

There were no opposing views among the Exchange's Board of Directors, members or market participants. The Exchange filed a Notice of Equity Interest Transfer with the Commission. The Exchange hereby certifies that the amendment complies with the Commodity Exchange Act and regulations thereunder. The Exchange also certifies that notice of pending certification and a copy of this submission have been concurrently posted on the Exchange's website at <http://www.nasdaqtrader.com/Micro.aspx?id=NFX>.

Regards,



Daniel R. Carrigan
President

cc: Lois Gregory
National Futures Association
The Options Clearing Corporation

Exhibit A

**CERTIFICATE OF CONVERSION TO CORPORATION
OF
NASDAQ FUTURES, INC.
a Pennsylvania corporation
TO
NASDAQ FUTURES, INC.
a Delaware corporation**

This Certificate of Conversion to Corporation, dated as of _____, 20_____, is being duly executed and filed by NASDAQ Futures, Inc., a Pennsylvania corporation (the "PA Company"), to convert the PA Company to NASDAQ Futures, Inc., a Delaware corporation (the "Corporation"), under the General Corporation Law of the State of Delaware (8 Del.C. § 101, et seq.).

1. The PA Company was first formed on April 26, 1984 under the name Philadelphia Board of Trade. The PA Company was first incorporated under the laws of the Commonwealth of Pennsylvania and was a corporation under the laws of the Commonwealth of Pennsylvania immediately prior to the filing of this Certificate of Conversion to Corporation.

2. The PA Company's name immediately prior to the filing of this Certificate of Conversion to Corporation was NASDAQ Futures, Inc.

3. The name of the Corporation as set forth in its certificate of incorporation filed in accordance with Section 265(b) of the General Corporation Law of the State of Delaware is NASDAQ Futures, Inc.

4. The conversion of the PA Company to the Corporation shall be effective at ____:____ a.m./p.m. on _____, 20_____(Eastern Time).

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Conversion to Corporation as of the date first-above written.

**NASDAQ FUTURES, INC.,
a Pennsylvania corporation**

By: _____
Name:
Title:

Exhibit B

CERTIFICATE OF INCORPORATION OF NASDAQ FUTURES, INC.

The undersigned, for the purposes of incorporating and organizing a corporation under the General Corporation Law of the State of Delaware, do execute this Certificate of Incorporation and do hereby certify as follows:

Article First

The name of the corporation is NASDAQ Futures, Inc. (the “Corporation”).

Article Second

The address of the registered office of the Corporation in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

Article Third

A. The Corporation is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Corporation is, engaging in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware and engaging in any and all activities necessary or incidental to the foregoing. Without limiting the generality of the foregoing, the nature of the business or purposes to be conducted and promoted shall include (i) to operate a board of trade designated as a contract market in accordance with Section 5 of the Commodity Exchange Act, as amended, (“CEA”), and regulations promulgated by the Commodity Futures Trading Commission (“CFTC”) thereunder, (ii) preventing fraudulent and manipulative acts and practices, fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information and, in general, protecting investors and the public interest, (iii) fulfilling the Corporation’s self-regulatory responsibilities as set forth in the CEA, and (iv) supporting such other initiatives as the Board of Directors of the Corporation (the “Board”) may deem appropriate.

B. The Corporation is being incorporated in connection with the conversion of NASDAQ Futures, Inc., a Pennsylvania corporation (“PA Corporation”), to the Corporation (the “Conversion”) and this Certificate of Incorporation is being filed simultaneously with the Certificate of Conversion of PA Corporation to the Corporation.

Article Fourth

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

B. Upon the effectiveness of the Certificate of Conversion of PA Corporation to the Corporation and this Certificate of Incorporation (the “Effective Time”), each share of capital stock of PA Corporation issued and outstanding immediately prior to the Effective Time will be deemed to be one issued and outstanding, fully paid and nonassessable share of Common Stock, without any action required on the part of the Corporation or the stockholder. No stockholder may 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 CFTC pursuant to the CEA, and the regulations promulgated thereunder. The shares of Common Stock to be outstanding immediately after the Effective Time shall be represented by the stock certificate(s) representing the issued and outstanding shares of capital stock of the PA Corporation until such time as such certificates are surrendered to the Corporation in exchange for new certificates. All stock certificates shall contain a legend setting forth the transfer restrictions set forth herein.

Article Fifth

A. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. The stockholders may determine at any time in their sole and absolute discretion the number of directors to constitute the Board. The authorized number of directors may be increased or decreased by the stockholders at any time in their sole and absolute discretion, upon a resolution duly adopted by the stockholders at a meeting of stockholders or by written consent of the stockholders and notice of such action shall be given to all directors. At least thirty-five percent (35%) of the directors, but no fewer than two (2) directors shall be Public Directors (as defined below). All directors shall be elected by the stockholders. Each director elected by the stockholder shall hold office until a successor is elected and qualified or until such director’s earlier death, resignation, disqualification or removal. Newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board resulting from death, resignation, disqualification, removal from office or other cause shall only be filled in the manner specified by the By-Laws of the Corporation (the “By-Laws”). Any director so chosen shall hold office until the next election of directors and until his successor shall be elected and qualified. No decrease in the number of directors shall shorten the term of any incumbent director. As a qualification to serve as a director, each director shall execute and deliver an instrument accepting such appointment and agreeing to be bound by the Certificate of Incorporation, By-Laws and any rule, interpretation, stated policy, or instrument corresponding to any of the foregoing, in each case as adopted or amended from time to time by the Corporation. The Board shall appoint a Chairman of the Board from among the Directors, who shall hold office until his or her successor is appointed and qualified or until his or her earlier resignation or removal. In addition, any person serving as a director must meet the qualifications set forth below.

(i) Fitness Standards. The Board shall designate from time to time appropriate fitness standards to qualify to serve as a director as the Board deems necessary or advisable or as required by Applicable Law (as defined below). No person may

serve as a director, any review panel, any disciplinary committee, any arbitration panel or any oversight panel of the Corporation if the person:

- (a) was found within the past three years by a final decision under Applicable Law to have committed a disciplinary offense;
- (b) entered into a settlement agreement within the past three years in which any of the findings or, in the absence of such findings, any of the acts charged, included a disciplinary offense;
- (c) is currently suspended from trading or any trading market, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:
 - (A) a finding by final decision under Applicable Law that such person committed a disciplinary offense; or
 - (B) a settlement agreement in which any of the findings or, in absence of such findings, any of the acts charged, included a disciplinary offense;
- (d) is currently subject to an agreement with the CFTC or any other self-regulatory organization not to apply for registration with the CFTC or membership in any self-regulatory organization;
- (e) is currently subject to or has had imposed on him or her within the past three years a CFTC registration revocation or suspension in any capacity for any reason, or has been convicted within the past three years of the felonies listed in section 8a(2)(D)(ii) through (iv) of the CEA;
- (f) is currently subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any self-regulatory organization; or
- (g) is subject to a statutory disqualification pursuant to Section 8a(2) or 8a(3) of the CEA.

B. The Board shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. The Board has the authority to bind the Corporation. To the fullest extent permitted by applicable law and the By-Laws the Board may delegate any of its powers to a committee appointed pursuant to By-Law Article VI or to any officer, employee or agent of the Corporation. With respect to committees of the Corporation which shall be composed solely of directors, except as otherwise provided in the By-Laws, each of such shall be comprised of at least thirty-five percent Public Directors.

C. Special meetings of stockholders of the Corporation may be called at any time by the holder or holders of a majority of the outstanding shares of Common Stock, by the Board acting pursuant to a resolution adopted by a majority of the directors then in office (provided that number of directors then in office constitutes at least one-third of the total number of directors), or by the officers of the Corporation so authorized by the By-Laws.

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

E. Unless otherwise restricted by law, any director may be removed by the holders of a majority of the voting power of the outstanding shares at the time entitled to vote at an election of directors, and shall cease to be a director upon disqualification in the manner provided by the By- Laws or this Certificate of Incorporation. Any director may resign in writing or by electronic means at any time either upon notice of resignation to the Chair of the Board, the Chief Executive Officer, the President or the Secretary. Any such resignation shall take effect at the time specified therein, or, if the time is not so specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

F. Unless and except to the extent that the By-laws of the Corporation shall so require, the election of directors of the corporation need not be by written ballot.

G. For purposes of this Article Fifth, (i) "**Public Director**" means an individual who has been found by the Board to have no material relationship with the Corporation. A "material relationship" is one that reasonably could affect the independent judgment or decision making of the director. A director shall be considered to have a "material relationship" with the Corporation if any of the following circumstances exist: (A) the director is an officer or employee of the Corporation or an officer or employee of its affiliate; ("Affiliate" shall include parents or subsidiaries of the Corporation or entities that share a common parent with the Corporation); (B) the director is a member of the Corporation, or an officer or director of a member ("Member" being defined according to Section 1a(24) of the CEA and CFTC Regulation 1.3(q)); (C) the director, or a firm with which the director is an officer, director or partner, receives more than \$100,000 in combined annual payments from the Corporation, or any Affiliate of the Corporation, for legal, accounting, or consulting services. Compensation for services as a director of the Corporation or as a director of an affiliate of the contract market does not count toward the \$100,000 payment limit, nor does deferred compensation for services prior to becoming a director, so long as such compensation is in no way contingent, conditioned, or revocable; and (D) any of the relationships herein apply to a member of the director's "immediate family," i.e., spouse, parents, children, and siblings. All of the disqualifying

circumstances described herein are subject to a one-year look back. Public Directors may also serve as directors of the Corporation's Affiliates as defined herein if they otherwise meet the definition of Public Director; (ii) "Applicable Law" includes, but is not limited to, the CEA, CFTC Regulations, margin rules adopted by the Board of Governors of the Federal Reserve System (as amended from time to time) and, to the extent applicable, the Exchange Act and CFTC Regulations; (iii) "CFTC Regulation" means any rule, regulation, order, directive and any interpretation thereof adopted or amended from time to time by the CFTC; (iv) "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time; and (v) "Affiliate" of, or a Person "Affiliated" with, another Person is a Person who, directly or indirectly, controls, is controlled by, or is under common control with, such other Person.

Article Sixth

A. A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended.

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

Article Seventh

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

Article Eighth

In furtherance of, and not in limitation of, the powers conferred by law, the Board is expressly authorized and empowered to adopt, amend or repeal the By-Laws; provided, however, that the By-Laws adopted by the Board under the powers hereby conferred may be amended or repealed by the Board by a majority of the whole Board or by the stockholders by the affirmative vote of the holders of a majority of the voting power of the then outstanding stock entitled to vote, voting together.

Article Ninth

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

Article Tenth

The Corporation shall have perpetual existence.

Article Eleventh

The incorporator of the Corporation is Joan Conley, whose mailing address is [805 King Farm Boulevard, Rockville, MD 20850].

* * *

[This Certificate of Incorporation shall be effective at : a.m./p.m. on _____, 20____ (Eastern Time).]

[Signature Page Follows]

Commodity Futures Trading Commission

December 16, 2013

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IN WITNESS WHEREOF, the undersigned has caused this Certificate to be on this _____
day of _____, 2013.

Name: Joan Conley

Incorporator

BY-LAWS
OF
NASDAQ FUTURES, 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:

“Act” or “CEA” means the Commodity Exchange Act, 7 U.S.C. §1 et seq., as amended from time to time.

“Affiliate” of, or a Person “Affiliated” with, another Person is a Person who, directly or indirectly, controls, is controlled by, or is under common control with, such other Person.

“Applicable Law” includes, but is not limited to, the Act, Commission Regulations, margin rules adopted by the Board of Governors of the Federal Reserve System (as amended from time to time) and, to the extent applicable, the Exchange Act and Commission Regulations.

“Board” or “Board of Directors” means the Board of Directors of the Exchange.

“Business Conduct Committee Panel” or “BCC Panel” shall refer to a panel as specified in Chapter VI of the Exchange Rules.

“Commission” means the Commodity Futures Trading Commission, and includes any successor agency or authority.

“Commission Regulation” means any rule, regulation, order, directive and any interpretation thereof adopted or amended from time to time by the Commission.

“Exchange” means NASDAQ Futures, Inc., a Delaware corporation.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time.

“Exchange Rules” or “Rule of the Exchange” means any rule, interpretation, stated policy, or instrument corresponding to any of the foregoing, in each case as adopted or amended from time to time by the Exchange.

“Futures Participant” means an organization that has been issued a permit in accordance with the By-Laws and Rules of the Exchange and authorized to access the exchange trading system.

“Lawfully Available Funds” means funds available for distributions and settlements of intercompany accounts, subject to any applicable regulatory requirements or limits on transfers

and, with respect to the payment of dividends, subject to any limitations imposed by the General Corporation Law of the State of Delaware.

“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.

“Public Director” means an individual who has been found by the Board of Directors to have no material relationship with the Exchange. A “material relationship” is one that reasonably could affect the independent judgment or decision making of the director. A director shall be considered to have a “material relationship” with the Exchange if any of the following circumstances exist: (A) the director is an officer or employee of the Exchange or an officer or employee of its affiliate; (“Affiliate” shall include for purposes of defining a Public Director parents or subsidiaries of the Exchange or entities that share a common parent with the Exchange); (B) the director is a member of the Exchange, or an officer or director of a member (“Member” being defined according to Section 1a(24) of the Act and Commission Regulation 1.3(q)); (C) the director, or a firm with which the director is an officer, director or partner, receives more than \$ 100,000 in combined annual payments from the Exchange, or any Affiliate of the Exchange, for legal, accounting, or consulting services. Compensation for services as a director of the Exchange or as a director of an affiliate of the contract market does not count toward the \$100,000 payment limit, nor does deferred compensation for services prior to becoming a director, so long as such compensation is in no way contingent, conditioned, or revocable; and (D) any of the relationships herein apply to a member of the director’s “immediate family,” i.e., spouse, parents, children, and siblings. All of the disqualifying circumstances described herein are subject to a one-year look back. Public Directors may also serve as directors of the Exchange’s Affiliates as defined herein if they otherwise meet the definition of Public Director.

“Staff Director of the Board” shall mean the member of the Board of Directors who is also the Chairman of the Board.

“Stockholder” means NASDAQ OMX PHLX LLC, a limited liability company, as the initial sole stockholder of the Exchange, and any other person who may be issued shares of capital stock of the Exchange or otherwise receive shares of capital stock of the Exchange.

Article II Offices

Section 2.1 Location

The address of the registered office of the Exchange 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, New Castle County, Delaware 19801. The Exchange 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 Exchange 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 Exchange'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 of Stockholders

The annual meeting of stockholders shall be held on a date that is no earlier than 45 days prior to, and no later than 30 days subsequent to, the anniversary of the prior year's annual meeting at 4:30 P.M., when a Board of Directors shall be elected and such other business as may properly be brought before the meeting shall be transacted. If the annual meeting shall not be called and held during any calendar year, any stockholder may call such meeting at any time thereafter.

Section 3.2 Meetings of Futures Participants

The Exchange shall not be required to hold meetings of Futures Participants as that term is defined in Exchange Rules.

Section 3.3 Special Meetings

Special meetings of stockholders of the Exchange 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 (provided that number of directors then in office constitutes at least one-third of the total number of directors), or by the Chairman of the Board, the Chief Executive Officer, the President or the Secretary.

Section 3.4. Voting

Each stockholder entitled to vote in accordance with the terms of the Certificate of Incorporation of the Exchange 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 cast; 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 applicable law. Voting at meetings of stockholders need not be by written ballot.

Section 3.5 Quorum

Except as otherwise required by law, by the Certificate of Incorporation of the Exchange 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 outstanding shares of capital stock of the Exchange shall constitute a quorum at all meetings of the stockholders. In case a quorum shall not be present at any meeting, the holders of a majority in voting power of the shares 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.

Section 3.6 Notice of Meetings

Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the Certificate of Incorporation of the Exchange or these By-Laws, the notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Exchange.

Section 3.7 Action Without Meeting

Unless otherwise provided by the Certificate of Incorporation of the Exchange, 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 General Corporation Law of the State of Delaware.

Article IV Board of Directors

Section 4.1 General Powers

The property, business, and affairs of the Exchange shall be managed by, or under the direction of, the Board. The Board may exercise all such powers of the Exchange 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 Article VI or to the Exchange staff.

Section 4.2 Number of Directors

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

Section 4.3 Selection; Term

(a) Whenever any director position becomes vacant, whether because of death, disqualification, removal, or resignation, the Board of Directors shall select for the directorship as provided in Section 4.4 to fill such vacancy.

(b) Directors shall serve for a one year term.

Section 4.4 Qualifications

(a) The Board of Directors shall consist of a number of Public Directors and commercial interest representatives, as defined by Commission Regulation 1.64, as determined by the Stockholder. The Board of Directors shall be comprised of persons from a variety of membership interests who will meaningfully represent the Exchange's diversity of interests, consistent with Commission Regulation 1.64(b)(3). If the numbers required by the foregoing classification of directors are not maintained at any time due to a vacancy or vacancies on the Board of Directors such requirements shall be suspended until the earlier of such time as the vacancy or vacancies is filled pursuant to the By-Laws or the election of directors at the next succeeding annual meeting of the Exchange and their qualification for office, except as otherwise required by Commission Regulations.

(b) The President shall report to the Chairman of the Board and, in the absence or incapacity of the Chairman, shall perform all the duties of that office.

(c) Fitness Standards. The Board shall designate from time to time appropriate fitness standards to qualify to serve as a director as the Board deems necessary or advisable or as required by Applicable Law (as defined below). No person may serve as a director, any

review panel, any disciplinary committee, any arbitration panel or any oversight panel of the Corporation if the person:

- (i) was found within the past three years by a final decision under Applicable Law to have committed a disciplinary offense;
 - (ii) entered into a settlement agreement within the past three years in which any of the findings or, in the absence of such findings, any of the acts charged, included a disciplinary offense;
 - (iii) is currently suspended from trading or any trading market, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:

 - (A) a finding by final decision under Applicable Law that such person committed a disciplinary offense; or
 - (B) a settlement agreement in which any of the findings or, in absence of such findings, any of the acts charged, included a disciplinary offense;
 - (iv) is currently subject to an agreement with the CFTC or any other self-regulatory organization not to apply for registration with the CFTC or membership in any self-regulatory organization;
 - (v) is currently subject to or has had imposed on him or her within the past three years a CFTC registration revocation or suspension in any capacity for any reason, or has been convicted within the past three years of the felonies listed in section 8a(2)(D)(ii) through (iv) of the CEA;
 - (vi) is currently subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any self-regulatory organization; or
 - (vii) is subject to a statutory disqualification pursuant to Section 8a(2) or 8a(3) of the CEA.
- (d) As a qualification to serve as a director, each director shall execute and deliver an instrument accepting such appointment and agreeing to be bound by the Certificate of Incorporation, By-Laws and any rule, interpretation, stated policy, or instrument corresponding to any of the foregoing, in each case as adopted or amended from time to time by the Exchange.

Section 4.5 Regulation

(a) The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of the Exchange, 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 Exchange 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 Exchange, or in relying in good faith upon other records of the Exchange.

(b) In light of the unique nature of the Exchange and its operations, and in light of the Exchange'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, the potential impact thereof on the integrity, continuity and stability of the Exchange and the other operations of the Exchange, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public.

Section 4.6 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 4.7.

(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 4.7.

(c) Special meetings of the Board may be called by the Chairman 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 4.7.

(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 Exchange.

(e) 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.

Section 4.7 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 Exchange 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.

(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 9.6

(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 4.8 Compensation of Board, Council, and Committee Members

The Board may provide for reasonable compensation of the Chairman of the Board, the directors and the members of other committees. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the Exchange.

Article V Officers, Agents and Employees

Section 5.1. Delegation of Duties of Officers

The Board may delegate the duties and powers of any officer of the Exchange 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 5.2 Resignation and Removal of Officers

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

(b) Any officer of the Exchange 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 Exchange.

Section 5.3 Chairman of the Board

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

Section 5.4 Chief Executive Officer

The Chief Executive Officer shall be the chief executive officer of the Exchange and shall have general supervision over the business and affairs of the Exchange. 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 5.5. President

The President shall have general supervision over the operations of the Exchange. 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 5.6 Vice President

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

from time to time by the Board, the Chief Executive Officer or the President. The term “Vice President” used in this Section shall include the positions of Executive Vice President, Senior Vice President, and Vice President.

Section 5.7 Chief Regulatory Officer

The Chief Regulatory Officer shall have general supervision of the regulatory operations of the Exchange, 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 Exchange is a party. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Exchange 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.

Section 5.8 Secretary

The Secretary shall act as Secretary of all meetings of the Board at which the Secretary is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of the Exchange, and shall have supervision over the care and custody of the books and records of the Exchange. The Secretary shall be empowered to affix the Exchange’s seal, if any, to documents, the execution of which on behalf of the Exchange 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 5.9 Assistant Secretary

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

Section 5.10 Treasurer

The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of the Exchange and shall cause the funds of the Exchange to be deposited in the name of the Exchange 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 Exchange. 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 5.11 Assistant Treasurer

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

Section 5.12 Authority to Settle Intercompany Accounts

The Chief Financial Officer and Controller of The NASDAQ OMX Group, Inc. (the "Authorized Officers") are each hereby authorized to, and each is hereby expressly delegated the full power and authority of the Board with respect to settling the intercompany accounts between The NASDAQ OMX Group, Inc. and the Exchange, including, without limitation, causing the Exchange to (i) make or receive payments with respect to intercompany debts or receivables from The NASDAQ OMX Group, Inc. out of Lawfully Available Funds; (ii) make capital contributions to The NASDAQ OMX Group, Inc. out of Lawfully Available Funds; (iii) receive capital contributions from The NASDAQ OMX Group, Inc. out of Lawfully Available Funds or (iv) make or receive payments with respect to any other obligation between The NASDAQ OMX Group, Inc. and the Exchange out of Lawfully Available Funds; provided, however, that the Authorized Officers shall not have the authority to declare dividends on behalf of the Exchange.

Article VI Committees

Section 6.1 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 or removal 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 the members 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 Exchange, 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. The Secretary of the Exchange 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 Exchange, 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 6.2 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 Exchange between meetings of the Board.
- (b) The Board may appoint a Finance Committee. The Finance Committee of the Exchange shall be an optional committee. If the Board of Directors appoints a Finance Committee it shall consist of the Chairman and two Public Directors. The Finance Committee shall examine the accounts of the Exchange. It shall prepare and present to the Board of Directors an estimate of the income of the Exchange for the succeeding calendar year and its recommendations as to the appropriations for expenses for said period. It may at any time recommend additional appropriations or the increase or decrease of any appropriations made by the Board of Directors and shall make reports and recommendations to the Board of Directors as to the financial policy of the Exchange. The Finance Committee shall have such other powers and duties as may be delegated to it by the Board of Directors.
- (c) The Board shall appoint a Regulatory Oversight Committee. The Regulatory Oversight Committee shall consist of four Public Directors. The Regulatory Oversight Committee shall: (A) monitor the Exchange's regulatory program for sufficiency, effectiveness, and independence; (B) oversee all facets of the regulatory program, including trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to Futures Participants (insuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations; (C) provide oversight over the systems of internal controls established by management and the Board and the Exchange's legal and compliance process; (D) review the size and allocation of the regulatory budget and resources and the number, hiring and termination, and compensation of regulatory personnel; (E) supervise the Chief Regulatory Officer, who will report directly to the Regulatory Oversight Committee; (F) prepare an annual report assessing the Exchange's self-regulatory program for the Board of Directors and the Commission, which sets forth the regulatory program's expenses, describes its staffing and structure, catalogues disciplinary actions taken during the year, and reviews the performance of disciplinary committees and panels; (G) recommend changes that would ensure fair, vigorous, and effective regulation; and (H) review regulatory proposals and advise the Board as to whether and how such changes may impact regulation. The Regulatory Oversight Committee may select and engage its own advisor(s) to assist it in carrying out its duties.

Section 6.3 Committees Not Composed Solely of Directors

- (a) The Board shall appoint a Business Conduct Committee which shall not be a committee of the Board. The Business Conduct Committee shall have jurisdiction to: (a) monitor compliance with the By-Laws and Rules of the Exchange or any interpretation

thereof and the rules, regulations, resolutions and stated policies of the Board of Directors or any committee of the Exchange, by Futures Participants or persons associated with or employed by Futures Participants; (b) inquire into the business conduct and financial condition of Futures Participants or persons associated with or employed by Futures Participants and require detailed financial reports and such other operational reports as it may deem advisable of any Futures Participants; (c) authorize the initiation of any disciplinary action or proceeding brought by the Exchange and render a decision in any such action or proceeding; (d) conduct hearings and render decisions in summary disciplinary actions and proceedings; (e) suspend a Futures Participants upon its determination that there is a substantial question as to whether a financial emergency exists with respect to such Futures Participants; (f) prohibit trading by a Futures Participants which is excessive in view of its capital; and (g) impose appropriate sanctions of expulsion, suspension, fine, censure or any other fitting sanction where the Committee finds that a violation within the disciplinary jurisdiction of the Exchange has been committed.

(b) With respect to the composition of the Business Conduct Committee, no person shall serve on that committee who is subject to any of the conditions specified in Commission Regulation 1.63(b)(1) through (6). Should any member of the Business Conduct Committee thus become ineligible to serve, the chairman of that committee shall remove such member and fill the resulting vacancy. In addition, when acting as a major disciplinary committee, pursuant to Commission Regulation 1.64, unless the case is related to decorum or attire, financial requirements or reporting or recordkeeping, and does not involve fraud, deceit or conversion, the Business Conduct Committee shall be comprised at least 50% of persons representing the interest of Futures Participants other than that of the subject of the disciplinary proceeding and, if the subject of the disciplinary action is a member of the Board of Directors or any major disciplinary committee, or whenever any of the rule violations involved pertain to manipulation or attempted manipulation of the price of a commodity, futures contract or option on a futures contract, or to conduct which directly results in financial harm to a non- Futures Participants, at least one person who is not a Futures Participants of the Exchange. The Business Conduct Committee shall not include any Exchange regulatory staff. At least one member of the Business Conduct Committee and of each BCC Panel shall be an individual who would qualify as a Public Director. No group or class of industry participants shall dominate or exercise inappropriate influence on the Business Conduct Committee or any BCC Panel. No member of the BCC Panel that considers the authorization of charges or whether to accept a settlement or letter of consent in a disciplinary matter pursuant to Chapter VI of Exchange Rules shall be a member of the BCC Panel that conducts a hearing or summary proceeding in that matter. No BCC Panel shall include any member of the Business Conduct Committee that has a financial, personal or other direct interest in the matter under consideration.

(c) No Person may serve on the Business Conduct Committee or any hearing panel or any other disciplinary committee, arbitration panel or oversight panel of the Exchange if such Person:

(a) was found within the past three years by a final decision under Applicable Law to have committed a disciplinary offense;

- (b) entered into a settlement agreement within the past three years in which any of the findings or, in the absence of such findings, any of the acts charged, included a disciplinary offense;
- (c) is currently suspended from trading or any trading market, is suspended or expelled from membership with any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:
 - (A) a finding by final decision under Applicable Law that such person committed a disciplinary offense; or
 - (B) a settlement agreement in which any of the findings or, in absence of such findings, any of the acts charged, included a disciplinary offense;
- (d) is currently subject to an agreement with the Commission or any other self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;
- (e) is currently subject to or has had imposed on him or her within the past three years a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the past three years of the felonies listed in section 8a(2)(D)(ii) through (iv) of the Act;
- (f) is currently subject to a denial, suspension or disqualification from serving on the disciplinary committee, arbitration panel or governing board of any self-regulatory organization; or
- (g) is subject to a statutory disqualification pursuant to Section 8a(2) or 8a(3) of the Act.

Section 6.4 Exchange Committees; Special Committees of the Board

The Exchange may create such Exchange committees as it may from time to time deem necessary or advisable. Members of such committees may be members of the Board, Futures Participants or officers or employees of Futures Participants, or other individuals who are considered to be qualified, subject to regulatory requirements.

Section 6.5 Dividend Committee

The Exchange shall have a Dividend Committee comprised of the Staff Director of the Board or such other member as shall be designated by the Board. The Dividend Committee is hereby expressly delegated the full power and authority of the Board, to be exercised in the Dividend Committee's sole discretion, to declare and authorize the payment of dividends out of Lawfully Available Funds on the shares of capital stock of the Exchange. Without limiting the authority of the Dividend Committee with respect to the declaration and payment of dividends, the Dividend Committee is hereby expressly

delegated the full power and authority of the Board to (i) determine the existence of Lawfully Available Funds for the declaration and payment of dividends; (ii) set the record and payment dates for the payment of dividends; (iii) retain legal or financial advisers in connection with any determination with respect to the declaration and payment of dividends; (iv) determine the amount and/or rate of any such dividends; (v) authorize the transfer and payment of funds and/or property of the Company in order for the payment of dividends; and (vi) take any other action necessary or advisable in connection with declaring and paying dividends on the shares of capital stock of the Exchange.

Section 6.6 Acting Without a Meeting

Committees may act without a meeting if all of its members consent in writing or by electronic transmission to the action in question. Such consent shall be in accordance with the provisions of Section 141(f) of the General Corporation Law of the State of Delaware (or any successor provision), whether or not the Standing Committee is a committee comprised solely of directors.

Article VII Indemnification; Conflicts; Disclosure and Voting

Section 7.1 Indemnification of Directors, Officers, Employees, and Agents

(a) The Exchange 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 Exchange, or while a director or officer of the Exchange, is or was serving at the request of the Exchange 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 Exchange) 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 Exchange 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 Exchange 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 Exchange 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 Exchange or is or was an agent of the Exchange who is or was serving at the request of the Exchange 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 Exchange 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 Exchange 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 Exchange; (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 Exchange.

(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 Exchange 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 Exchange'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 Exchange, 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 to the fullest extent permitted by law. In any such action, the Exchange shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

(k) The Exchange 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 Exchange, or is or was serving at the request of the Exchange 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 Exchange would have the power to indemnify such person against such liability hereunder.

Article VIII Capital Stock

Section 8.1 Certificates

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

Section 8.2 Signatures

Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman or Vice Chairman of the Board of Directors, if any, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the corporation certifying the number of shares owned by such holder in the corporation. Any or of all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Exchange with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Section 8.3 Stock Ledger

(a) A record of all issued shares of capital stock of the Exchange, including all certificates for capital stock, if any, so issued by the Exchange, 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 the shares of capital stock are registered, the number of shares owned by such person, the date of each such shares were issued, the certificate number, if the shares are certificated, representing such shares so issued, and in the case of certificates which have been canceled, the date of cancellation thereof.

(b) The Exchange 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 Exchange 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 Exchange shall have express or other notice thereof, except as required by law.

Section 8.4 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 Exchange.

(b) Transfers of capital stock shall be made on the books of the Exchange only upon delivery to the Exchange 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 (if such shares are certificated); and (iii) a written assignment of the shares of capital stock evidenced thereby.

(c) All of the authorized shares of Common Stock initially shall be issued and outstanding, and shall initially be held by NASDAQ OMX PHLX LLC. No stockholder may transfer or assign any shares of stock of the Exchange, 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.

Section 8.5 Cancellation

Each certificate for capital stock surrendered to the Exchange 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 8.6 until such existing certificate shall have been canceled.

Section 8.6 Lost, Stolen, Destroyed, and Mutilated Certificates

In the event that any certificate for shares of capital stock of the Exchange shall be mutilated, the Exchange 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 Exchange 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 Exchange a bond with an acceptable surety or sureties and in such sum as will be sufficient to indemnify the Exchange 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 8.7 Fixing of Record Date

The Board may fix a record date in accordance with Delaware law. If no record date is set by the Board, then the record date shall be the date as provided in Section 213 of the General Corporation Law of the State of Delaware.

Section 8.8. 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 Exchange as and when they deem appropriate. Notwithstanding the foregoing,

dividends shall not be paid using regulatory funds.

Article IX Miscellaneous Provisions

Section 9.1 Rights and Privileges

(a) Upon receipt of a permit, a person shall, except as otherwise set forth in the Rules of the Exchange or any resolution of the Board of Directors authorizing a specific class or series of permits, have all the rights and privileges and shall be under all the duties and obligations of a Futures Participant in accordance with these By-Laws and the Rules of the Exchange, and, if permitted in the Rules of the Exchange or any resolution of the Board of Directors authorizing a specific class or series of permits.

(b) Notwithstanding anything to the contrary contained in these By-Laws or the Rules of the Exchange, the ability of a permit holder to exercise any right or privilege of a Member is subject to such holder's compliance with applicable registration, testing, capital, fitness, allocation, deposit, bonding or other rules, requirements or procedures of the Exchange as may be established from time to time relating to trading on the Exchange (in any particular security, capacity or otherwise), use of given services of, or facilities of or operated by, the Exchange, engaging in any particular line of business at the Exchange, maintaining employees or agents at the Exchange, and to the payment of applicable fees, dues and other charges.

(c) A corporation to which a permit is issued under the provisions of this Section of these By-Laws shall be entitled to all the rights and privileges specified in the Exchange Rules, except as otherwise specifically provided in these By-Laws and the rules and regulations adopted pursuant hereto

Section 9.2 Use of Facilities of Exchange

The Exchange shall not be liable for any damages sustained by a Futures Participant growing out of the use or enjoyment by such person or organization of the facilities afforded by the Exchange to such person or organization for the conduct of their business.

Section 9.3 By-Laws and Rules Incorporated into Exchange Contracts

The provisions of these By-Laws and of the Rules adopted pursuant hereto shall be a part of the terms and conditions of all exchange contracts. All such contracts shall be subject to the exercise by the Board of Directors and the Standing Committees of the Exchange of the powers with respect thereto vested in them by these By-Laws and Rules adopted pursuant hereto.

Section 9.4 Corporate Seal

The seal of the Exchange shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board, the name of the Exchange, 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 9.5 Fiscal Year

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

Section 9.6 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 9.7 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 Exchange 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 Exchange, 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 Exchange by any officer of the Exchange,

or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of the Exchange. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

Article X Amendments

Section 10.1 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 10.2 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 10.3 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 Exchange 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 XI Exchange Authorities

Section 11.1 Rules

To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among Futures Participants, 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 Exchange and of the Act, the Board

is hereby authorized to adopt such Rules of the Exchange 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 Futures Participants and between Futures Participants 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 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 11.2 Disciplinary Proceedings

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

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

(i) a breach by a Futures Participants or a person associated with a Futures Participants of any covenant with the Exchange or its Futures Participants;

(ii) violation by a Futures Participants or a person associated with a Futures Participants 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 a Futures Participants or person associated with a Futures Participants to: (A) submit a dispute for arbitration as may be required by the Rules; (B) appear or produce any document in the Futures Participants' 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

(vi) failure by a Futures Participants or person associated with a Futures Participants 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 11.3 Qualifications to Obtain a Permit

(a) The Board shall have authority to adopt rules and regulations applicable to applicants seeking to become Futures Participants and persons associated with applicants or Futures Participants, 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) Uniform standards for regulatory and other access issues, such as admission to membership shall be promulgated and applied on a consistent basis, and the Exchange shall institute safeguards to ensure fair and evenhanded access to all of its services and facilities.

Section 11.4 Fees, Dues, Assessments, and Other Charges

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

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ARTICLE I Offices and Business Hours

Sec. 1. Offices

The Exchange shall have its place of business and registered office in the City of Philadelphia, Commonwealth of Pennsylvania. It may have other offices at such other places as the Board of Directors may from time to time determine.

See. 2. Business Hours

The offices of the Exchange shall be open for the transaction of business at 8:00 A.M. each day that the Exchange is open, and shall close at 5:00 P.M., except as otherwise determined by the Board of Directors.

ARTICLE II Seal

Sec. 1. Seal

~~The seal of the Exchange shall be circular in form with the words, "PHILADELPHIA BOARD OF TRADE" on the circumference and the figures "1984" in the center. It shall be kept by the Secretary and shall be affixed to all instruments requiring the seal.~~

ARTICLE III Shareholders

Sec. 1. Classes of Shareholders

~~The Exchange shall issue voting common shares.~~

Sec. 2. Voting Rights of Shareholders

~~The common shareholders shall have the exclusive right to elect the Board of Directors. The common shareholders may in their sole discretion appoint two individuals as voting trustees who shall be authorized to vote all of the common shares collectively with respect to the election of directors, including the five directors from among candidates nominated by the membership of the Exchange in accordance with the procedures set forth in the By-Laws. The common shareholders may at any time remove any such individual and appoint a new voting trustee.~~

Sec. 3. Meeting of Shareholders

~~Meetings of the shareholders shall be held at the registered office of the Exchange, or at such other place or places within the Commonwealth of Pennsylvania as the Board of Directors may fix from time to time.~~

Sec. 4. Annual Meeting

~~The annual meeting of shareholders shall be held on a date that is no earlier than 45 days prior to, and no later than 45 days subsequent to, the anniversary of the prior year's annual meeting at 4:30 P.M., when a Board of Directors shall be elected and such other business as may properly be brought before the meeting shall be transacted. If the annual meeting shall not be called and held during any calendar year, any shareholder may call such meeting at any time thereafter.~~

Sec. 5. Terms of Office – Board of Directors

~~Except as otherwise provided in the By Laws, the terms of office of the persons elected to the Board of Directors shall commence on the date of their election and shall continue for the periods of time hereafter specified in By Law Section 4-2.~~

Sec. 6. Nomination of Directors; Nominating Committee

~~(a) There shall be a Nominating Committee which shall submit nominations for the directors to be elected by the common shareholders, as described below.~~

~~(b) The Nominating Committee shall submit nominations for the directors to be elected by the common shareholders at the annual meeting and election of the Exchange. The Nominating Committee shall nominate ten individuals, five of whom shall be the individuals nominated by the membership in accordance with By Law Section 3-6(d). In making nominations, the Nominating Committee shall give due consideration to the various functions and activities of the Exchange and its permit holders.~~

~~(c) The Nominating Committee shall report in writing to the Secretary of the Exchange the names of its nominees for directors to be voted upon by the common shareholders at the next annual election of the Exchange. The report shall be delivered to the Secretary no later than the date that is 30 days prior to the date of the annual meeting at which the director nominees will be voted upon. The Secretary of the Exchange, upon receipt of the report of the Nominating Committee, shall notify the common shareholders and the permit holders of the names of the Nominating Committee's nominees for the directors to be voted by upon the common shareholders at the annual meeting and election of the Exchange.~~

~~(d) Nominations for directors by the permit holders shall be made by a written petition filed with the Nominating Committee within two weeks after the permit holders have been notified of the Nominating Committee's nominees for the directors to be voted upon by the common shareholders. If fewer than five candidates are nominated by petition by the permit holders and qualified for election, the Nominating Committee shall submit the names of additional nominees as directors so that the number of nominees is ten. All such candidates who qualify for election to the Board shall be deemed nominees for the position of director to be voted upon by the common shareholders.~~

~~(e) The Secretary shall collect from each nominee for Director such information as is reasonably necessary to serve as the basis for a determination as to whether the nominee may be classified as a Public Director or commercial interest representative, and the Secretary shall certify to the Nominating Committee each nominee's classification, if applicable. Throughout their term directors shall update all information submitted by them to the Secretary.~~

~~(f) A ballot shall be prepared by the Secretary of the Exchange containing the names of all nominees for the office of director. The ballot shall indicate whether the person is nominated by the Nominating Committee or the permit holders, and the interest represented by such nominee.~~

~~(g) At the annual meeting of shareholders, the ballot containing the names of all nominees for the office of directors shall be submitted to the common shareholders for a vote.~~

Sec. 7. Quorum and Action by Shareholders

The presence, in person or by proxy, of shareholders entitled to cast at least a majority of the votes which shareholders are entitled to cast on the particular matter shall constitute a quorum for the purpose of considering such matter, and, unless otherwise provided by statute, the acts, at a duly organized meeting of the shareholders present, in person or by proxy, entitled to cast at least a majority of the votes which all shareholders present are entitled to cast on the particular matter shall be the acts of the shareholders. The shareholders present at a duly organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum for the purpose of considering such matter. Adjournment or adjournments of any annual or special meeting may be taken, but any meeting at which directors are to be elected shall be adjourned only from day to day, or for such longer periods not exceeding fifteen days each, as may be directed by shareholders present, in person or by proxy, who are entitled to cast at least a majority of the votes for the classes of directors to be elected. If a meeting cannot be organized because a quorum has not attended for the purpose of considering the matter for which the meeting was called, those present, may, except as otherwise provided by statute, adjourn the meeting to such time and place as they may determine, but in the case of any meeting called for the election of directors, those who attend the second of such adjourned meetings, although less than a quorum, shall nevertheless constitute a quorum for the purpose of electing directors.

Sec. 8. Voting and Proxies

Every shareholder entitled to vote at a meeting of shareholders, or to express consent or dissent to corporate actions in writing without a meeting, may authorize another person or persons to act for him by proxy. Every proxy shall be executed in writing by the shareholder, or by his duly authorized attorney in fact, and filed with the Secretary of the Exchange. A proxy, unless coupled with an interest shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until notice thereof has been given to the Secretary of the Exchange. No unrevoked proxy shall be valid after eleven months from the date of its execution, unless a longer time is expressly provided therein, but in no event shall a proxy, unless coupled with an interest, be voted on after three years from the date of its execution. A proxy shall not be revoked by the death or incapacity of the maker unless before the vote is counted or the authority is exercised, written notice of such death or incapacity is given to the Secretary of the Exchange. A shareholder shall not sell his vote or execute a proxy to any person for any sum of money or anything of value. A proxy coupled with an interest shall include an unrevoked proxy in favor of a creditor of a shareholder and such proxy shall be valid so long as the debt owed by him to the creditor remains unpaid. Elections for directors need not be by ballot, except that with respect to the directors to be elected by the voting trustees, elections shall be by ballot upon demand made by a member or a general partner or officer of a Futures Participant at the election and before the voting begins.

Sec. 9. Voting and Action by Trustees

The trustees shall act in concert and collectively cast votes for a number of nominees for the office of director equal to the number of directors to be elected by the trustees at the annual meeting of the Exchange or at a special meeting called for such purpose, as the case may be. The voting power held by the voting trustees may be exercised only by agreement of a majority of such trustees. One or more trustees may participate at any such meeting by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. The voting trustees shall vote in favor of the candidates for director positions nominated by the membership in accordance with By Law Section 3-6(e) in each election of directors.

Sec. 10. Written Consent of Shareholders Without a Meeting

Except as otherwise provided in the Certificate or By Laws of the Exchange, any action which may be taken at a meeting of shareholders may be taken without a meeting, if a consent or consents in writing, setting forth the action so taken, shall be signed by all of the shareholders who would be entitled to vote at a meeting for such purpose and shall be filed with the Secretary of the Exchange.

Sec. 11. Notice of Annual Meeting

Written notice of the annual meeting shall be given to each shareholder entitled to vote thereat, at least ten days prior to the meeting.

Sec. 12. Judges of Election

In advance of any meeting of shareholders, the Board may appoint judges of election, who need not be shareholders, to act at such meeting or any adjournment thereof. If judges of election are not so appointed, the chairman of any such meeting may, and on the request of any shareholder entitled to vote at such election or his proxy shall, make such appointment at the meeting with respect to the election of the directors by such shareholder. The number of judges shall be one or three. If appointed at a meeting on the request of one or more shareholders or proxies, the majority of shares present and entitled to vote with respect to such directors shall determine whether one or three judges are to be appointed. On request of the chairman of the meeting, or of any shareholder entitled to vote at the election of the directors for which judges have been appointed or his proxy, the judges shall make a report in writing of any challenge or question or matter determined by them, and execute a certificate of any fact found by them. No candidate for office shall act as a judge.

Sec. 13. Special Meetings

Special meetings of the shareholders may be called at any time by the President, or the Board of Directors, or shareholders entitled to cast at least one fifth of the votes which shareholders are entitled to cast with respect to a particular matter at such meeting. At any time, upon written request of any person or persons who has duly called a special meeting,

~~it shall be the duty of the Secretary to fix the date of the meeting, to be held not more than sixty days after the receipt of the request, and to give notice thereof. If the Secretary shall neglect or refuse to fix the date of the meeting and give notice thereof, the person or persons calling the meeting may do so.~~

Sec. 14 Business Transacted at Special Meeting

~~Business transacted at a special meeting shall be confined to the original purpose stated in the written notice of such meeting and matters germane thereto, unless notice of an enlarged purpose is given to shareholders not present at such meeting in person or by proxy who are entitled to vote thereon, or unless all shareholders entitled to vote are present in person or by proxy and consent to enlarge such original purpose.~~

Sec. 15. Notice of Special Meetings

~~Written notice of a special meeting of shareholders stating the time and place and purpose thereof, shall be given to each shareholder entitled to vote thereat at least five days before such meeting, unless a greater period of notice is required by statute in a particular case.~~

Sec. 16. Shareholder Lists

~~The officer or agent having charge of the transfer books shall make at least ten days before each meeting of shareholders, a complete list of the shareholders of the Exchange, arranged in alphabetical order, with the address of and the number of shares held by each, which list shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting, and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original share ledger or transfer book, or a duplicate thereof kept in this Commonwealth, shall be prima facie evidence as to who are the shareholders entitled to examine such list or share ledger or transfer book, or to vote in person or by proxy, at any meeting of shareholders.~~

ARTICLE IV Directors

Sec. 1 Authorization

~~The business and affairs of the Exchange shall be managed by its Board of Directors.~~

Sec. 2. Composition of Board of Directors

~~(a) The number of directors of the Exchange shall be ten, all of whom shall be citizens of the United States.~~

~~(b) The Chief Executive Officer of the Exchange shall be Chairman of the Board of Directors of the Exchange.~~

~~(e) The ten directors shall be elected as provided in the By Laws at the annual meeting of shareholders of the Exchange and each such director shall be elected for a term of one year and until his successor shall be elected and shall qualify under law and the By Laws.~~

~~(d) The ten members of the Board of Directors shall consist of the Chairman, the President, four Public Directors and four who shall qualify as commercial interest representatives pursuant to Commodity Futures Trading Commission Regulation 1.64. In total, the Board of Directors shall be comprised of persons from a variety of membership interests who will meaningfully represent the Exchange's diversity of interests, consistent with Commodity Futures Trading Commission Regulation 1.64(b)(3). If the numbers required by the foregoing classification of directors are not maintained at any time due to a vacancy or vacancies on the Board of Directors such requirements shall be suspended until the earlier of such time as the vacancy or vacancies is filled pursuant to the By Laws or the election of directors at the next succeeding annual meeting of the Exchange and their qualification for office, except as otherwise required by Commodity Futures Trading Commission regulations.~~

~~(e) The President shall report to the Chairman of the Board and, in the absence or incapacity of the Chairman, shall perform all the duties of that office.~~

~~(f) Members of the Board of Directors shall be ineligible for service if any of the conditions specified in Commodity Futures Trading Commission Regulation 1.63 (b)(1) through (6) are met. If for such reason any director becomes ineligible for continued service, that director shall be removed in a manner permitted by the By Laws.~~

Sec. 3. Powers of the Board of Directors

The Board of Directors shall be vested with all the powers necessary for the management of the business and affairs of the Exchange. In addition to all of the power and authority expressly conferred upon it by the Certificate and the By Laws, the Board of Directors may exercise all such power and do all such lawful acts and things as are not by statute or by the Certificate or the By Laws directed or required to be exercised or done by the shareholders.

Sec. 4. Meetings Of Directors

The meetings of the Board of Directors may be held at such place within the Commonwealth of Pennsylvania, or elsewhere, as a majority of the directors may from time to time appoint, or as may be designated in the notice calling the meeting. One or more directors may participate in a meeting of the Board or of a committee of the Board by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.

Sec. 5. Regular Meetings

~~Regular meetings of the Board of Directors shall be held without notice at such times as the Board of Directors shall determine at the registered office of the Exchange, or at such other place within the Commonwealth of Pennsylvania as shall be determined by the Board of Directors.~~

Sec. 6. Special Meetings

~~Special meetings of the Board of Directors may be called by the Chief Executive Officer on one hour's notice to each director, either personally or by mail or by telegram; special meetings shall be called by the Chief Executive Officer or Secretary in like manner and on like notice upon the written request of a majority of the directors then in office.~~

Sec. 7. Quorum

~~Except where otherwise specifically provided by the By Laws or Rules of the Exchange, a majority of all the directors then in office shall constitute a quorum for the transaction of business and actions of a majority of those present at a meeting at which a quorum is present shall be actions of the Board of Directors.~~

Sec. 8. Written Consent in Lieu of Meeting

~~Any action which may be taken at a meeting of the directors may be taken without a meeting if a consent or consents in writing, setting forth the action so taken, shall be signed by all of the directors and filed with the Secretary of the Exchange.~~

Sec. 9. Compensation

~~The Board of Directors may, except as otherwise provided in the Certificate or By Laws, fix the compensation of directors for their services and a director may also be a salaried officer of the Exchange.~~

Sec. 10. Vacancies

~~Vacancies on the Board, including vacancies resulting from an increase in the number of directors, shall be filled by a majority vote of the directors then in office, although less than a quorum, and each individual so elected and who qualifies therefor shall be a director until his successor is elected by the common shareholders or the voting trustees, as required under the By Laws, who may make such election at the next annual meeting of the Exchange or at any special meeting duly called for that purpose and held prior thereto, or until his earlier resignation or removal.~~

Sec. 11. Removals

~~Any director may be removed with or without cause by vote of a majority of the common shareholders at a meeting duly called for such purpose.~~

Sec. 12. Resignations

~~Any director may resign at any time by submitting his written resignation to the Secretary of the Exchange. Such resignation shall take effect at the time of its receipt by the Secretary of the Exchange unless another time is fixed in the resignation, in which case it shall become effective at the time so fixed. The acceptance of a resignation shall not be required to make it effective.~~

Sec. 13. Conduct of Meetings

~~The Board of Directors may adopt such rules and regulations for the conduct of its meetings as it may deem proper, consistent with the laws of the Commonwealth of Pennsylvania, the Certificate and the By Laws.~~

Sec. 14. Voting By Members of Board and Certain Committees

(a) Definitions. For purposes of this Rule:

(1) Committee shall refer to any of the following:

~~(i) Standing Committee of the Board of Directors as defined in Article V;~~

~~(ii) Advisory Committee appointed pursuant to Article V;~~

~~(iii) Hearing Panel appointed pursuant to Chapter V; or~~

~~(iv) Any other person or committee of persons, or any subcommittee thereof, that is authorized by the Exchange to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof in cases involving any violations of Exchange Rules, except those cases where the person or committee is authorized summarily to impose minor penalties for violating Rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or similar activities.~~

~~(2) Family relationship~~ shall mean a person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(3) Governing Board shall refer to either of the following:

~~(i) Board of Directors~~

~~(ii) Executive Committee~~

~~(iii) or any subcommittee of the Board of Directors or the Executive Committee~~

~~(4) Member's affiliate firm shall mean a firm in which the member is a "principal," as defined in Commission Regulation Section 3.1(a) or an employee.~~

~~(5) Named party in interest shall mean a person or entity that is identified by name as a subject of any matter being considered by the Board or Committee.~~

~~(6) Significant Action shall mean any actions or rule changes which address an "emergency" as defined in Commission Regulation 40.1(h) (exclusive of physical emergencies), and any changes in margin levels that are designed to respond to extraordinary market conditions or are likely to have a substantial effect on prices in any contract traded at the Exchange.~~

~~(b) Relationship with named party in interest.~~

~~(1) Nature of relationship. A member of a Governing Board or Committee must abstain from such body's deliberations and voting on any matter involving a named party in interest where such member:~~

~~(i) is a named party in interest;~~

~~(ii) is an employer, employee, or fellow employee of a named party in interest;~~

~~(iii) is associated with a named party in interest through a "broker association" as defined in Commission Regulation on 156.1;~~

~~(iv) has any other significant, ongoing business relationship with a named party in interest; or~~

~~(v) has a family relationship with a named party in interest.~~

~~(2) Disclosure of relationship. Prior to the consideration of any matter involving a named party in interest, each member of a Governing Board or Committee must disclose to the Exchange's Corporate Secretary whether he or she has one of the relationships listed in section (b)(1) above with a named party in interest.~~

~~(3) Procedure for determination. The Exchange's Secretary shall review items for consideration by the Governing Board or Committee for purposes of determining whether any such member thereof is subject to a conflict restriction in any matter involving a named party in interest. Such determinations shall be based upon information provided by the member pursuant to paragraph (b)(2) above and any other information held by and reasonably available to the Exchange's Secretary.~~

(e) Financial interest in a significant action.

~~(1) Nature of relationship.~~ A member of any Governing Board or Committee must abstain from such body's deliberations and voting on any significant action if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either position at the Exchange or other exchange positions that could reasonably be expected to be affected by the action.

~~(2) Disclosure of interest.~~ Prior to the consideration of any significant action, each member of any Governing Board or Committee must disclose to the Exchange's Secretary information that is known to him or her or any other information that would present a conflict. This requirement does not apply to members who choose to abstain from deliberations and voting on the subject of the significant action.

~~(d) Documentation of determination.~~ The Governing Board or Committee must reflect in its minutes or otherwise document that the conflicts determination procedures required by this Rule have been followed. Such records must also include:

- ~~(i) the names of all members who attended the meeting in person or who otherwise were present by electronic means;~~
- ~~(ii) the name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated; and information on the position information that was reviewed for each member.~~

ARTICLE V Committees

Sec. 1. Committees

~~(a) The Standing Committees of the Exchange shall consist of a Regulatory Oversight Committee, a Business Conduct Committee, an Executive Committee, and a Nominating Committee and may also include a Finance Committee. Except as otherwise provided in the By Laws, each of such committees shall be composed of not less than three individuals and shall be comprised of at least thirty five percent Public Directors.~~

~~Members of such committees shall be directors of the Exchange.~~

~~With respect to the Business Conduct Committee, no person shall serve on that committee who is subject to any of the conditions specified in Commodity Futures Trading Commission Regulation 1.63(b)(1) through (6). Should any member of the Business Conduct Committee thus become ineligible to serve, the chairman of that committee shall remove such member and fill the resulting vacancy.~~

~~(b) Except as otherwise specifically provided in the By Laws, the Standing Committees shall be appointed by the Board of Directors as promptly as possible after~~

each annual meeting of the Exchange. Each appointee shall serve for one year or until his successor is appointed, until his resignation or removal by a majority vote of the Board of Directors. Subject to like approval, the Chairman of the Board of Directors shall designate the chairman of each such committee.

(e) ~~Each Standing Committee shall assist in the supervision, management and control of the affairs of the Exchange within its particular area of responsibility and interest. Subject always to the control and supervision of the Board of Directors, each Standing Committee shall recommend for adoption and administer the Rules of the Exchange within its particular area of responsibility and interest and shall make such rules as it may deem necessary for the orderly conduct of its business.~~

(d) ~~In addition to the Standing Committees, the Board of Directors may constitute and appoint by rule or resolution special committees and designate their composition, responsibilities and powers, as well as their chairmen.~~

(e) ~~Subject always to the control and supervision of the Board of Directors, each Standing Committee, exclusive of the Finance Committee and the Regulatory Oversight Committee, and each Special Committee shall determine the manner and form in which its proceedings shall be conducted, and may act at a meeting or without a meeting, and through a quorum composed of a majority of all its members then in office. Except as otherwise specifically provided in the By Laws or Rules, the decision of a majority of those present at a meeting at which a quorum is present, or the decision of a majority of those participating when at least a quorum participates, shall be the decision of the Committee. One or more members of any such committee may participate in any meeting thereof by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.~~

(f) ~~In the absence or disqualification of any member of such committee, the following individuals, in the order of their availability, may appoint another qualified individual to act at the meeting in the place of any such absent or disqualified member: the Chairman of the Board of Directors of the Exchange; or the Chairman of the particular committee~~

Sec. 3. Business Conduct Committee

The Business Conduct Committee shall have jurisdiction to: (a) monitor compliance with the By Laws and Rules of the Exchange or any interpretation thereof and the rules, regulations, resolutions and stated policies of the Board of Directors or any committee of the Exchange, by Futures Participants or persons associated with or employed by Futures Participants; (b) inquire into the business conduct and financial condition of Futures Participants or persons associated with or employed by Futures Participants and require detailed financial reports and such other operational reports as it may deem advisable of any Futures Participants; (c) authorize the initiation of any disciplinary action or proceeding brought by the Exchange and render a decision in any such action or proceeding; (d) conduct hearings and render decisions in summary disciplinary actions and proceedings; (e)

~~suspend a Futures Participants upon its determination that there is a substantial question as to whether a financial emergency exists with respect to such Futures Participants; (f) prohibit trading by a Futures Participants which is excessive in view of its capital; and (g) impose appropriate sanctions of expulsion, suspension, fine, censure or any other fitting sanction where the Committee finds that a violation within the disciplinary jurisdiction of the Exchange has been committed.~~

~~With respect to the composition of the Business Conduct Committee, no person shall serve on that committee who is subject to any of the conditions specified in Commodity Futures Trading Commission Regulation 1.63(b)(1) through (6). Should any member of the Business Conduct Committee thus become ineligible to serve, the chairman of that committee shall remove such member and fill the resulting vacancy. In addition, when acting as a major disciplinary committee, pursuant to Commission Regulation 1.64, unless the case is related to decorum or attire, financial requirements or reporting or recordkeeping, and does not involve fraud, deceit or conversion, the Business Conduct Committee shall be comprised at least 50% of persons representing the interest of Futures Participants other than that of the subject of the disciplinary proceeding and, if the subject of the disciplinary action is a member of the Exchange's Board of Directors or any major disciplinary committee, or whenever any of the rule violations involved pertain to manipulation or attempted manipulation of the price of a commodity, futures contract or option on a futures contract, or to conduct which directly results in financial harm to a non-Futures Participants, at least one person who is not a Futures Participants of the Exchange. The committee as a whole shall be comprised of three Public Directors and two other directors who represent the interests of Futures Participants.~~

~~Sec. 5. Executive Committee~~

~~(a) The Executive Committee shall consist of the Chairman of the Board of Directors, two Public Directors and two other directors who the Board of Directors may authorize. The Executive Committee shall execute and implement policy previously established by the Board of Directors, shall make recommendations concerning policy previously established by the Board of Directors, shall appoint a panel of disinterested individuals to arbitrate any dispute between Futures Participants submitted for arbitration pursuant to the Arbitration Rules of the Exchange and exercise other authority incidental thereto and shall have such other powers and shall perform such other duties as the Board of Directors may delegate to it in writing from time to time.~~

~~(b) When the Board of Directors is not in session, the Executive Committee shall have and may exercise all power and authority of the Board, which may lawfully be delegated to it by the Board and which are not in conflict with the limitations created by the Board, the Certificate of Incorporation or By Laws. All actions of the Executive Committee shall be reported to the Board of Directors.~~

Sec. 6. Finance Committee

~~The Finance Committee of the Exchange shall be an optional Standing Committee. If the Board of Directors appoints a Finance Committee it shall consist of the Chairman and two Public Directors.~~

~~The Finance Committee shall examine the accounts of the Exchange. It shall prepare and present to the Board of Directors an estimate of the income of the Exchange for the succeeding calendar year and its recommendations as to the appropriations for expenses for said period. It may at any time recommend additional appropriations or the increase or decrease of any appropriations made by the Board of Directors and shall make reports and recommendations to the Board of Directors as to the financial policy of the Exchange.~~

~~The Finance Committee shall have such other powers and duties as may be delegated to it by the Board of Directors.~~

Sec. 8. Nominating Committee

~~The Nominating Committee shall consist of the Chairman and two Public Directors.~~

Sec. 9. Regulatory Oversight Committee

~~The Regulatory Oversight Committee shall consist of four Public Directors.~~

~~The Regulatory Oversight Committee shall: (A) monitor the Exchange's regulatory program for sufficiency, effectiveness, and independence; (B) oversee all facets of the regulatory program, including trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to Futures Participants (insuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations; (C) provide oversight over the systems of internal controls established by management and the Board and the Exchange's legal and compliance process; (D) review the size and allocation of the regulatory budget and resources and the number, hiring and termination, and compensation of regulatory personnel; (E) supervise the Chief Regulatory Officer, who will report directly to the Regulatory Oversight Committee; (F) prepare an annual report assessing the Exchange's self regulatory program for the Board of Directors and the Commodity Futures Trading Commission, which sets forth the regulatory program's expenses, describes its staffing and structure, catalogues disciplinary actions taken during the year, and reviews the performance of disciplinary committees and panels; (G) recommend changes that would ensure fair, vigorous, and effective regulation; and (H) review regulatory proposals and advise the Board as to whether and how such changes may impact regulation.~~

~~The Regulatory Oversight Committee may select and engage its own advisor(s) to assist it in carrying out its duties.~~

ARTICLE VI Vacancies Created By Expulsion, Suspension or Termination of Membership

Sec. 1. Office Vacated by Suspension or Expulsion

~~Upon the expulsion or suspension of a Futures Participant, whether for insolvency or otherwise, any office in the Exchange held by that Futures Participant shall thereupon become vacant.~~

ARTICLE VII Rules

Sec. 1. Rules and Regulations

~~The Board of Directors may make and from time to time alter, amend and repeal rules relating to and regulating the business and affairs of the Exchange. The Rules of the Exchange, made in accordance with the By Laws, shall have the same force and effect as though a part hereof. The Board of Directors shall have the power to interpret the Rules adopted pursuant hereto and any and all amendments or changes therein and additions thereto, and any such interpretations so made shall be final and conclusive.~~

ARTICLE VIII Officers

Sec. 1. Officers

~~The officers of the Exchange shall be elected by the Board of Directors and shall be a Chief Executive Officer, a President, one or more Vice Presidents, Secretary, Treasurer, Chief Regulatory Officer and such other officers as the Board of Directors shall authorize from time to time; provided, however, that the Chief Executive Officer of the Exchange, with the approval of the Board of Directors, may appoint one or more of such other officers as provided in the By Laws. Any number of offices may be held by the same individual except the offices of the President and Treasurer. It shall not be necessary for the officers to be directors, except that the Chief Executive Officer shall be a member of the Board of Directors. The Board of Directors shall elect or appoint such agents as it may deem appropriate.~~

Sec. 2. Compensation

~~The salaries of all officers and agents of the Exchange shall be fixed by the Board of Directors.~~

Sec. 3. Term of Office

~~The officers of the Exchange shall hold office for the terms for which they are elected or appointed and until their successors are chosen and have qualified. Any officer or agent may be removed by the Board of Directors whenever in its judgment the best interests of the Exchange will be served thereby.~~

Sec. 4. Chief Executive Officer

The Chief Executive Officer of the Exchange shall be a member of the Board of Directors. The Chief Executive Officer shall be Chairman of the Board of Directors of the Exchange. The Chief Executive Officer shall have general supervision over the business and affairs of the Exchange. The Chief Executive Officer shall have all powers and duties of supervision and management usually incident to the office of the Chief Executive Officer of a corporation, 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 of Directors. The Chief Executive Officer shall be an ex officio member of all Standing Committees.

Subject to the approval of the Board of Directors, the Chief Executive Officer may appoint the other officers of the Exchange as provided for in the By Laws and such additional officers as he may determine are required for the efficient management of the Exchange. Subject to like approval, he may fix their duties, responsibilities and terms of office or employment and he may terminate their terms of office or employment at any time. All officers of the Exchange as provided for in the By Laws shall be responsible to the Board of Directors and all other officers shall be responsible to the Chief Executive Officer for the proper performance of their duties. The Chief Executive Officer shall have power to appoint or hire agents and all other employees of the Exchange; to fix the duties, responsibilities and terms of their employment and to terminate their employment at any time.

See. 5. President

The President shall be responsible for general and active management of the business and affairs of the Exchange, and shall see that all orders and resolutions of the Board of Directors are carried into effect, subject, however, to the right of the directors to delegate any specific powers to any other officer or officers of the Exchange.

See. 6. Chief Regulatory Officer

The Chief Regulatory Officer shall have general supervision of the regulatory operations of the Exchange, 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 Exchange is a party. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Exchange 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.

See. 7. Secretary

The Secretary shall attend all meetings of the Board of Directors and all meetings of the shareholders and shall act as clerk thereof, and record all votes of the Exchange and the

~~minutes of all its transactions in a book to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the shareholders and of the Board of Directors as required under the By Laws, and shall perform such other duties as may be prescribed by the Board of Directors or Chief Executive Officer. The Secretary shall keep in safe custody the seal of the Exchange, and when authorized by the Board of Directors, affix the same to any instrument requiring it.~~

Sec. 8. Treasurer

~~The Treasurer shall have charge of all funds and securities beneficially owned by the Exchange; shall endorse the same for deposit or collection when necessary; and deposit the same to the credit of the Exchange in such banks or depositories as the Board of Directors may authorize. The Treasurer may endorse all commercial documents requiring endorsements for or on behalf of the Exchange and may sign all receipts and vouchers for payments made to the Exchange. The Treasurer shall have all such powers and duties as generally are incident to the position of Treasurer or as may be assigned to the Treasurer by the Board of Directors or by the Chief Executive Officer.~~

Sec. 9. Vacancies

~~If the office of one or more officers or agents becomes vacant for any reason, the Board of Directors or, subject to the approval of the Board of Directors, the Chief Executive Officer may choose a successor or successors who shall hold office for the unexpired term in respect of which such vacancy occurred.~~

ARTICLE IX Indemnification

Sec. 1. Indemnification

~~Any person made, or threatened to be made a party to any action or proceeding, whether civil or criminal, by reason of the fact that he, his testator or intestate, is or was a director, officer, or employee, or a member of a committee of the Exchange or serves or served any other corporation, partnership, joint venture, trust or other enterprise in any capacity at the request of the Exchange, shall be indemnified by the Exchange and the Exchange may advance his related expenses, to the full extent permitted by law.~~

ARTICLE X Share Certificates

Sec. 1. Share Certificates

~~The share certificates of the Exchange shall be numbered and registered in the share ledger and transfer books of the Exchange as they are issued. They shall bear the seal of the Exchange and shall be signed by the President and the Secretary or by such other officers as the Board of Directors may decide. All share certificates shall contain such information as is required by law to be stated thereon.~~

Sec. 2. Transfer of Shares

~~Transfers of shares on the record of shareholders of the Exchange shall be made only upon surrender to the Exchange of the certificate or certificates for such shares, duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer. No transfer shall be made which is inconsistent with law or the Certificate, By Laws and Rules of the Exchange and a preferred shareholder shall have no right to transfer or redeem such stock except as provided in the By Laws and Rules of the Exchange.~~

Sec. 3. Record Date for Meetings and Other Purposes

~~The Board of Directors may fix a time, not more than fifty days prior to the date of any meeting of shareholders, or the date fixed for the payment of any distribution, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares will be made or go into effect, as a record date for the determination of the shareholders entitled to notice of, or to vote at, any such meeting, or to receive any such distribution or any such allotment of rights, or to exercise the rights in respect to any such change, conversion, or exchange of shares. In such case, only such shareholders as shall be shareholders of record on the date so fixed shall be entitled to notice of, or to vote at, such meeting or to receive payment of such distribution, or to receive such allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any shares on the books of the Exchange after any record date fixed as aforesaid. The Board of Directors may close the books of the Exchange against transfers of shares during the whole or any part of such period, and in such case, written notice thereof shall be mailed at least ten days before the closing thereof to each shareholder of record at the address appearing on the records of the Exchange or supplied by him to the Exchange for the purpose of notice. While the stock transfer books of the Exchange are closed, no transfer of shares shall be made thereon. If no record date is fixed for the determination of shareholders entitled to receive notice of, or vote at, a shareholders' meeting, transferees of shares which are transferred on the books of the Exchange within the ten days immediately preceding the date of such meeting shall not be entitled to notice of or to vote at such meeting.~~

Sec. 4. Lost, Stolen or Destroyed Certificates

~~In the event that a share certificate shall be lost, stolen, destroyed or mutilated, a new certificate may be issued therefor upon such terms and indemnity to the Exchange as the Board of Directors may prescribe.~~

ARTICLE XI Miscellaneous

Sec. 1. Authority to Sign Checks

~~All checks or demands for money and notes of the Exchange shall be signed by such officer or officers as the Board of Directors may from time to time designate.~~

Sec. 2. Fiscal Year

~~The Board of Directors shall have the power by resolution to fix the fiscal year of the Exchange. If the Board of Directors shall fail to do so, the President shall fix the fiscal year.~~

Sec. 3. Annual Statement of the Exchange

~~The President and Board of Directors shall present at each annual meeting a full and complete statement of the business and affairs of the Exchange for the preceding year. Such statement shall be prepared and presented in whatever manner the Board of Directors shall deem advisable and need not be verified by a certified public accountant.~~

Sec. 4. Method of Giving Written Notice

~~Unless otherwise specifically provided, written notice required to be given to any person by statute, the Certificate, By Laws or Rules of the Exchange may be given to such person either personally or by sending a copy thereof through the mail, or by facsimile, or by electronic mail to his address appearing on the books of the Exchange, or supplied by him to the Exchange for the purpose of notice. If notice is sent by mail, or by facsimile, or by electronic mail, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail. If such notice is of a meeting, it shall specify the place, day and hour of the meeting, and in the case of a special meeting of shareholders, the general nature of the business to be transacted.~~

Sec. 5. Waiver of Notice

~~Unless otherwise specifically provided, any written notice required to be given by statute, the Certificate, By Laws or Rules of the Exchange need not be given if there is a waiver thereof in writing, signed by the person entitled to such notice, whether before or after the time when notice would otherwise be required to be given. If the notice is of a meeting other than a special meeting of shareholders, neither the business to be transacted at, nor the purpose of, the meeting need be specified in the waiver of notice of such meeting.~~

Sec. 6. Notices to Futures Participants

- (a) ~~Futures Participants shall provide any required notice to the Exchange in the manner set forth in the By Laws and Rules or other Exchange regulatory or operational procedures, as applicable.~~
- (b) ~~The Exchange may provide a notice to Futures Participants in the following manner:~~
 - (1) ~~handing a copy to Futures Participants, or~~
 - (2) ~~mailing a copy to Futures Participants to the address supplied to the Exchange by the Futures Participant for notice, or~~

- (3) transmitting electronically a copy to the Futures Participant (including electronic-mail transmission) to the address supplied to the Exchange by the Futures Participant for notice, or
- (4) posting the notice on the Exchange's website.

Sec. 7. Right to Issue Permits and Non Transferability

- (a) In addition to all other powers granted to the Board of Directors by law, these By Laws or otherwise, the Board of Directors shall have the power to issue permits to conduct business on the Exchange or on specific facilities of, or operated by, the Exchange, and to adopt by resolution or to set forth in the Rules of the Exchange such Rules with respect to such permits as the Board Directors may from time to time determine in its sole discretion to be advisable, including, without limitation, the Rules governing the terms and conditions of such permits and the number, types and attributes thereof at any time authorized for issuance, the transferability or non transferability of such permits, the termination and/or suspension of rights and privileges appertaining to permits, the qualifications that must be met for a person to be issued any such permit, and the dues, fees and other charges to be paid to the Exchange in connection with such permits and by persons applying for, using, holding or (if allowed) transferring such permits, and for firms and organizations with which such persons are affiliated or associated in any manner. Such permits do not represent an equity interest in the Exchange and shall confer upon any person only such rights, privileges and obligations as are expressly set forth in these By Laws, the Rules of the Exchange and any resolution of the Board of Directors. The Board of Directors may authorize any committee thereof or the Chair of the Board of Directors to exercise any powers of the Board of Directors with respect to such permits.
- (b) Except as otherwise set forth in the Rules of the Exchange or any resolution of the Board of Directors authorizing a specific class or series of permits, a permit will confer upon and subject the holder thereof to all the privileges and obligations of a Futures Participant pursuant to these By Laws and the Rules of the Exchange, including, without limitation, the right to vote (exclusively through the Executive Representative of the Futures Participant identified by such holder as its primary affiliation) and to conduct business on the Exchange as provided in these By Laws and such Rules. Except as otherwise provided in the Rules of the Exchange or any resolution of the Board of Directors authorizing a specific class or series of permits, no permit may be sold, transferred (by operation of law or otherwise), leased or otherwise encumbered by any person to whom such permit is issued by the Exchange.

Sec. 8. Rights and Privileges of Permit Holders

- (a) Upon receipt of a permit, a Futures Participant shall, except as otherwise set forth in the Rules of the Exchange or any resolution of the Board of Directors authorizing a specific class or series of permits, have all the rights and privileges and shall be under all the duties and obligations in accordance with these By Laws and the Rules of the Exchange, and, if

~~permitted in the Rules of the Exchange or any resolution of the Board of Directors authorizing a specific class or series of permits.~~

~~(b) Notwithstanding anything to the contrary contained in these By Laws or the Rules of the Exchange, the ability of a permit holder to exercise any right or privilege of a Futures Participant is subject to such holder's compliance with applicable registration, testing, capital, fitness, allocation, or other rules, requirements or procedures of the Exchange as may be established from time to time relating to trading on the Exchange, use of given services of, or facilities of or operated by, the Exchange, and to the payment of applicable fees, dues and other charges.~~

Sec. 9. Acceptance of LLC Agreement, By Laws and Rules

~~(a) No permit shall be issued until such Futures Participant has pledged in writing to abide by (to the extent applicable), these By Laws and all Rules and regulations of the Exchange (which, for all purposes under these By Laws, shall be deemed to include any dues, fees and other charges imposed by the Exchange), in each case as they have been or shall be from time to time amended.~~

ARTICLE XII Amendments

Sec. 1. Amendment Procedure

~~The Board of Directors shall have the power to make, alter, amend and repeal the By Laws. The powers conferred in this By Law Section 12-1 on the Board of Directors shall be exercised by the affirmative vote of a majority of the whole Board of Directors at a regular or special meeting, provided notice of any proposed action on the By Laws is included in the notice of such meeting or if such meeting is held without notice as provided in By Law Section 4-5, then written notice of any such proposed action shall be provided separately prior thereto.~~

Exhibit C

New text is underlined; deleted text is in brackets.

NASDAQ OMX Futures Exchange – Rules

* * * * *

Chapter I Definitions and Governance of the Exchange

Section 1 Definitions

Unless otherwise specifically provided in the By-Laws or Rules of the Exchange or the context otherwise requires, the terms defined herein shall for all purposes of the By-Laws and Rules of the Exchange, have the meanings therein specified.

* * * * *

Exchange. The term “**Exchange**” means NASDAQ OMX Futures Exchange, Inc. or “NQF” and when used with reference to the administration of any By-Law or Rule of the Exchange, means either the Board of Directors or the officer, employee, agent or committee to whom appropriate authority to administer such provision has been delegated by the Board.

* * * * *

Section 7 Disclosure and Trading by Exchange Employees, Consultants, Directors and Committee Members

(a) Disclosure of Information.

(i) **Employees.** An employee of the Exchange shall not disclose to any other person any material, non-public information which such employee obtains as a result of his or her employment at the Exchange if such employee has or should have a reasonable expectation that such information disclosed may assist another person in trading any commodity interest; however, such provision does not prohibit disclosures made in the course of an employee's duties or disclosure made to another self-regulatory organization, linked exchange, court of competent jurisdiction or representative of any agency or department of the federal or state government acting in his or her official capacity.

(ii) **Directors and Committee Members.** No member of the Exchange's Board of Directors or any standing committee shall use or disclose, for any purpose other than the performance of such person's official duties as a Director or member of a standing committee, material, non-public information obtained as a result of such person's participation on any committee or governing board of the Exchange.

(b) [Member] Transactions by Futures Participants. No Futures Participant shall effect a transaction in a commodity interest for an account in which an employee of the Exchange or any affiliate of the Exchange is directly or indirectly interested, or any other commodity interest traded on or cleared by another contract market, linked exchange or clearing organization where such employee has access to material non-public information concerning such commodity interest.

(c) Employee Transactions. No employee of the Exchange or any affiliate of the Exchange may purchase or sell for his own account or for the account of others any commodity interest where the employee has access to material nonpublic information concerning such commodity interest.

(d) For purposes of this Rule the term "employee" shall include any consultant hired by the Exchange.

• • • **Commentary:** -----

.01 With respect to the above-referenced Rule the Exchange has determined that the terms "material non-public information" and "commodity interest" shall be defined pursuant to CFTC regulation 1.59(a).

Section 8 Voting By Board of Directors and Certain Committees

(a) Definitions. For purposes of this Rule:

(1) Committee shall refer to any of the following:

(i) Committee of the Board of Directors as defined in Article V of the By-Laws;

(ii) BCC Panel appointed pursuant to Chapter VI; or

(iv) Any other person or committee of persons, or any subcommittee thereof, that is authorized by the Exchange to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof in cases involving any violations of Exchange Rules, except those cases where the person or committee is authorized summarily to impose minor penalties for violating Rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions or similar activities.

(2) Family relationship shall mean a person's spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(3) Governing Board shall refer to either of the following:

(i) Board of Directors

(ii) Executive Committee

(iii) or any subcommittee of the Board of Directors or the Executive Committee

(4) Member's affiliate firm shall mean a firm in which the member is a "principal," as defined in Commission Regulation Section 3.1(a) or an employee.

(5) Named party in interest shall mean a person or entity that is identified by name as a subject of any matter being considered by the Board or Committee.

(6) Significant Action shall mean any actions or rule changes which address an "emergency" as defined in Commission Regulation 40.1(h) (exclusive of physical emergencies), and any changes in margin levels that are designed to respond to extraordinary market conditions or are likely to have a substantial effect on prices in any contract traded at the Exchange.

(b) Relationship with named party in interest.

(1) Nature of relationship. A member of a Governing Board or Committee must abstain from such body's deliberations and voting on any matter involving a named party in interest where such member:

(i) is a named party in interest;

(ii) is an employer, employee, or fellow employee of a named party in interest;

(iii) is associated with a named party in interest through a "broker association" as defined in Commission Regulation on 156.1;

(iv) has any other significant, ongoing business relationship with a named party in interest; or

(v) has a family relationship with a named party in interest.

(2) Disclosure of relationship. Prior to the consideration of any matter involving a named party in interest, each member of a Governing Board or Committee must disclose to the Exchange's Corporate Secretary whether he or she has one of the relationships listed in section (b)(1) above with a named party in interest.

(3) Procedure for determination. The Exchange's Secretary shall review items for consideration by the Governing Board or Committee for purposes of determining whether any such member thereof is subject to a conflict restriction in any matter involving a named party in interest. Such determinations shall be based upon information provided by the member pursuant to paragraph (b)(2) above and any other information held by and reasonably available to the Exchange's Secretary.

(c) Financial interest in a significant action.

(1) Nature of relationship. A member of any Governing Board or Committee must abstain from such body's deliberations and voting on any significant action if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either position at the Exchange or other exchange positions that could reasonably be expected to be affected by the action.

(2) Disclosure of interest. Prior to the consideration of any significant action, each member of any Governing Board or Committee must disclose to the Exchange's Secretary information that is known to him or her or any other information that would present a conflict. This requirement does not apply to members who choose to abstain from deliberations and voting on the subject of the significant action.

(d) Documentation of determination. The Governing Board or Committee must reflect in its minutes or otherwise document that the conflicts determination procedures required by this Rule have been followed. Such records must also include:

(i) the names of all members who attended the meeting in person or who otherwise were present by electronic means;

(ii) the name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated; and information on the position information that was reviewed for each member.

Section 9 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.

(k) 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.