

Nasdaq PHLX Rules, Second Amended Limited Liability Company Agreement of Nasdaq PHLX LLC

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This Second Amended Limited Liability Company Agreement (together with the exhibits and schedules attached hereto, this "Agreement") of Nasdaq PHLX LLC (the "Exchange"), is entered into by Nasdaq, Inc. as the sole member of the Exchange (as "Stockholder").

WHEREAS, on September 1, 2010, NASDAQ OMX PHLX, Inc., a Delaware corporation (the "Corporation"), was converted to a limited liability company pursuant to Section 18-214 of the Delaware Limited Liability Company Act (6 Del. C. § 18-101, et seq.), as amended from time to time (the "LLC Act" and Section 266 of the General Corporation Law of the State of Delaware (8 Del. C. § 101, et seq.) by causing the filing with the Secretary of State of the State of Delaware of a Certificate of Conversion to Limited Liability Company and a Certificate of Formation (the "Conversion"); and

WHEREAS, pursuant to the Limited Liability Agreement dated September 1, 2010 (the "Original LLC Agreement") and the Conversion, (i) all the capital stock of the Corporation was converted into all the limited liability company interests in the Exchange, (ii) The NASDAQ OMX Group, Inc. ("NASDAQ OMX Inc."), as the sole common shareholder of the Corporation, became a member of the Exchange and the owner of all of the Common Stock (as defined below) in the Exchange, and (iii) PHLX Member Voting Trust (the "Trust"), as the sole preferred shareholder of the Corporation, became a member of the Exchange and the owner of all of the Series A Preferred Stock (as defined below) in the Exchange.

WHEREAS, the First Amended Limited Liability Company Agreement amended the Original LLC Agreement to make certain administrative changes and to eliminate the Series A Preferred Stock;

WHEREAS, the Stockholder and the Board of Directors desire to amend this Agreement to reflect the name changes of The NASDAQ OMX Group, Inc. to Nasdaq, Inc. and of NASDAQ OMX PHLX LLC to Nasdaq PHLX LLC;

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

Section 1. Name; Conversion.

(a) The name of the limited liability company is Nasdaq PHLX LLC.

Section 2. Principal Business Office.

The principal business office of the Exchange shall be located at FMC Tower, 2929 Walnut Street, Philadelphia, Pennsylvania or such other location as may hereafter be determined by the Board of Directors.

Section 3. Registered Office; Registered Agent.

The address of the registered office of the Exchange 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 Exchange at such address is The Corporation Trust Company.

Section 4. Members.

The mailing address of the Stockholder is set forth on Schedule B attached hereto. The Stockholder hereby continues as a member of the Exchange upon its execution of a counterpart signature page to this Agreement.

Section 5. Certificates.

Joan C. Conley, as an "authorized person" within the meaning of the Act, has executed, delivered and filed the Certificate of Formation of the Exchange and the Certificate of Conversion to Limited Liability Company with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation and the Certificate of Conversion to Limited Liability Company with the Secretary of State of the State of Delaware, her powers as an "authorized person" ceased, and the Stockholder, each Director and each Officer thereupon became a designated "authorized person" and hereby continues as an designated "authorized person" within the meaning of the Act. A Stockholder, Director or an Officer, as an authorized person, within the meaning of the Act, shall execute, deliver and file, or cause the execution, delivery and filing of, all certificates (and any amendments and/or restatements thereof) required or permitted by the Act to be filed in with the Secretary of State of the State of Delaware. A Stockholder, Director or any Officer shall execute, deliver and file, or cause the execution, delivery and filing of any certificates (and any amendments and/or restatements thereof) necessary for the Exchange to qualify to do business in any jurisdiction in which the Exchange may wish to conduct business. The existence of the Exchange as a separate legal entity shall continue until the cancellation of the Certificate of Formation as provided in the LLC Act.

Section 6. Purpose.

The Exchange is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Exchange is, engaging in any lawful act or activity for which limited liability companies may be formed under the LLC Act and engaging in any and all activities necessary or incidental to the foregoing. Without limiting the generality of the foregoing, the nature of the business or purposes to be conducted and promoted shall include (i) supporting the operation, regulation, and surveillance of the national securities exchange operated by the Exchange, (ii) preventing fraudulent and manipulative acts and practices, promoting just and equitable principles of trade, fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removing impediments to and perfecting the mechanisms of a free and open market and a national market system, and, in general, protecting investors and the public interest, (iii) supporting the various elements of the national market system pursuant to Section 11A of the Exchange Act and the Rules thereunder, (iv) fulfilling the Exchange's self-regulatory responsibilities as set forth in the Exchange Act, and (v) supporting such other initiatives as the Board may deem appropriate.

Section 7. Powers.

The Exchange, and the Board of Directors and the Officers of the Exchange on behalf of the Exchange, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 6, including without limitation, those powers set forth in the By-Laws, and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the LLC Act.

Section 8. Management.

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

(b) Powers. The Board of Directors shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. The Board of Directors has the authority to bind the Exchange. To the fullest extent permitted by applicable law, the By-Laws, and this Agreement, the Board may delegate any of its powers to a committee appointed pursuant to Section 8(g) or to any officer, employee or agent of the Exchange.

(c) By-Laws. The Exchange, the Stockholder and the Board of Directors hereby adopt the By-Laws of the Exchange in the form attached hereto as Exhibit A, as the same may be amended from time to time in accordance with the terms therein and in this Agreement (the "By-Laws"). The Board, each Officer and the Stockholder shall be subject to the express provisions of this Agreement and of the By-Laws, including, but not limited, to Section 2-2 of the Bylaws. In case of any conflict between the provisions of this Agreement and any provisions of the By-Laws, the provisions of this Agreement shall control.

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

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

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

(g) Committees.

i. The Board may designate one or more committees, each committee to consist of one or more of the Directors or other Persons. The By-Laws may establish the initial committees, which may be altered, eliminated or restructured by an amendment to the By-Laws. The Board may designate one or more Directors or other Persons as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

ii. Except as otherwise provided by the By-Laws, members of a committee shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a committee may be removed from such committee only by the Board. Vacancies in the membership of any committee shall be filled by the Board.

iii. Each committee may adopt its own Rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

iv. Unless otherwise required by the By-Laws, a majority of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

v. To the extent provided in the resolution of the Board, any committee that consists solely of one or more Directors shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. In the absence or disqualification of a member of a committee composed solely of Directors, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

(h) Compensation of Directors; Expenses. The Board shall have the authority to fix the compensation of Directors. The Directors may be paid their expenses, if any, of attendance at meetings of the Board and may be paid a fixed sum for attendance at each meeting of the Board, a stated salary as Director or other remuneration. No such payment shall preclude any Director from serving the Exchange in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

(i) Removal and Resignation of Directors. Unless otherwise restricted by law, any Director may be removed or expelled for cause by the Stockholder, and may be removed by the Board of Directors in the manner provided by the By-Laws. Any vacancy caused by any such removal or expulsion may be filled in the manner provided in the By-Laws. Any Director may resign at any time either upon notice of resignation to the Chair of the Board, the Chief Executive Officer, the President or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

(j) Directors as Agents. To the extent of their powers set forth in this Agreement, the Directors are agents of the Exchange for the purpose of the Exchange's business, and the actions of the Directors taken in accordance with such powers set forth in this Agreement shall bind the Exchange. Notwithstanding the last sentence of Section 18-402 of the LLC Act, except as provided in this Agreement or in a resolution of the Directors, a Director may not bind the Exchange.

Section 9. Officers.

(a) Appointment. Except as provided herein, the Board may, from time to time as it deems advisable, select natural persons who are employees or agents of the Exchange and designate them as officers of the Exchange (the "Officers") and assign titles (including, without limitation, President, Vice President, Secretary and Treasurer) to any such person. Any number of offices may be held by the same person. The Board may appoint such other Officers and agents as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board. The salaries of all Officers and agents of the Exchange shall be fixed by or in the manner prescribed by the Board. The Officers shall hold office until their successors are chosen and qualified. Any Officer may be removed at any time, with or without cause, by the Board. Any vacancy occurring in any office of the Exchange shall be filled by the Board.

(b) Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement and the By-Laws or otherwise vested in them by action of the Board not inconsistent with this Agreement or the By-Laws, are agents of the Exchange for the purpose of the Exchange's business, and the actions of the Officers taken in accordance with such powers shall bind the Exchange.

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

Section 10. Limited Liability.

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

Section 11. Capital Contributions.

The Stockholder has contributed to the Exchange the amounts set forth in the books and records of the Exchange.

Section 12. Additional Contributions.

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

Section 13. Allocation of Profits and Losses.

The Exchange's profits and losses shall be allocated solely to the Stockholder.

Section 14. Distributions.

Distributions shall be made to the Stockholder at the times and in the aggregate amounts determined by the Board. Notwithstanding any provision to the contrary contained in this Agreement, (i) the Exchange shall not be required to make a distribution to the Stockholder on account of its interest in the Exchange if such distribution would violate the LLC Act or any other applicable law, and (ii) the Exchange shall not make a distribution to the Stockholder using Regulatory Funds (as defined in the By-Laws).

Section 15. Books and Records.

The Board shall keep or cause to be kept complete and accurate books of account and records with respect to the Exchange's business within the United States. The books of the Exchange shall at all times be maintained by the Board. The Stockholder and its duly authorized representatives shall have the right to examine the Exchange books, records and documents during normal business hours. The Exchange, and the Board on behalf of the Exchange, shall not have the right to keep confidential from the Stockholder any information that the Board would otherwise be permitted to keep confidential from the Stockholder pursuant to Section 18-305(c) of the LLC Act. The Exchange's books of account shall be kept using the method of accounting determined by the Stockholder. The Exchange's independent auditor shall be an independent public accounting firm selected by the Board.

Section 16. Reports.

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

Section 17. Limited Liability Company Interests.

(a) The limited liability company interests in the Exchange were formerly represented by shares of the Exchange. Initially, there were two classes of shares, designated as "Common Stock" and "Preferred Stock." All outstanding Preferred Stock are hereby redeemed at their liquidation value and any certificates

representing such interests are hereby cancelled. The Stockholder is the sole member of the Exchange and continues to hold its limited liability company interests in the Exchange, the Common Stock. The Common Stock shall hereinafter be referred to as limited liability company interests in the Exchange and shall no longer be evidenced by certificates. All certificates representing such interests shall be returned to the Exchange for cancellation.

Section 18. Other Business.

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

Section 19. Exculpation and Indemnification.

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

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

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

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

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

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

Section 20. Assignments.

The Stockholder may not transfer or assign in whole or in part its limited liability company interest in the Exchange, except to an Affiliate of such Stockholder.

Section 21. Dissolution.

(a) The Exchange shall be dissolved and its affairs shall be wound up upon the first to occur of the following: (i) the consent of the Stockholder and a majority of the whole Board, (ii) the termination of the legal existence of the Stockholder or the occurrence of any other event that terminates the continued membership of the Stockholder in the Exchange unless the Exchange is continued without dissolution in a manner permitted by this Agreement or the LLC Act or (iii) the entry of a decree of judicial dissolution under Section 18-802 of the LLC Act.

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

(c) In the event of dissolution, the Exchange shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Exchange in an orderly manner), and the assets of the Exchange shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the LLC Act.

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

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

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Exchange or by any creditor of the Stockholder. Nothing in this Agreement shall be deemed to create any right in any person or entity (other than Covered Persons, and to the extent provided in Article IV of the By-Laws, the Members and the Member Organizations, (each as defined in the By-Laws), and to the extent such Persons are represented thereby, the Trustee (each as defined in the By-Laws)) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third person or entity (other than the Covered Persons, and to the extent provided in Article IV of the By-Laws, the Members and the Member Organizations).

Section 23. Severability of Provisions.

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

Section 24. Entire Agreement.

This Agreement, together with the By-Laws, constitutes the entire agreement of the parties with respect to the subject matter hereof, and together these documents shall constitute the limited liability company agreement of the Exchange within the meaning of the LLC Act.

Section 25. Binding Agreement.

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

Section 26. Governing Law.

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

Section 27. Amendments.

This Agreement may be modified, altered, supplemented or amended by a resolution adopted by the Board and a written agreement executed and delivered by the Stockholder.

Section 28. Notices.

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Second Amended Limited Liability Company Agreement as of the ____ day of _____, 201_.

STOCKHOLDER:

NASDAQ , INC.

By: _____

Name:

Title:

SCHEDULE A

A. Definitions

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

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

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

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

"Bankruptcy" means, with respect to any Person, if (A) such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged as bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties; or (B) (i) 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or (ii) within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101 (1) and 18-304 of the LLC Act.

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

"By-Laws" has the meaning set forth in Section 8.

"Certificate of Formation" means the Certificate of Formation of the Exchange filed with the Secretary of State of the State of Delaware on September 1, 2010, as amended or amended and restated from time to time.

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

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

"Exchange" means Nasdaq PHLX LLC, a Delaware limited liability company.

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

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

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

"Officer" means an officer of the Exchange described in Section 9.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization or other organization, whether or not a legal entity, and any governmental authority.

Regulatory Funds means fees, fines, or penalties derived from the regulatory operations of the Exchange.

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

"Stockholder" means Nasdaq, Inc., as the sole member of the Exchange.

B. Rules of Construction

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

SCHEDULE B

Stockholder Name	Mailing Address	Limited Liability Company Interest
Nasdaq, Inc.	One Liberty Plaza, New York, NY 10006	100%

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Services and does not reflect the views of Nasdaq, Inc. Nasdaq, Inc. reserves the right to amend the Nasdaq PHLX Rules at its discretion.

Nasdaq PHLX Rules, ¶901, Certificate of Formation of NASDAQ OMX PHLX LLC

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CERTIFICATE OF FORMATION OF NASDAQ OMX PHLX LLC

This Certificate of Formation of NASDAQ OMX PHLX LLC (the "Company"), dated as of September 1, 2010, has been duly executed and is being filed by the undersigned, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 Del. C. §§ 18-101, et seq.).

FIRST. The name of the limited liability company is NASDAQ OMX PHLX LLC.

SECOND. The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

THIRD. The name and address of the registered agent for service of process on the Company in the State of Delaware are The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the date first above written.

/s/

Name: Joan C. Conley

Title: Authorized Person

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Nasdaq PHLX Rules, ¶901A, CERTIFICATE OF AMENDMENT TO CERTIFICATE OF FORMATION OF NASDAQ OMX PHLX LLC

[Click to open document in a browser](#)

This Certificate of Amendment to Certificate of Formation of Nasdaq PHLX LLC, a Delaware limited liability company (the "Company"), dated as of _____, 201_, has been duly executed and is being filed by the undersigned, as an authorized person, in accordance with the provisions of 6 Del. C. §18-202, to amend the Certificate of Formation of the Company, as filed in the office of the Secretary of State of the State of Delaware on September 1, 2010 (the "Certificate").

1. The name of the Company is NASDAQ OMX PHLX LLC.

Article FIRST of the Certificate is hereby amended to read as follows:

"FIRST. The name of the limited liability company is Nasdaq PHLX LLC."

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment to Certificate of Formation as of the date first above written.

Name:

Authorized Person

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Nasdaq PHLX Rules, BY-LAWS OF NASDAQ PHLX LLC

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These By-Laws have been established as the By-Laws of Nasdaq PHLX LLC, a Delaware limited liability company (the Exchange), pursuant to the Second Amended Limited Liability Company Agreement of the Exchange, dated as of _____, ____ (as amended from time to time, the “LLC Agreement”), and, together with the LLC Agreement, constitute the limited liability company agreement of the Exchange within the meaning of the LLC Act (as defined in the LLC Agreement). In the event of any inconsistency between the LLC Agreement and these By-Laws, the provisions of the LLC Agreement shall control.

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

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Nasdaq PHLX Rules, DEFINITIONS

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Unless the context requires otherwise, the terms defined in this Section shall, for all purposes of these By-Laws, have the meaning herein specified:

(a) Act

The term "Act" shall mean the Securities Exchange Act of 1934, as amended.

(b) Associated Person or Person Associated with a Member Organization

(b) The term "associated person" or "person associated with a member organization" means any partner, officer, director, or branch manager of an Exchange member organization or applicant (or person occupying a similar status or performing similar functions), or any person directly or indirectly controlling, controlled by, or under common control with such member organization or applicant, or any employee of such member organization or applicant, except that any person associated with a member organization or applicant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of the Exchange Rules.

(c) Board or Board of Directors

The term means the Board of Directors of the Exchange.

(d) Certificate of Formation

The term "Certificate of Formation" shall mean the Certificate of Formation of the Exchange, as amended and in effect from time to time.

(e) Commission

The term "Commission" means the United States Securities and Exchange Commission.

(f) Common Stock

The term "Common Stock" shall mean the Common Stock, par value \$0.01 per share, of the Exchange.

(g) Contested Vote

The term "Contested Vote" shall mean a process for selection of one or more Member Representative Directors for which the number of candidates on the List of Candidates exceeds the number of positions to be elected by the Stockholder.

(h) Demutualization Merger

The term "Demutualization Merger" shall mean the merger of Phlx Merger Sub, Inc., a Delaware corporation, with and into Nasdaq PHLX, Inc., with Nasdaq PHLX, Inc. as the surviving corporation, in connection with the demutualization of Nasdaq PHLX, Inc. from a non-stock membership corporation.

(i) Director

The term "Director" means the Persons elected or appointed to the Board of Directors from time to time in accordance with the LLC Agreement and these By-Laws, in their capacity as managers of the Exchange.

(j) Election Date

The term "Election Date" means a date selected by the Board on an annual basis, on which Members may vote with respect to Member Representative Directors in the event of a contested election.

(k) Exchange

The term "Exchange" shall mean Nasdaq PHLX LLC.

(l) Exchange Act

The term "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

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(m) Executive Representative

The term "Executive Representative" shall mean the executive representative who shall represent, vote, and act for the Member Organization in all the affairs of the Exchange; provided, however, that other representatives of a Member Organization may also serve on the Exchange Board or committees of the Exchange or otherwise take part in the affairs of the Exchange. Each Member shall appoint and certify to the Membership Department one executive representative. If an Member is also a member of FINRA, the executive representative shall be the same person appointed to serve as the FINRA executive representative. A Member may change its executive representative or appoint a substitute for its executive representative upon giving notice thereof to the Membership Department via electronic process or such other process as the Exchange may prescribe. An executive representative of a Member or a substitute shall be a member of senior management of the Member. Each executive representative shall maintain an Internet electronic mail account for communication with the Exchange and shall update firm contact information as prescribed by the Exchange.

(n) FINRA

The term "FINRA" shall mean the Financial Industry Regulatory Authority, Inc. and its affiliates.

(o) Inactive Nominee

The term "inactive nominee" shall mean a natural person associated with and designated as such by a Member Organization and who has been approved for such status and is registered as such with the Membership Department. An inactive nominee shall have no rights or privileges under a permit unless and until said inactive nominee becomes admitted as a Member of the Exchange pursuant to these By-Laws and the Rules of the Exchange. An inactive nominee merely stands ready to exercise rights under a permit upon notice by the Member Organization to the Membership Department on an expedited basis.

(p) Industry Director

The term "Industry Director" means a Director (excluding any two officers of the Exchange, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

(q) Industry Member

The term "Industry member" means a Nasdaq Listing and Hearing Review Council member, Nasdaq Review Council member, or member of any other committee appointed by the Board who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity;

(iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

(r) Investment Banking or Securities Business

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

(s) List of Candidates

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

(t) Member

The term "Member" (as used herein) means a holder of a permit which has not been terminated in accordance with these By-Laws and the Rules of the Exchange. A Member, as such term is used herein, is not a member of the Exchange within the meaning of the LLC Act.

(u) Membership Department

The term "Membership Department" shall mean the Membership Department located within the Exchange.

(v) Member Organization

The term "member organization" shall mean a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of Rules 900.1 or 900.2 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws. References herein to officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization.

(w) Member Representative Director

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

(x) Member Representative Member

The term "Member Representative Member" shall mean a member of any committee appointed by the Board of Directors who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to these By-Laws.

(y) Member Voting Record Date or Record Date

The term "Member Voting Record Date" or "Record Date" means a date selected by the Board of Directors for the purpose of determining the Members entitled to vote for Member Representative Directors on a Voting Date in the event of a Contested Vote.

(z) Nasdaq Conversion

The term "Nasdaq Conversion" shall mean the conversion of Nasdaq PHLX, Inc., a Delaware corporation, to Nasdaq PHLX LLC, a Delaware limited liability company.

(aa) Nasdaq Merger

The term "Nasdaq Merger" shall mean the merger of a wholly owned subsidiary of Nasdaq, Inc., a Delaware corporation, with and into Nasdaq PHLX, Inc., with Nasdaq PHLX, Inc. as the surviving corporation, in connection with the acquisition of Nasdaq PHLX, Inc. by Nasdaq, Inc.

(bb) Non-Industry Director

The term "Non-Industry Director" shall mean a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Exchange; or (iii) any other individual who would not be an Industry Director.

(cc) Non-Industry Member

The term "Non-Industry member" means a member of any committee appointed by the Board of Directors who is (i) a Public member; (ii) an officer, director, or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry member.

(dd) Non-member

The term "non-member" includes, with respect to individuals, any person who is not a Member and, with respect to entities, any organization that is not a Member Organization.

(ee) Permit

The term "permit" shall mean a permit of any class, series or kind established from time to time by the Board of Directors and denominated as such.

(ff) Person

The term "person", shall mean an individual, partnership (general or limited), joint-stock company, corporation, limited liability company, trust or unincorporated organization, and a government or agency or political subdivision thereof.

(gg) Public Director

The term "Public Director" shall mean a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA.

(hh) Public Member

The term "public member" means a member of any committee appointed by the Board of Directors who has no material business relationship with a broker or dealer, the Exchange, or its affiliates.

(ii) Regulatory Funds

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

(jj) Securities Act

The term "Securities Act" shall mean the Securities Act of 1933, as amended.

(kk) Statutory Disqualification

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

(ll) Stockholder

The term "Stockholder" shall mean a Person who has been admitted to the Exchange in accordance with the LLC Agreement, these By-Laws and the LLC Act as a member thereof, in its capacity as such. A Stockholder shall be a member of the Exchange within the meaning of the LLC Act.

(mm) Stockholder Director

The term "Stockholder Director" shall mean a Director who is an officer, director (or a person in a similar position in business entities that are not corporations), designee or an employee of a holder of Common Stock or any affiliate or subsidiary of such holder of Common Stock and is duly elected to fill the one (1) vacancy on the Board of Directors allocated to the Stockholder Director.

(nn) Voting Date

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

Amendments.

August 29, 1980.
October 14, 1982.
December 29, 1995 (95-73).
August 22, 1997 (97-31).
January 16, 2004 (03-73).
April 27, 2006 (05-93).
September 28, 2006 (06-43).
July 17, 2008 (08-31).
July 24, 2008 (08-57).
August 18, 2008 (08-61).
April 20, 2009 (09-17).
May 14, 2009 (09-23).
August 16, 2010 (10-104), operative September 1, 2010.
April 25, 2011 (11-13).
December 9, 2015 (15-105), operative February 1, 2016.
October 18, 2017 (17-82).

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Nasdaq PHLX Rules, Sec. 2-1. Record and Election Date

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(a) The Member Representative Directors shall be elected to the Board on an annual basis. For each annual election of Member Representative Directors, the Board shall select a Record Date and an Election Date. The Record Date shall be at least 10 days but not more than 60 days prior to the Election Date. The Member Nominating Committee shall create a list of one or more candidates for each Member Representative Director position (the "List of Candidates") on the Board to be elected on the Election Date. Promptly after selection of the Election Date, in a Notice to Members and in a prominent location on a publicly accessible website, the Exchange (i) shall announce the Election Date and the List of Candidates, and (ii) shall describe the procedures for Members to nominate candidates for election at the next annual meeting. In the Event of a Contested Vote, the Exchange shall also send Members the formal notice described in Section 2-1(d).

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

(c) In the case of the death, withdrawal or disqualification of a person on the List of Candidates, the election for such position shall proceed at the appointed date therefore, notwithstanding such death, withdrawal or disqualification.

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

Amendments.

August 22, 1997 (97-31).

April 25, 2011 (11-13)

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Nasdaq PHLX Rules, Sec. 2-2. Voting

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

Amendments.

August 22, 1997 (97-31).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 2-3. Filling of Vacancies

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If a Member Representative Director position shall become vacant prior to the expiration of such person's term, or if an increase in the size of the Board results in the creation of a new Member Representative Director position, the Stockholder shall elect a Person from a list of candidates prepared by the Member Nominating Committee to fill such vacancy, except that if the remaining term of office for the vacant Director position is less than six months, no replacement shall be required.

Adopted.

April 25, 2011 (11-13).

Amended.

May 3, 2011 (11-59).

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Nasdaq PHLX Rules, Sec. 2-4. Member Meetings

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

Adopted.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 3-1. Selection; Term

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(a) Whenever any Director position other than a Member Representative Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee shall nominate, and the Member shall select, a person satisfying the classification (Industry, Non-Industry, or Public Director), if applicable, for the directorship as provided in Article III, Section 3-2 to fill such vacancy.

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

Amendments.

August 22, 1997 (97-31).

January 16, 2004 (03-73).

April 27, 2006 (05-93).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 3-2. Qualifications

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(a) The number of Non-Industry Directors, including at least one Public Director and at least one Director representative of issuers and investors, shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors to be elected under the terms of the LLC Agreement. A Director may not be subject to a statutory disqualification.

(b) A Director shall be removed immediately upon a determination by the Board, by a majority vote of the remaining Directors, (a) that the Director no longer satisfies the classification for which the Director was elected; and (b) that the Director's continued service as such would violate the compositional requirements of the Board set forth in Article III, Section 3-2(a). If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Article III, Section 3-2(a) by virtue of such vacancy.

Amendments.

April 27, 1976.

December 28, 1977.

December 29, 1980.

December 19, 1985.

August 22, 1997 (97-31).

January 16, 2004 (03-73).

April 27, 2006 (05-93).

July 17, 2008 (08-31).

April 20, 2009 (09-17).

August 16, 2010 (10-104), operative September 1, 2010.

April 25, 2011 (11-13).

August 25, 2011 (11-90).

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Nasdaq PHLX Rules, Sec. 3-3. Regulation

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(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 LLC Agreement or these By-Laws, as the Board may deem proper. A Director shall, in the performance of such Director's duties, be fully protected, to the fullest extent permitted by law, in relying in good faith upon the books of account or reports made to the 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, (i) the potential impact thereof on the integrity, continuity and stability of the national securities exchange operated by the Exchange and the other operations of the Exchange, on the ability to prevent fraudulent and manipulative acts and practices on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

Amendments.

December 29, 1980.

November 13, 1992.

January 16, 2004 (03-73).

April 27, 2006 (05-93).

July 17, 2008 (08-31).

April 20, 2009 (09-17).

August 16, 2010 (10-104), operative September 1, 2010.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 3-4. Conflicts of Interest; Contracts and Transactions Involving Directors

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(a) A Director or a member of any other committee shall not directly or indirectly participate in any adjudication of the interests of any party if that Director or other committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director or other committee member shall recuse himself or herself or shall be disqualified.

(b) No contract or transaction between the Exchange and one or more of its Directors or officers, or between the Exchange and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum.

Adopted.

August 22, 1997 (97-31).

Amendments.

January 16, 2004 (03-73).

April 27, 2006 (05-93).

July 17, 2008 (08-31).

April 20, 2009 (09-17).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 3-5. Compensation of Board, Council, and Committee Members

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The Board may provide for reasonable compensation of the Chair 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.

Amendments.

January 17, 1975.
April 27, 1976.
December 29, 1980.
December 19, 1985.
November 13, 1992.
April 28, 1997 (97-17).
August 22, 1997 (97-31).
May 31, 2000 (99-26).
January 16, 2004 (03-73).
April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 3-6. Indemnification

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(a) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (for the purposes of this Section, a "proceeding"), by reason of the fact that he or she is or was a Director, officer, committee member or in-house legal counsel of the Exchange or is or was serving at the request of the Exchange as an officer, director (or person in a similar position), employee or agent of another corporation or of a partnership (general or limited), limited liability company, joint venture, trust or other enterprise or business entity, including, without limitation, such service with respect to an employee benefit plan (each, hereinafter an "indemnitee"), whether the basis of such action, suit or proceeding is alleged action in an official capacity as a Director, officer, committee member, in-house legal counsel, director (or person in a similar position), employee or agent or in any other capacity while serving as a Director, officer, committee member, in-house legal counsel, director (or a person in a similar position), employee or agent, shall be indemnified and held harmless by the Exchange to the fullest extent authorized by applicable law (but, in the case of any such amendment, only to the extent that such amendment permits the Exchange to provide broader indemnification rights than permitted prior thereto), from and against all expense, liability and loss (including reasonable attorneys' fees, judgments, fines, excise taxes or penalties under the Employee Retirement Income Security Act of 1974, as amended, and in each case any amounts paid in settlement thereof) reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a Director, officer, committee member, in-house legal counsel, director (or person in a similar position), employee or agent and shall inure to the benefit of the indemnitee's heirs, executors, administrators and representatives if such indemnitee acted in good faith and in a manner such indemnitee reasonably believed to be in or not opposed to the best interests of the Exchange, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful; provided, however, that, except as provided in paragraph (c) of this Section with respect to actions, suits or proceedings to enforce rights to indemnification, the Exchange shall indemnify any such indemnitee in connection with an action, suit or proceeding (or part thereof) initiated by such indemnitee only if such action, suit or proceeding (or part thereof) was authorized by the Board of Directors. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Exchange, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the person's conduct was unlawful.

(b) Right to Advancement of Expenses. The right to indemnification conferred in paragraph (a) of this Section shall include the right to be paid by the Exchange the expenses incurred in defending any action, suit or proceeding for which such right to indemnification is applicable in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that an advancement of expenses incurred by an indemnitee in his or her capacity as a Director, officer or committee member (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Exchange of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section or otherwise.

(c) Right of Indemnitee to Bring Suit. The rights to indemnification and to the advancement of expenses conferred in paragraphs (a) and (b) of this Section shall be contract rights. If a claim under either paragraph (a) or (b) of this Section is not paid in full by the Exchange within sixty (60) days after a written claim therefor

has been received by the Exchange from an indemnitee, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, such indemnitee may at any time thereafter bring suit against the Exchange to recover the unpaid amount of such claim. If successful in whole or in part in any such suit, or in a suit brought by the Exchange to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit by the Exchange to recover an advancement of expenses pursuant to the terms of the undertaking the Exchange shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification. Neither the failure of the Exchange (including its Board of Directors or independent legal counsel or) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth herein, nor an actual determination by the Exchange (including its Board of Directors or independent legal counsel or its Stockholder) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Exchange to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Section or otherwise shall be on the Exchange.

(d) Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under the LLC Agreement or these By-Laws or any statute, agreement, vote of the Stockholder or of disinterested Directors or otherwise.

(e) Insurance. The Exchange may maintain insurance, at its expense, to protect itself and any Director, officer, committee member, director (or person in a similar position), employee or agent of the Exchange or another corporation, partnership (general or limited), limited liability company, joint venture, trust or other enterprise or business entity against any expense, liability or loss, whether or not the Exchange would have the power to indemnify such person against such expense, liability or loss under applicable law.

(f) Indemnification of Employees and Agents of the Exchange. To the fullest extent permitted by law, the Exchange may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and to the advancement of expenses to any employee or agent of the Exchange to the fullest extent of the provisions of this Section with respect to the indemnification and advancement of expenses of Directors, officers and committee members of the Exchange.

(g) No Director of the Exchange shall be personally liable to the Exchange or its Stockholder for monetary damages for breach of fiduciary duty as a Director, except for liability (a) for any breach of the Director's duty of loyalty to the Exchange or its Stockholder, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or (c) for any transaction from which the Director derived any improper personal benefit. The Stockholder may approve and authorize corporate action to further eliminate or limit the personal liability of Directors of the Exchange.

(h) Neither the amendment nor repeal of this Section, nor the adoption of any provision of these By-Laws or the LLC Agreement inconsistent with this Section, shall eliminate or reduce the effect of this Section, in respect of any matter occurring before such amendment, repeal or adoption of an inconsistent provision or in respect of any cause of action, suit or claim relating to any such matter which would have given rise to a right

of indemnification or right to the reimbursement expenses pursuant to this Section, if such provision had not been so amended or repealed or if a provision inconsistent therewith had not been so adopted.

Amendments.

August 22, 1997 (97-31).

June 1, 2000 (00-40).

January 16, 2004 (03-73).

April 27, 2006 (05-93).

August 16, 2010 (10-104), operative September 1, 2010.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 3-7. Exercise Rights with Respect to Stock Clearing Corporation Stock

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The Board of Directors shall exercise the rights of the Exchange as owner of the Capital Stock of Stock Clearing Corporation of Philadelphia.

Amendments.

August 22, 1997 (97-31).

January 16, 2004 (03-73).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 3-8. Attendance of Meetings by Electronic Means

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Directors may participate in and hold any meeting of the Board of Directors or any committee thereof by means of a telephone conference or similar communications equipment by which each Director participating in the meeting can hear each other, and participation in any meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Amendments.

December 19, 1985.
November 13, 1992.
August 22, 1997 (97-31).
May 31, 2000 (99-26).
January 16, 2004 (03-73).
April 27, 2006 (05-93).
July 17, 2008 (08-31).
April 20, 2009 (09-17).
April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 4-1. Delegation of Duties of Officers

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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.

Amendments.

January 17, 1975.
April 27, 1976.
December 29, 1980.
June 22, 1981.
December 19, 1985.
July 24, 1989.
August 22, 1997 (97-31).
January 16, 2004 (03-73).
March 23, 2005 (05-11).
April 27, 2006 (05-93).
July 28, 2006 (06-39).
July 17, 2008 (08-31).
April 20, 2009 (09-17).
August 16, 2010 (10-104), operative September 1, 2010.
April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 4-2. , Resignation and Removal of Officers

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(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.

Amendments.

December 29, 1980.

December 19, 1985.

March 11, 1988.

March 11, 1992.

August 22, 1997 (97-31).

January 16, 2004 (03-73).

April 27, 2006 (05-93).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 4-3. Chair of the Board of Directors

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

Amendments.

August 22, 1997 (97-31).

January 16, 2004 (03-73).

April 27, 2006 (05-93).

July 17, 2008 (08-31).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 4-4. Chief Executive Officer

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

Adopted.

August 22, 1997 (97-31).

Amendments.

January 16, 2004 (03-73).

July 17, 2008 (08-31).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 4-5. President

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The President shall, in the absence of the Chair of the Board and the Chief Executive Officer, preside at all meetings of the Board at which the President is present. The President shall have general supervision over the operations of the 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.

Amendments.

October 17, 1980.
December 15, 1980.
December 29, 1980.
August 22, 1997 (97-31).
May 31, 2000 (99-26).
September 25, 2000 (97-46).
January 16, 2004 (03-73).
April 27, 2006 (05-93).
July 17, 2008 (08-31).
April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 4-6. Vice President

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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.

Amendments.

August 22, 1997 (97-31).
January 16, 2004 (03-73).
April 27, 2006 (05-93).
July 17, 2008 (08-31).
April 20, 2009 (09-17).
April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 4-7. Chief Regulatory Officer

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An officer of the Exchange shall be designated as the Chief Regulatory Officer of the Exchange. 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.

Adopted.

August 22, 1997 (97-31).

Amendments.

July 17, 2008 (08-31).

September 18, 2009 (09-59).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 4-8. Secretary

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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.

Amendments.

August 22, 1997 (97-31).
October 3, 2000 (00-39).
January 16, 2004 (03-73).
July 28, 2006 (06-39).
April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 4-9. Assistant Secretary

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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.

Amendments.

August 22, 1997 (97-31).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 4-10. Treasurer

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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.

Amendment.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 4-11. Assistant Treasurer

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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.

Amendments.

August 22, 1997 (97-31).

January 16, 2004 (03-73).

April 27, 2006 (05-93).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 5-1. Committees

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(a) 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 as an Industry, Member Representative, Non-Industry, or Public Committee member. 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.

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

Amendments.

January 16, 2004 (03-73).

April 27, 2006 (05-93).

July 17, 2008 (08-31).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 5-2. Committees Composed Solely of Directors

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(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. The number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors on the Executive Committee. The percentage of Public Directors on the Executive Committee shall be at least as great as the percentage of Public Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee shall be at least as great as the percentage of Member Representative Directors on the whole Board. An Executive Committee member shall hold office for a term of one year.

(b) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of the Exchange, including recommendations for Exchange's annual operating and capital budgets and proposed changes to the rates and fees charged by the Exchange. A Finance Committee member shall hold office for a term of one year.

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

Amendments.

August 22, 1997 (97-31).
January 16, 2004 (03-73).
April 27, 2006 (05-93).
July 17, 2008 (08-31).
April 25, 2011 (11-13).
October 18, 2017 (17-83).

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Nasdaq PHLX Rules, Sec. 5-3. Committees Not Composed Solely of Directors

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(a) The Board shall appoint a Nominating Committee and a Member Nominating Committee. The Member Nominating Committee shall nominate candidates for each Member Representative Director position on the Board that is to be elected by Members or the Stockholder under the terms of the LLC Agreement and these By-Laws, and shall nominate candidates for appointment by the Board for each vacant or new position on other committees that are to be filled with a Member Representative member under the terms of these By-Laws. The Nominating Committee shall nominate candidates for all other vacant or new Director positions on the Board.

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

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

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

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

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

(b) The Board shall appoint an Exchange Review Council.

(i) The Exchange Review Council may be authorized to act for the Board in a manner consistent with these By-Laws and the Rules with respect to an appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; the exercise of exemptive authority; and such other proceedings or actions as may be authorized by the Exchange Rules. The Exchange Review Council also may consider and make recommendations to the Board on policy and rule changes relating to business and sales practices of members, member organizations and associated persons and enforcement policies, including policies with respect to fines and other sanctions, may advise the Board on regulatory proposals and industry initiatives relating to quotations, execution, trade

reporting, and trading practices and may advise the Board in its administration of programs and systems for the surveillance and enforcement of rules governing member, member organization and associated person conduct and trading activities in the national securities exchange operated by the Company. The Board may delegate such other powers and duties to the Exchange Review Council as the Board deems appropriate.

(ii) The Exchange Review Council shall consist of no fewer than 8 and no more than 12 members. The Exchange Review Council shall include a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Exchange Review Council. The number of Non-Industry members, including at least three Public members, shall equal or exceed the sum of the number of Industry members and Member Representative members. As soon as practicable following the appointment of members, the Exchange Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Exchange Review Council. The Board, by resolution adopted by a majority of Directors then in office, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair. No more than fifty percent of the members of the Exchange Review Council shall be engaged in market making activity or employed by an Exchange member organization whose revenues from market making activity exceed ten percent of its total revenues.

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

(iv) Except as otherwise provided in this Article, each Exchange Review Council member shall hold office for a term of three years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason. The Exchange Review Council shall be divided into three classes. The term of office of those of the first class shall expire one year after the date of their appointment, the term of office of those of the second class shall expire two years after the date of their appointment, and the term of office of those of the third class shall expire three years after the date of their appointment. After the expiration of the term of office of those in the first class, members shall be appointed for terms of three years to replace those whose terms expire. No member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive three-year terms following the expiration of such member's initial term.

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

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

(vii) Notwithstanding By-Law Article V, Section 5-3(b)(iv), the term of office of an Exchange Review Council member shall terminate immediately upon a determination by the Board, by a majority vote, (a) that the member no longer satisfies the classification (Industry, Member Representative, Non-Industry, or Public) for which the member was elected; and (b) that the member's continued service as such would

violate the compositional requirements of the Exchange Review Council set forth in Article V, Section 5-3(b)(ii). If the term of office of an Exchange Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Exchange Review Council shall not be deemed to be in violation of Article V, Section 5-3(b)(ii) by virtue of such vacancy.

(viii) If a position on the Exchange Review Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee or the Member Nominating Committee (as applicable) shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Article V, Section 5-3(b)(ii) to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

(ix) At all meetings of the Exchange Review Council, a quorum for the transaction of business shall consist of a majority of the Exchange Review Council, including not less than 50 percent of the Non-Industry members of the Exchange Review Council and at least one Member Representative member of the Exchange Review Council; provided, however, that a quorum for the transaction of business with regard to an appeal of proceedings involving Exchange Rules 124, 1092, 3219, 3220, and 3312 shall consist of three members of the Exchange Review Council. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.

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

(xi) The Exchange Review Council shall appoint a Review Subcommittee to determine whether disciplinary and membership proceedings decisions should be called for review by the Exchange Review Council under the Exchange Rules and to perform any other function authorized by the Rules. The Review Subcommittee shall be composed of no fewer than two and no more than four members of the Exchange Review Council. The number of Non-Industry members of the Review Subcommittee shall equal or exceed the sum of the number of Industry members and Member Representative members of the Review Subcommittee, and the Review Subcommittee shall include at least one Member Representative member. At all meetings of the Review Subcommittee, a quorum for the transaction of business shall consist of not less than 50 percent of the members of the Review Subcommittee, including not less than 50 percent of the Non-Industry members of the Review Subcommittee and one Member Representative member of the Review Subcommittee.

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

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

(ii) The Quality of Markets Committee shall include broad representation of participants in the national securities exchange operated by the Exchange, including investors, market makers, integrated retail firms, and order entry firms. The Quality of Markets Committee shall include a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Quality

of Markets Committee. The number of Non-Industry members of the Quality of Markets Committee shall equal or exceed the sum of the number of Industry members and Member Representative members.

(iii) At all meetings of the Quality of Markets Committee, a quorum for the transaction of business shall consist of a majority of the Quality of Markets Committee, including not less than 50 percent of the Non-Industry members. If at least 50 percent of the Non-Industry members (A) are present at or (B) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry members be present to constitute the quorum shall be waived.

(d) Reserved.

Adopted.

August 22, 1997 (97-31).

Amendments.

January 16, 2004 (03-73).

July 17, 2008 (08-31).

April 20, 2009 (09-17).

April 25, 2011 (11-13).

November 11, 2017 (17-92), operative January 2, 2018.

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Nasdaq PHLX Rules, Sec. 6-1. Rights and Privileges

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- (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 Member 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 of a Member of the Exchange, except as otherwise specifically provided in these By-Laws and the rules and regulations adopted pursuant hereto.

Amendments.

October 14, 1982.
August 22, 1997 (97-31).
January 16, 2004 (03-73).
April 27, 2006 (05-93).
April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-2. Acceptance of LLC Agreement, By-Laws and Rules

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(a) No person issued a permit shall be entitled to the rights and privileges thereof until he has pledged in writing to abide by the LLC Agreement (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. This Section shall not apply to a corporation issued a permit under the provisions of Rule 798, except that such corporation, upon receipt of a permit, shall be bound by the provisions of the LLC Agreement (to the extent applicable), these By-Laws and all Rules and regulations of the Exchange, in each case as they have been or shall be from time to time amended, unless specifically exempted therefrom.

(b) No Member Organization shall be entitled to the rights and privileges thereof until it has pledged in writing to abide by the LLC Agreement, these By-Laws and all Rules and regulations of the Exchange, in each case as they have been or shall be from time to time amended.

Amendments.

October 14, 1982.

March 23, 1995 (94-77).

January 16, 2004 (03-73).

April 27, 2006 (05-93).

August 16, 2010 (10-104), operative September 1, 2010.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-3. Use of Facilities of Exchange

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The Exchange shall not be liable for any damages sustained by a Member or Member Organization 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.

Amendments.

August 22, 1997 (97-31).
September 24, 2003 (03-43).
January 16, 2004 (03-73).
April 27, 2006 (05-93).
August 20, 2009 (09-61).
April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-4. Certain Transitional Rules

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(a) The Rules of the Exchange may specify such transitional provisions concerning, without limitation: (i) the status, rights and obligations following the Demutualization Merger of persons who were lessors and lessees in respect of Exchange memberships, parties to A-B-C Agreements, Members, Member Organizations, Inactive Nominees and equitable titleholders prior to the Demutualization Merger; (ii) the procedures to be followed, forms to be submitted and other requirements to be satisfied by Members, Inactive Nominees and Member Organizations at the time of the Demutualization Merger in respect of the issuance of permits and the continuation of such Members', Inactive Nominees' and organizations' status as Members, Inactive Nominees and Member Organizations (and the penalties and other consequences for failing to comply with such procedures or to submit such forms); (iii) the designation and replacement of Executive Representatives; and (iv) other appropriate matters concerning the transition and continuity of the Exchange and its Members and Member Organizations. In the event of any conflict between such transitional provisions and any otherwise applicable provision of these By-Laws or the Rules of the Exchange, such transitional provisions shall govern.

(b) No person shall be relieved of any monetary or other obligations to the Exchange or any responsibility in relation to any matter within the disciplinary jurisdiction of the Exchange as a consequence of the Demutualization Merger or the Nasdaq Merger. Without limiting the generality of the foregoing, no person shall, by virtue of the Demutualization Merger or the Nasdaq Merger, be relieved of any obligation in respect of any pledge or other document submitted under or pursuant to Section 6-2 of these By-Laws (or any predecessor provision), and any such pledge or other document entered into prior to the Demutualization Merger or the Nasdaq Merger shall remain in full force and effect.

(c) Any person who was a Member, Inactive Nominee or Member Organization immediately before the time that the Demutualization Merger became effective and who received a permit or which has continued to be an Inactive Nominee or Member Organization in connection with such Demutualization Merger shall be deemed to have pledged to abide by the LLC Agreement, 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.

Adopted.

January 16, 2004 (03-73).

Amendments.

April 27, 2006 (05-93).

July 17, 2008 (08-31).

August 16, 2010 (10-104), operative September 1, 2010.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-5. Provisions of By-Laws and Rules Applicable to Member Organizations

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For the purpose of enforcing these By-Laws and the Rules of the Exchange, and unless otherwise specifically provided therein, any provision hereof or thereof applicable to a Member Organization that is not a corporation shall apply likewise to a Member Organization that is a corporation. Any provision applicable to a partner of a Member Organization that is not a corporation shall apply likewise to an officer or director of a Member Organization that is a corporation. Any provision applicable to a special or limited partner of a Member Organization that is not a corporation shall apply likewise to a holder of stock, other than an officer or director, of a Member Organization that is a corporation.

Amendments.

October 14, 1982.

August 22, 1997 (97-31).

January 16, 2004 (03-73).

April 27, 2006 (05-93).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-6. Liability of Officers, Directors and Substantial Stockholders

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Any officer, director or substantial stockholder of a Member Organization that is a corporation who commits any act or omission which violates these By-Laws or the Rules of the Exchange shall be personally liable and subject to the same discipline and penalties as a Member of the Exchange. A Member of the Exchange who is an officer of a Member Organization that is a corporation shall be liable and subject to the same discipline and penalties for any act or omission of said corporation or any officer, director, or employee thereof, as if the same were committed by him personally, but the Board of Directors may, in its discretion, by the affirmative vote of a majority of all Directors, relieve him from the penalty therefore.

Amendments.

August 22, 1997 (97-31).

January 16, 2004 (03-73).

April 27, 2006 (05-93).

July 17, 2008 (08-31).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-7. Application to Member Organizations

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Whenever necessary for the proper conduct of business of the Exchange, the By-Laws and the Rules of the Exchange shall be construed so as to apply to Member Organizations.

Amendments.

August 22, 1997 (97-31).

January 16, 2004 (03-73).

April 27, 2006 (05-93).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-8. By-Laws and Rules Incorporated into Exchange Contracts

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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.

Amendments.

April 7, 1978

August 22, 1997 (97-31).

January 16, 2004 (03-73).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-9. Amendments to By-Laws

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These By-Laws may be amended by the affirmative vote of a majority of the entire Board of Directors and the affirmative vote of the holders of a majority of the shares of Common Stock then issued and outstanding, at any regular or special meeting of the Board of Directors or the Stockholder (as the case may be). Amendments to the By-Laws shall not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Exchange Act and the rules promulgated thereunder.

Amendments.

August 22, 1997 (97-31).
September 25, 2000 (97-46).
January 16, 2004 (03-73).
April 27, 2006 (05-93).
July 17, 2008 (08-31).
April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-10. Seal

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The Exchange shall have such seal as the Board of Directors may from time to time adopt as the seal of the Exchange. The seal of the Exchange shall be in such form as approved by the Board of Directors and may be altered at its pleasure. The seal of the Exchange may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Amendments.

January 16, 2004 (03-73).

August 16, 2010 (10-104), operative September 1, 2010.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-11. Fiscal Year

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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 Chief Executive Officer shall fix the fiscal year.

Amendments.

August 22, 1997 (97-31).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-12. Dealings

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Dealings on the Exchange in options contracts issued by the Options Clearing Corporation, the terms and conditions of such contracts, the exercise and settlement thereof, the handling of orders, and the conduct of accounts and other matters relating to options trading, shall be subject to the By-Laws and Rules of the Exchange.

Amendments.

August 22, 1997 (97-31).

January 16, 2004 (03-73).

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-13. Action Without Meeting

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Unless otherwise provided in these By-Laws or the LLC Agreement, any action required or permitted to be taken at any annual or special meeting of Stockholder(s) 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 shares 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 such action without a meeting by less than unanimous written consent shall be given to those Stockholder(s) who have not consented in writing to the extent required by Delaware law.

Adopted.

July 17, 2008 (08-31).

Amendment.

August 16, 2010 (10-104), operative September 1, 2010.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-14. Fixing of Record Date

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

Adopted.

July 17, 2008 (08-31).

Amendment.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-15. Distributions

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Subject to the provisions of the LLC Agreement, the Board may, out of funds legally available therefor at any regular or special meeting, declare distributions upon shares of the Exchange as and when they deem appropriate. Notwithstanding the foregoing, distributions shall not be paid using Regulatory Funds.

Adopted.

July 17, 2008 (08-31).

Amendments.

August 16, 2010 (10-104), operative September 1, 2010.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-16. Waiver of Notice

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

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

Adopted.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 6-17. Execution of Instruments, Contracts, etc.

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(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.

Adopted.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 7-1. Rules

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

Adopted.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 7-2. Disciplinary Proceedings

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- (a) The Board is authorized to establish procedures relating to disciplinary proceedings involving Members, Member Organizations and their associated persons.
- (b) The Board is authorized to impose appropriate sanctions applicable to Members and Member Organizations including censure, fine, suspension, or expulsion from membership, suspension or bar from being associated with all Members or Member Organizations, limitation of activities, functions, and operations of a Member or Member Organization, or any other fitting sanction, and to impose appropriate sanctions applicable to persons associated with Members and Member Organizations, including censure, fine, suspension, or barring a person associated with a Member or Member Organization from being associated with all Members or Member Organizations, limitation of activities, functions, and operations of a person associated with a Member or Member Organization, or any other fitting sanction, for:
- (i) a breach by a Member, Member Organization or a person associated with a Member or Member Organization of any covenant with the Exchange or its Members;
 - (ii) violation by a Member, Member Organization or a person associated with a Member or Member Organization 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 Member, Member Organization or person associated with a Member or Member Organization to: (A) submit a dispute for arbitration as may be required by the Rules; (B) appear or produce any document in the Member's, Member Organization's or person's possession or control as directed pursuant to the Rules; (C) comply with an award of arbitrators properly rendered, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied; or (D) comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition; or
 - (vi) failure by a Member, Member Organization or person associated with a Member or Member Organization 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.

Adopted.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 7-3. Membership Qualifications

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

(b) 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.

Adopted.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 7-4. Fees, Dues, Assessments, and Other Charges

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

Adopted.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 7-5. Authority to Take Action Under Emergency or Extraordinary Market Conditions

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

- (a) the trading in or operation of the national securities exchange operated by the Exchange or any other organized securities markets that may be operated by the Exchange, the operation of any automated system owned or operated by the Exchange, and the participation in any such system or any or all persons or the trading therein of any or all securities; and
- (b) the operation of any or all offices or systems of Members and Member Organizations, if, in the opinion of the Board of Directors or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.

Adopted.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Sec. 7-6. Right to Issue Permits and Non-Transferability

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(a) In addition to all other powers granted to the Board of Directors by law, the LLC Agreement, these By-Laws or otherwise, the Board of Directors shall have the power to issue permits in one or more classes or series and, unless otherwise provided in the resolution of the Board of Directors or the Rules of the Exchange establishing such class or series, in unlimited number 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 Member 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 Member Organization 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.

Adopted.

April 25, 2011 (11-13).

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Nasdaq PHLX Rules, Certificate of Incorporation of The NASDAQ OMX Group, Inc., Nasdaq PHLX

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Article First

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

Article Second

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

Article Third

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

Article Fourth

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

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of Nasdaq (the "Board") is hereby authorized to provide for the issuance of shares of Preferred Stock in one or more series and, by filing a certificate pursuant to the applicable law of the State of Delaware (hereinafter referred to as "Preferred Stock Designation"), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations

and restrictions thereof. The authority of the Board with respect to each series shall include, but not limited to, determination of the following:

- (1) The designation of the series, which may be by distinguishing number, letter or title.
- (2) The number of shares of the series, which number the Board may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding).
- (3) The amounts payable on, and the preferences, if any, of shares of the series in respect of dividends, and whether such dividends, if any, shall be cumulative or noncumulative.
- (4) Dates at which dividends, if any, shall be payable.
- (5) The redemption rights and price or prices, if any, for shares of the series.
- (6) The terms and amount of any sinking fund provided for the purchase or redemption of shares of the series.
- (7) The amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of Nasdaq.
- (8) Whether the shares of the series shall be convertible into or exchangeable for shares of any other class or series, or any other security, of Nasdaq or any other corporation, and, if so, the specification of such other class or series or such other security, the conversion or exchange price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible or exchangeable and all other terms and conditions upon which such conversion or exchange may be made.
- (9) Restrictions on the issuance of shares of the same series or of any other class or series.
- (10) The voting rights, if any, of the holders of shares of the series. Pursuant to the foregoing authority, the Board has previously authorized the issuance of (i) Series A Cumulative Preferred Stock by filing a Certificate of Designations, Preferences and Rights with the Secretary of State of the State of Delaware on March 8, 2002, and (ii) Series B Preferred Stock by filing a Certificate of Designations, Preferences and Rights with the Secretary of State of the State of Delaware on March 8, 2002. The number of shares included in the Series A Cumulative Preferred Stock, the powers, preferences and rights of the shares of such series, and the qualifications, limitations and restrictions thereof are set forth in Annex A hereto, and the number of shares included in the Series B Preferred Stock, the powers, preferences and rights of the shares of such series, and the qualifications; limitations and restrictions thereof are set forth in Annex B hereto.

C.1. (a) Except as may otherwise be provided in this Restated Certificate of Incorporation (including any Preferred Stock Designation) or by applicable law, each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote, and no holder of any series of Preferred Stock, as such, shall be entitled to any voting powers in respect thereof.

(b) Except as may otherwise be provided in this Restated Certificate of Incorporation or by applicable law, the holders of the 3.75% Series A Convertible Notes due 2012 (as may be amended, supplemented or otherwise modified from time to time, the "Series A Notes") and the 3.75% Series B Convertible Notes due 2012 (as may be amended, supplemented or otherwise modified from time to time, the "Series B Notes" and, together with the Series A Notes, the "Notes") which may be issued from time to time by Nasdaq shall be entitled to vote on all matters submitted to a vote of the stockholders of Nasdaq, voting together with the holders of the Common Stock (and of any other shares of capital stock of Nasdaq entitled to vote at a meeting of stockholders) as one class. Each principal amount of Notes shall be entitled to a number of votes equal to the number of votes represented by the Common Stock of Nasdaq that could then be acquired upon conversion

of such principal amount of Notes into Common Stock, subject to adjustments as provided in the Notes and the Indenture dated as of April 22, 2005 between Nasdaq and Law Debenture Trust Company of New York, as trustee, as such Indenture may be amended, supplemented or otherwise modified from time to time. Holders of the Notes shall be deemed to be stockholders of Nasdaq, and the Notes shall be deemed to be shares of stock, solely for the purpose of any provision of the General Corporation Law of the State of Delaware or this Restated Certificate of Incorporation that requires the vote of stockholders as a prerequisite to any corporate action.

2. Notwithstanding any other provision of this Restated Certificate of Incorporation, but subject to subparagraph 6 of this paragraph C. of this Article Fourth, in no event shall (i) any record owner of any outstanding Common Stock or Preferred Stock which is beneficially owned, directly or indirectly, as of any record date for the determination of stockholders and/or holders of Notes entitled to vote on any matter, or (ii) any holder of any Notes which are beneficially owned, directly or indirectly, as of any record date for the determination of stockholders and/or holders of Notes entitled to vote on any matter, by a person (other than an Exempt Person) who beneficially owns shares of Common Stock, Preferred Stock and/or Notes in excess of five percent (5%) of the then-outstanding shares of stock generally entitled to vote as of the record date in respect of such matter ("Excess Shares and/or Notes"), be entitled or permitted to vote any Excess Shares and/or Notes on such matter. For all purposes hereof, any calculation of the number of shares of stock outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding shares of stock of which any person is the beneficial owner, shall be made in accordance with the last sentence of Rule 13d-3(d)(1)(i) of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as in effect on the date of filing this Restated Certificate of Incorporation.

3. The following definitions shall apply to this paragraph C. of this Article Fourth:

(a) "Affiliate" shall have the meaning ascribed to that term in [Rule 12b-2 of the General Rules and Regulations under the Exchange Act](#), as in effect on the date of filing this Restated Certificate of Incorporation.

(b) A person shall be deemed the "beneficial owner" of, shall be deemed to have "beneficial ownership" of and shall be deemed to "beneficially own" any securities:

(i) which such person or any of such person's Affiliates is deemed to beneficially own, directly or indirectly, within the meaning of Rule 13d-3 of the General Rules and Regulations under the Exchange Act as in effect on the date of the filing of this Restated Certificate of Incorporation;

(ii) which such person or any of such person's Affiliates has (A) the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the beneficial owner of, or to beneficially own, securities tendered pursuant to a tender or exchange offer made by or on behalf of such person or any of such person's Affiliates until such tendered securities are accepted for purchase; or (B) the right to vote pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the beneficial owner of, or to beneficially own, any security by reason of such agreement, arrangement or understanding if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given to such person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the

applicable rules and regulations promulgated under the Exchange Act and (2) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report); or (iii) which are beneficially owned, directly or indirectly, by any other person and with respect to which such person or any of such person's Affiliates has any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities) for the purpose of acquiring, holding, voting (except to the extent contemplated by the proviso to (b)(ii)(B) above) or disposing of such securities; provided, however, that (A) no person who is an officer, director or employee of an Exempt Person shall be deemed, solely by reason of such person's status or authority as such, to be the "beneficial owner" of, to have "beneficial ownership" of or to "beneficially own" any securities that are "beneficially owned" (as defined herein), including, without limitation, in a fiduciary capacity, by an Exempt Person or by any other such officer, director or employee of an Exempt Person, and (B) the Voting Trustee, as defined in the Voting Trust Agreement by and among Nasdaq, the National Association of Securities Dealers, Inc., a Delaware corporation (the "NASD"), and The Bank of New York, a New York banking corporation, as such may be amended from time to time (the "Voting Trust Agreement"), shall not be deemed, solely by reason of such person's status or authority as such, to be the "beneficial owner" of, to have "beneficial ownership" of or to "beneficially own" any securities that are governed by and held in accordance with the Voting Trust Agreement.

(c) A "person" shall mean any individual, firm, corporation, partnership, limited liability company or other entity.

(d) "Exempt Person" shall mean Nasdaq or any Subsidiary of Nasdaq, in each case including, without limitation, in its fiduciary capacity, or any employee benefit plan of Nasdaq or of any Subsidiary of Nasdaq, or any entity or trustee holding stock for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of Nasdaq or of any Subsidiary of Nasdaq.

(e) "Subsidiary" of any person shall mean any corporation or other entity of which securities or other ownership interests having ordinary voting power sufficient to elect a majority of the board of directors or other persons performing similar functions are beneficially owned, directly or indirectly, by such person, and any corporation or other entity that is otherwise controlled by such person.

(f) The Board shall have the power to construe and apply the provisions of this paragraph C. of this Article Fourth and to make all determinations necessary or desirable to implement such provisions, including, but not limited to, matters with respect to (1) the number of shares of stock beneficially owned by any person, (2) the number of Notes beneficially owned by any person, (3) whether a person is an Affiliate of another, (4) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in the definition of beneficial ownership, (5) the application of any other definition or operative provision hereof to the given facts, or (6) any other matter relating to the applicability or effect of this paragraph C. of this Article Fourth.

4. The Board shall have the right to demand that any person who is reasonably believed to hold of record or beneficially own Excess Shares and/or Notes supply Nasdaq with complete information as to (a) the record owner(s) of all shares and/or Notes beneficially owned by such person who is reasonably believed to own Excess Shares and/or Notes, and (b) any other factual matter relating to the applicability or effect of this paragraph C. of this Article Fourth as may reasonably be requested of such person.

5. Any constructions, applications, or determinations made by the Board, pursuant to this paragraph C. of this Article Fourth, in good faith and on the basis of such information and assistance as was

then reasonably available for such purpose, shall be conclusive and binding upon Nasdaq, its stockholders and the holders of the Notes.

6. Notwithstanding anything herein to the contrary, subparagraph 2 of this paragraph C. of this Article Fourth shall not be applicable to any Excess Shares and/or Notes beneficially owned by (a) the NASD or its Affiliates until such time as the NASD beneficially owns five percent (5%) or less of the outstanding shares of stock and/or Notes entitled to vote on the election of a majority of directors at such time, (b) any other person as may be approved for such exemption by the Board prior to the time such person beneficially owns more than five percent (5%) of the outstanding shares of stock and/or Notes entitled to vote on the election of a majority of directors at such time or (c) Hellman & Friedman Capital Partners IV, L.P., H&F International Partners IV-A, L.P., H & F International Partners IV-B, L.P., H&F Executive Fund, IV L.P.; Silver Lake Partners II TSA, L.P., Silver Lake Technology Investors II, L.L.C., Silver Lake Partners TSA, L.P., and Silver Lake Investors, L.P. or their respective affiliated investment funds that are: (i) under common management and control, (ii) comprised of members or partners with the same ultimate ownership, and (iii) subject to terms and conditions that are substantially identical in all material respects, if the Board has approved an exemption for any other person pursuant to Section 6(b) of this paragraph C. of this Article Fourth (other than an exemption granted in connection with the establishment of a strategic alliance with another exchange or similar market) provided that in no event shall the exemption contained in Section 6(c) cause a registered broker or dealer or an Affiliate thereof (a "Broker Affiliate," provided that, a Broker Affiliate shall not include an entity that either owns ten percent or less of the equity of a broker or dealer, or for which the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity) to receive an exemption for a greater percentage of voting securities than has been granted to another Broker Affiliate by the Board. The Board, however, may not approve an exemption under Section 6(b): (i) for a Broker Affiliate or (ii) an individual or entity that is subject to a statutory disqualification under [Section 3\(a\)\(39\) of the Exchange Act](#). The Board may approve an exemption for any other stockholder or holder of Notes if the Board determines that granting such exemption would (A) not reasonably be expected to diminish the quality of, or public confidence in, Nasdaq or The NASDAQ Stock Market LLC or the other operations of Nasdaq and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

7. In the event any provision (or portion thereof) of this paragraph C. of this Article Fourth shall be found to be invalid, prohibited or unenforceable for any reason, the remaining provisions (or portions thereof) of this paragraph C. of this Article Fourth shall remain in full force and effect, and shall be construed as if such invalid, prohibited or unenforceable provision (or portion hereof) had been stricken herefrom or otherwise rendered inapplicable, it being the intent of Nasdaq, its stockholders and the holders of the Notes that each such remaining provision (or portion thereof) of this paragraph C. of this Article Fourth remains, to the fullest extent permitted by law, applicable

and enforceable as to all stockholders and all holders of Notes, including stockholders and holders of Notes that beneficially own Excess Shares and/or Notes, notwithstanding any such finding.

Article Fifth

A. The business and affairs of Nasdaq shall be managed by, or under the direction of, the Board. The total number of directors constituting the entire Board shall be fixed from time to time by the Board.

B. Subject to the provisions of this paragraph B, the Board (other than those directors elected by the holders of any series of Preferred Stock provided for, or fixed pursuant to the provisions of Article Fourth hereof (the "Preferred Stock Directors")) shall be divided into three classes, as nearly equal in number as possible, designated Class I, Class II and Class III. Each director elected or appointed prior to this effectiveness of this Certificate of Amendment under the General Corporation Law of the State of Delaware shall serve for his or her full term, such that the term of each Class I director shall expire at the 2007 annual meeting of stockholders; the term of each Class II director shall expire at the 2005 annual meeting of stockholders; and the term of each Class III director shall expire at the 2006 annual meeting of stockholders. In case of any increase or decrease, from time to time, in the number of directors (other than Preferred Stock Directors), the number of directors in each class shall be apportioned as nearly equal as possible. The term of each director elected at the 2005 annual meeting of stockholders; and at each subsequent annual meeting of stockholders shall expire at the first annual meeting of stockholders following his or her election. Commencing with the 2007 annual meeting of stockholders, the foregoing classification of the Board shall cease, and the directors, other than the Preferred Stock Directors, shall be elected by the holders of the Voting Stock (as hereinafter defined) and shall hold office until the next annual meeting of stockholders and until their respective successors shall have been duly elected and qualified, subject, however, to prior death, resignation, retirement, disqualification or removal from office.

C. Subject to the rights of the holders of any one or more series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause shall only be filled by the Board. No decrease in the number of directors shall shorten the term of any incumbent director.

D. Except for Preferred Stock Directors, any director, or the entire Board, may be removed from office at any time, but only by the affirmative vote of at least 66 2/3% of the total voting power of the outstanding shares of capital stock of Nasdaq entitled to vote generally in the election of directors ("Voting Stock"), voting together as a single class.

E. During any period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to the provisions of Article Fourth hereof, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of Nasdaq shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his earlier death, disqualification, resignation or removal. Except as otherwise provided by the Board in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from death, resignation, disqualification or removal of such additional directors, shall forthwith

terminate and the total authorized number of directors of Nasdaq shall automatically be reduced accordingly.

Article Sixth

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

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

Article Seventh

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

Article Eighth

A. In furtherance of, and not in limitation of, the powers conferred by law, the Board is expressly authorized and empowered to adopt, amend or repeal the By Laws of Nasdaq; *provided, however*, that the By Laws adopted by the Board under the powers hereby conferred may be amended or repealed by the Board or by the stockholders having voting power with respect thereto, *provided further* that, notwithstanding any other provision of this Restated Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the stock required by law or this Restated Certificate of Incorporation, the affirmative vote of the holders of at least 66 2/3% percent of the total voting power of the outstanding Voting Stock, voting together as a single class, shall be required in order for the stockholders to adopt, alter, amend or repeal any By Law.

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

Article Ninth

A. Nasdaq reserves the right to amend, alter, change, or repeal any provisions contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred herein are granted subject to this reservation; *provided, however*, that the affirmative vote of the holders of at least 66 2/3% of the voting power of the outstanding Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with paragraph C. of Article Fourth, Article Fifth, Article Seventh, Article Eighth or this Article Ninth; *provided further, however*, the affirmative vote of at least 66 2/3% of the voting power of the holders of the outstanding Notes shall also be required to (i) amend paragraph C. of Article Fourth in a manner that would adversely affect the rights of the holders of the Notes thereunder

without similarly affecting the rights of the holders of the Common Stock thereunder or (ii) amend this clause.

B. For so long as Nasdaq shall control, directly or indirectly, The NASDAQ Stock Market LLC, any proposed amendment of any provisions contained in this Restated Certificate of Incorporation shall be submitted to the Exchange Board, and if the Exchange Board determines that such amendment is required, under [Section 19 of the Exchange Act](#) and the rules promulgated thereunder, to be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be filed with the Secretary of State of the State of Delaware until filed with, or filed with and approved by, the Commission, as the case may be.

Article Tenth

Nasdaq shall have perpetual existence.

Article Eleventh

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

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Nasdaq PHLX Rules, Certificate of Elimination of the Series D Preferred Stock of The NASDAQ OMX Group, Inc., Nasdaq PHLX

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

1. That, pursuant to Section 151 of the General Corporation Law and authority granted in the Restated Certificate of Incorporation of the Company, as theretofore amended, the Board of Directors (the "Board") of the Company, by resolution duly adopted, authorized the issuance of a series of preferred stock of the Company as Series D Preferred Stock, par value \$.01 per share (the "Series D Preferred Stock"), and established the voting powers, designations, preferences and relative, participating and other rights, and the qualifications, limitations or restrictions thereof, and, on December 13, 2005, filed a Certificate of Designations with respect to such Series D Preferred Stock in the office of the Secretary of State of the State of Delaware (the "Secretary of State").

2. That no shares of such Series D Preferred Stock are outstanding and no shares thereof will be issued subject to such Certificates of Designations.

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

BE IT RESOLVED, that no shares of Series D Preferred Stock are outstanding and no shares of any such series shall be issued, and that the Board of Directors hereby approves the elimination of the Certificate of Designations, Preferences and Rights of Series D Preferred Stock, and of all matters set forth therein; and

BE IT FURTHER RESOLVED, that the Board of Directors hereby approves the amendment of the Restated Certificate of Incorporation of Nasdaq to eliminate the matters set forth therein specifically with respect to the Series D Preferred Stock; and

BE IT FURTHER RESOLVED, that the officers of the Company be, and hereby are, authorized and directed to file a certificate with the office of the Secretary of State of the State of Delaware setting forth copies of any of the foregoing resolutions, as appropriate, whereupon all matters approved for elimination in the foregoing resolutions shall be so eliminated.

4. That, accordingly, the Certificate of Designations with respect to such Series D Preferred Stock, and all matters set forth therein, be, and hereby are, eliminated.

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Nasdaq PHLX Rules, Definitions, Nasdaq PHLX

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

- (a) "Act" means the Securities Exchange Act of 1934, as amended;
- (b) "Board" means the Board of Directors of the Corporation;
- (c) "broker" shall have the same meaning as in [Section 3\(a\)\(4\) of the Act](#);
- (d) "Commission" means the Securities and Exchange Commission;
- (e) "Corporation" means The Nasdaq OMX Group, Inc.;
- (f) "day" means calendar day;
- (g) "dealer" shall have the same meaning as in [Section 3\(a\)\(5\) of the Act](#);
- (h) "Delaware law" means the General Corporation Law of the State of Delaware;
- (i) "Director" means a member of the Board;
- (j) "Industry Director" or "Industry committee member" means a Director (excluding any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")) or committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or committee member or 20 percent or more of the gross revenues received by the Director's or committee member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or committee member or 20 percent or more of the gross revenues received by the Director's or committee member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate thereof (including any Self-Regulatory Subsidiary) or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years;
- (k) "FINRA" means the Financial Industry Regulatory Authority, Inc. and its affiliates;
- (l) "Nominating Committee" means the Nominating Committee appointed pursuant to these By-Laws;
- (m) "Non-Industry Director" or "Non-Industry committee member" means a Director (excluding the Staff Directors) or committee member who is (1) a Public Director or Public committee member; (2) an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary; or (3) any other individual who would not be an Industry Director or Industry committee member;
- (n) "Public Director" or "Public committee member" means a Director or committee member who has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA; and
- (o) "Self-Regulatory Subsidiary" means each of (i) The NASDAQ Stock Market LLC; (ii) upon the closing of their acquisition by the Corporation, Boston Stock Exchange, Incorporated and Boston Stock Exchange Clearing

Corporation; and (iii) upon the closing of their acquisition by the Corporation, Philadelphia Stock Exchange, Inc. and Stock Clearing Corporation of Philadelphia.

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Nasdaq PHLX Rules, Location, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Change of Location, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Annual Meetings of Stockholders, Nasdaq PHLX

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- (a) Nominations of persons for election to the Board and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (i) pursuant to the Corporation's notice of meeting (or any supplement thereto), (ii) by or at the direction of the Board or the Nominating Committee or (iii) by any stockholder of the Corporation who was a stockholder of record of the Corporation at the time the notice provided for in this [Section 3.1](#) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this [Section 3.1](#).
- (b) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 3.1(a)(iii), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such proposed business other than the nominations of persons for election to the Board must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth day nor earlier than the close of business on the one hundred twentieth day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty days before or more than seventy days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth day prior to such annual meeting and not later than the close of business on the later of the ninetieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (i) as to each person whom the stockholder proposes to nominate for election as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14 under the Act and the rules thereunder (and such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the By-Laws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (A) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (B) the class and number of shares of capital stock of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (C) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, and (D) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (2) otherwise to solicit proxies from stockholders in support of such proposal or nomination. The Corporation may require any proposed

nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.

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

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Nasdaq PHLX Rules, Special Meetings of Stockholders, Nasdaq PHLX

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

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Nasdaq PHLX Rules, General, Nasdaq PHLX

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- (a) Only such persons who are nominated in accordance with the procedures set forth in this Article III shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Article III. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (i) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Article III (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by Section 3.1(b)(iii)(D)) and (ii) if any proposed nomination or business was not made or proposed in compliance with this Article III, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Article III, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation.
- (b) For purposes of this Article III, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Commission pursuant to [Section 13, 14, or 15\(d\) of the Act](#).
- (c) Notwithstanding the foregoing provisions of this Article III, a stockholder shall also comply with all applicable requirements of the Act and the rules and regulations thereunder with respect to the matters set forth in this Article III. Nothing in Article III shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Act or (ii) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Restated Certificate of Incorporation.

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Nasdaq PHLX Rules, Conduct of Meetings, Nasdaq PHLX

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

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Nasdaq PHLX Rules, General Powers, Nasdaq PHLX

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The property, business, and affairs of the Corporation's staff shall be managed by or under the direction of the Board. The Board may exercise all such powers of the Corporation and have the authority to perform all such lawful acts as are permitted by law, the Restated Certificate of Incorporation, or these By Laws. To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to [Section 4.13](#) or to the Corporation staff.

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Nasdaq PHLX Rules, Number of Directors, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Qualifications, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Election, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Resignation, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Removal, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Disqualification, Nasdaq PHLX

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The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) the Director no longer satisfies the classification for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board set forth in [Section 4.3](#). If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of [Section 4.3](#) by virtue of such vacancy.

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Nasdaq PHLX Rules, Filling of Vacancies, Nasdaq PHLX

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If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee shall nominate, and the Board shall elect by majority vote, a person satisfying the classification (Industry, Non-Industry, or Public Director), if applicable, for the directorship as provided in [Section 4.3](#) to fill such vacancy, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

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Nasdaq PHLX Rules, Quorum and Voting, Nasdaq PHLX

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- (a) At all meetings of the Board, unless otherwise set forth in these By-Laws or required by law, a quorum for the transaction of business shall consist of a majority of the Board. In the absence of a quorum, a majority of the Directors present may adjourn the meeting until a quorum be present.
- (b) Except as provided herein or by applicable law, the vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.

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Nasdaq PHLX Rules, Regulation, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Meetings, Nasdaq PHLX

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- (a) An annual meeting of the Board shall be held for the purpose of organization, election of officers, and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of the stockholders, no notice of the annual meeting of the Board need be given. Otherwise, such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with [Section 4.12](#).
- (b) Regular meetings of the Board may be held at such time and place, within or without the State of Delaware, as determined from time to time by the Board. After such determination has been made, notice shall be given in accordance with [Section 4.12](#).
- (c) Special meetings of the Board may be called by the Chair of the Board, by the Chief Executive Officer, by the President, or by at least one-third of the Directors then in office. Notice of any special meeting of the Board shall be given to each Director in accordance with [Section 4.12](#).
- (d) Directors or members of any committee appointed by the Board may participate in a meeting of the Board or of such committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

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Nasdaq PHLX Rules, Notice of Meetings; Waiver of Notice, Nasdaq PHLX

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- (a) Notice of any meeting of the Board shall be deemed to be duly given to a Director if: (i) mailed to the address last made known in writing to the Corporation by such Director as the address to which such notices are to be sent, at least seven days before the day on which such meeting is to be held; (ii) sent to the Director at such address by telegraph, telefax, cable, radio, or wireless, not later than the day before the day on which such meeting is to be held; or (iii) delivered to the Director personally or orally, by telephone or otherwise, not later than the day before the day on which such meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.
- (b) Notice of any meeting of the Board need not be given to any Director if waived by that Director in writing or by electronic transmission (or by telegram, telefax, cable, radio, or wireless and subsequently confirmed in writing or by electronic transmission) whether before or after the holding of such meeting, or if such Director is present at such meeting, subject to [Article X, Section 10.3\(b\)](#).
- (c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present thereat, except when a Director attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

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Nasdaq PHLX Rules, Committees, Nasdaq PHLX

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- (a) The Board may, by resolution or resolutions adopted by the Board, appoint one or more committees. Except as herein provided, vacancies in membership of any committee shall be filled by the Board. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a committee may be removed from such committee only by the Board, after appropriate notice.
- (b) The Board may, by resolution or resolutions adopted by the Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of the Corporation to the extent permitted by law. A committee, to the extent permitted by law and provided in the resolution or resolutions creating such committee, may authorize the seal of the Corporation to be affixed to all papers that may require it.
- (c) Except as otherwise provided by applicable law, no committee shall have the power or authority of the Board with regard to: amending the Restated Certificate of Incorporation or the By-Laws of the Corporation; adopting an agreement of merger or consolidation; recommending to the stockholders the sale, lease, or exchange of all or substantially all the Corporation's property and assets; or recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution. Unless the resolution of the Board expressly so provides, no committee shall have the power or authority to authorize the issuance of stock.
- (d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation between meetings of the Board, and which may authorize the seal of the Corporation to be affixed to all papers that may require it. The number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors on the Executive Committee. The percentage of Public Directors on the Executive Committee shall be at least as great as the percentage of Public Directors on the whole Board. An Executive Committee member shall hold office for a term of one year.
- (e) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of the Corporation, including recommendations for the Corporation's annual operating and capital budgets and proposed changes to the rates and fees charged by the Corporation. A Finance Committee member shall hold office for a term of one year.
- (f) The Board shall appoint a Management Compensation Committee. The Management Compensation Committee shall consider and recommend compensation policies, programs, and practices for employees of the Corporation. A majority of Management Compensation Committee members shall be Non-Industry Directors. The Chief Executive Officer shall be an ex-officio, non-

voting member of the Management Compensation Committee. A Management Compensation Committee member shall hold office for a term of one year.

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

- (h) The Board may appoint a Nominating Committee. The Nominating Committee shall nominate Directors for each vacant or new Director position on the Board.
 - (i) The Nominating Committee shall consist of no fewer than six and no more than nine members. The number of Non-Industry members on the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee. If the Nominating Committee consists of six members, at least two shall be Public committee members. If the Nominating Committee consists of seven or more members, at least three shall be Public committee members. No officer or employee of the Corporation shall serve as a member of the Nominating Committee in any voting or non-voting capacity. No more than three of the Nominating Committee members and no more than two of the Industry committee members shall be current members of the Board.
 - (ii) A Nominating Committee member may not simultaneously serve on the Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee.
 - (iii) Members of the Nominating Committee shall be appointed annually by the Board and may be removed by majority vote of the Board.
 - (iv) The Secretary shall collect from each nominee for Director such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Non-Industry, or Public Director, if applicable, and the Secretary shall certify to the Nominating Committee each nominee's classification, if applicable. Directors shall update the information submitted under this subsection at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

- (i) Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.
- (j) Unless otherwise provided by these By-Laws, a majority of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.
- (k) Upon request of the Secretary of the Corporation, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as

the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member. The Secretary of the Corporation shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this subsection at least annually and upon request of the Secretary of the Corporation, and shall report immediately to the Secretary any change in such information.

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Nasdaq PHLX Rules, Conflicts of Interest; Contracts and Transactions Involving Directors, Nasdaq PHLX

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- (a) A Director shall not directly or indirectly participate in any adjudication of the interests of any party if that Director has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director shall recuse himself or herself or shall be disqualified.
- (b) No contract or transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders.

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Nasdaq PHLX Rules, Action Without Meeting, Nasdaq PHLX

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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.

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Nasdaq PHLX Rules, Compensation of Board, Council, and Committee Members, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Principal Officers, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Election of Principal Officers; Term of Office, Nasdaq PHLX

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- (a) The principal officers of the Corporation shall be elected annually by the Board at the annual meeting of the Board convened pursuant to Section 4.11(a). Failure to elect any principal officer annually shall not dissolve the Corporation.
- (b) If the Board shall fail to fill any principal office at an annual meeting, or if any vacancy in any principal office shall occur, or if any principal office shall be newly created, such principal office may be filled at any regular or special meeting of the Board.
- (c) Each principal officer shall hold office until a successor is duly elected and qualified, or until death, resignation, or removal.

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Nasdaq PHLX Rules, Subordinate Officers, Agents, or Employees, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Delegation of Duties of Officers, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Resignation and Removal of Officers, Nasdaq PHLX

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- (a) Any officer may resign at any time upon notice of resignation to the Board, the Chief Executive Officer, the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.
- (b) Any officer of the Corporation may be removed, with or without cause, by resolution adopted by a majority of the Directors then in office at any regular or special meeting of the Board or by a written consent signed by all of the Directors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with the Corporation.

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Nasdaq PHLX Rules, Bond, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Chair of the Board, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Chief Executive Officer, Nasdaq PHLX

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

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Nasdaq PHLX Rules, President, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Vice President, Nasdaq PHLX

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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.

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Nasdaq PHLX Rules, Secretary, Nasdaq PHLX

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The Secretary shall act as Secretary of all meetings of the stockholders and of the Board at which the Secretary is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of the Corporation, and shall have supervision over the care and custody of the corporate records and the corporate seal of the Corporation. The Secretary shall be empowered to affix the corporate seal to documents, the execution of which on behalf of the Corporation under its seal, is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board. The Secretary shall exercise such other powers and perform such other duties as may be assigned to the Secretary from time to time by the Board, the Chief Executive Officer or the President.

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Nasdaq PHLX Rules, Assistant Secretary, Nasdaq PHLX

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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.

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Nasdaq PHLX Rules, Treasurer, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Assistant Treasurer, Nasdaq PHLX

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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.

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Nasdaq PHLX Rules, Indemnification of Directors, Officers, Employees, and Agents, Nasdaq PHLX

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- (a) The Corporation shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of the Corporation, or is or was a Director, officer, or employee of the Corporation who is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:
- (i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Corporation) against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or
 - (ii) any threatened, pending, or completed action or suit by or in the right of the Corporation to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.
- (b) The Corporation shall advance expenses (including attorneys' fees and disbursements) reasonably and actually incurred in defending any action, suit, or proceeding in advance of its final disposition to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.
- (c) The Corporation may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of the Corporation or is or was an agent of the Corporation who is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in subsection (a).
- (d) The Corporation may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

- (e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by the Corporation to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) The person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Corporation; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to the Corporation.
- (f) The indemnification provided by this Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.
- (g) Notwithstanding the foregoing, but subject to subsection (j), the Corporation shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.
- (h) The Corporation's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.
- (i) Any repeal or modification of the foregoing provisions of this Section shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.
- (j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by the Corporation, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, the Corporation shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

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Nasdaq PHLX Rules, Indemnification Insurance, Nasdaq PHLX

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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.

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Nasdaq PHLX Rules, Certificates, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Signatures, Nasdaq PHLX

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- (a) Certificates for shares of capital stock of the Corporation shall be signed in the name of the Corporation by two officers with one being the Chair of the Board, the Chief Executive Officer, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board. Such certificates may be sealed with the corporate seal of the Corporation or a facsimile thereof.
- (b) If any such certificates are countersigned by a transfer agent other than the Corporation or its employee, or by a registrar other than the Corporation or its employee, any other signature on the certificate may be a facsimile. In the event that any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall cease to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

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Nasdaq PHLX Rules, Stock Ledger, Nasdaq PHLX

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- (a) A record of all certificates for capital stock issued by the Corporation shall be kept by the Secretary or any other officer, employee, or agent designated by the Board. Such record shall show the name and address of the person, firm, or corporation in which certificates for capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates which have been canceled, the date of cancellation thereof.
- (b) The Corporation shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. The Corporation shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not the Corporation shall have express or other notice thereof.

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Nasdaq PHLX Rules, Transfers of Stock, Nasdaq PHLX

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- (a) The Board may make such rules and regulations as it may deem expedient, not inconsistent with law, the Restated Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of certificates for shares of capital stock of the Corporation. The Board may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.
- (b) Transfers of capital stock shall be made on the books of the Corporation only upon delivery to the Corporation or its transfer agent of: (i) a written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing; (ii) the certificate for the shares of capital stock being transferred; and (iii) a written assignment of the shares of capital stock evidenced thereby.

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Nasdaq PHLX Rules, Cancellation, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Lost, Stolen, Destroyed, and Mutilated Certificates, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Fixing of Record Date, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Corporate Seal, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Fiscal Year, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Waiver of Notice, Nasdaq PHLX

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- (a) Whenever notice is required to be given by law, the Restated Certificate of Incorporation, or these By-Laws, a waiver thereof by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, Directors, or members of a committee of Directors need be specified in any waiver of notice.
- (b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

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Nasdaq PHLX Rules, Execution of Instruments, Contracts, Etc., Nasdaq PHLX

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- (a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of the Corporation by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board, any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board, may authorize any officer, employee, or agent, in the name of and on behalf of the Corporation, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.
- (b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of the Corporation by any principal officer or subordinate officer of the Corporation, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of the Corporation. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

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Nasdaq PHLX Rules, Form of Records, Nasdaq PHLX

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

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Nasdaq PHLX Rules, By Stockholders, Nasdaq PHLX

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These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any meeting of the stockholders by the affirmative vote of the holders of at least 66 2/3 percent of the voting power of the then outstanding stock entitled to vote, voting together as a single class, provided that, in the case of a special meeting, notice that an amendment is to be considered and acted upon shall be inserted in the notice or waiver of notice of said meeting.

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Nasdaq PHLX Rules, By Directors, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Review by Self-Regulatory Subsidiaries, Nasdaq PHLX

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For so long as the Corporation shall control, directly or indirectly, any Self-Regulatory Subsidiary, any proposed adoption, alteration, amendment, change or repeal (an "amendment") of any By-Law shall be submitted to the Board of Directors of each Self-Regulatory Subsidiary, and if any such proposed amendment must, under [Section 19 of the Act](#) and the rules promulgated thereunder, be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

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Nasdaq PHLX Rules, Emergency By-Laws, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Self-Regulatory Organization Functions of the Self-Regulatory Subsidiaries, Nasdaq PHLX

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- (a) For so long as the Corporation shall control any Self-Regulatory Subsidiary, the Board of Directors, officers, employees and agents of the Corporation shall give due regard to the preservation of the independence of the self-regulatory function of each such Self-Regulatory Subsidiary and to its obligations to investors and the general public and shall not take any actions which would interfere with the effectuation of any decisions by the Board of Directors of any Self-Regulatory Subsidiary relating to its regulatory functions (including disciplinary matters) or the market structures or clearing systems which it regulates or which would interfere with the ability of any Self-Regulatory Subsidiary to carry out its responsibilities under the Act.
- (b) All books and records of each Self-Regulatory Subsidiary reflecting confidential information pertaining to the self-regulatory function of such Self-Regulatory Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) which shall come into the possession of the Corporation, and the information contained in those books and records, shall be retained in confidence by the Corporation and the Directors, officers, employees and agents of the Corporation and shall not be used for any non-regulatory purposes. Nothing in these By-Laws shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission. The Corporation's books and records shall be subject at all times to inspection and copying by the Commission. The Corporation's books and records relating to each Self-Regulatory Subsidiary shall be maintained in the United States.
- (c) To the extent they are related to the activities of a Self-Regulatory Subsidiary, the books, records, premises, officers, Directors, agents, and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors, agents and employees of such Self-Regulatory Subsidiary for the purposes of, and subject to oversight pursuant to, the Act.

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Nasdaq PHLX Rules, Cooperation with the Commission, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Consent to Jurisdiction, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Further Assurances, Nasdaq PHLX

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The Corporation shall take such action as is necessary to insure that its officers, Directors, employees, and agents consent in writing to the applicability of [Sections 12.1](#), [12.2](#), and [12.3](#) with respect to activities related to each Self-Regulatory Subsidiary.

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Nasdaq PHLX Rules, Board Action with Respect to Voting Limitations of the Certificate of Incorporation, Nasdaq PHLX

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For so long as the Corporation shall control, directly or indirectly, any Self-Regulatory Subsidiary, a resolution of the Board to approve an exemption for any person under Article Fourth, Section C.6(b) of the Restated Certificate of Incorporation (the "Certificate") shall not be permitted to become effective until such resolution has been filed with and approved by the Commission under [Section 19 of the Act](#). The Board may not approve an exemption under Article Fourth, Section C.6(b) of the Certificate: (i) for a registered broker or dealer or an Affiliate thereof (as defined in the Certificate) (provided that, for these purposes, an Affiliate shall not be deemed to include an entity that either owns ten percent or less of the equity of a broker or dealer, or the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity); or (ii) an individual or entity that is subject to a statutory disqualification under [Section 3\(a\)\(39\) of the Exchange Act](#). The Board may approve an exemption under Article Fourth, Section C.6(b) if the Board determines that granting such exemption would (A) not reasonably be expected to diminish the quality of, or public confidence in, the Corporation or the Self-Regulatory Subsidiaries or the other operations of the Corporation and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, (B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system, and (C) would promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), would assure the safeguarding of securities and funds in the custody or control of the Self-Regulatory Subsidiaries that are clearing agencies or securities and funds for which they are responsible, would foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

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Nasdaq PHLX Rules, Amendments to the Certificate of Incorporation, Nasdaq PHLX

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

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Nasdaq PHLX Rules, Self-Regulatory Subsidiaries, Nasdaq PHLX

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

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