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

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**FORM 8-K**

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**CURRENT REPORT**

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

**Date of report (Date of earliest event reported): March 3, 2008 (February 26, 2008)**

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**THE NASDAQ OMX GROUP, INC.**

(Exact Name of Registrant as Specified in its Charter)

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**DELAWARE**  
(State or Other Jurisdiction  
of Incorporation)

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

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

**One Liberty Plaza**  
**New York, New York**  
(Address of Principal Executive Offices)

**10006**  
(Zip Code)

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

**THE NASDAQ STOCK MARKET, INC.**  
(Former Name or Address, if Changed Since Last Report)

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

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

On February 27, 2008, The NASDAQ OMX Group, Inc. (“Nasdaq”) entered into certain agreements as part of its arrangements with Borse Dubai Limited (“Borse Dubai”) relating to The Nasdaq Stock Market, Inc.’s consummation of its combination with OMX AB (publ) (“OMX”).

**Amendment to OMX Transaction Agreement**

Nasdaq, Borse Dubai and BD Stockholm AB entered into an amendment (the “Amendment”) to the OMX Transaction Agreement, dated November 15, 2007, for the purpose of clarifying certain provisions in the OMX Transaction Agreement.

**Nasdaq Stockholders’ Agreement**

Nasdaq and Borse Dubai entered into the Nasdaq Stockholders’ Agreement, which governs the shares of Nasdaq common stock, par value \$0.01 per share (“Nasdaq Common Stock”) issued to Borse Dubai as partial consideration in the acquisition of OMX from Borse Dubai. Simultaneously with entering into the agreement, Borse Dubai acquired Nasdaq Common Stock representing 19.99% of the total Nasdaq Common Stock outstanding on a fully-diluted basis.

*Transfer Restrictions*

Under the terms of the Nasdaq Stockholders’ Agreement, Borse Dubai is restricted from transferring any of the Nasdaq Common Stock it acquired for a period of one year from the date of the Nasdaq Stockholders’ Agreement, subject to certain exceptions for transfers to, among others, its affiliates, Nasdaq and to the Borse Dubai Nasdaq Share Trust, a Delaware statutory trust (the “Trust”), under certain circumstances. Additionally, at no time may Borse Dubai transfer any Nasdaq Common Stock to a competitor of Nasdaq, other than in a change of control of Nasdaq, a public offering or sale pursuant to Rule 144 under the Securities Act or in limited circumstances involving not more than 5% of the outstanding Nasdaq Common Stock. During the 18 months following the date of the Nasdaq Stockholders’ Agreement, Borse Dubai may participate pro rata in any repurchases by Nasdaq of Nasdaq Common Stock or may contribute Nasdaq Common Stock to the Trust, in each case in order to maintain its ownership percentage of Nasdaq at or below 19.99%.

*Trust Matters*

For as long as the Trust continues to hold any shares of Nasdaq Common Stock, Borse Dubai has agreed to use its reasonable best efforts to cause the Trust to dispose of its Nasdaq Common Stock. However, Borse Dubai has no obligation to cause the Trust to dispose of any shares of Nasdaq Common Stock if the net amount that the Trust would receive from any sale of such shares is less than \$51.52, the agreed-upon floor price. This implied share price is based upon the Swedish kronor/United States dollar exchange rate on the date of the Nasdaq Stockholders’ Agreement, and is subject to adjustment upward based upon certain reasonable expenses of the Trust and a 6% cost of capital, and downward for any distributions made by Nasdaq.

### *Board Representation*

As long as Borse Dubai maintains at least one-half of its initial 19.99% ownership of Nasdaq, Borse Dubai will be entitled to propose for nomination two directors for election to Nasdaq's Board of Directors, and Nasdaq will use its reasonable best efforts to ensure that one designee of Borse Dubai will be appointed to the Audit, Executive, Finance, and Management Compensation committees of Nasdaq's Board of Directors and that one designee of Borse Dubai will be appointed to the Nominating Committee of Nasdaq's Board of Directors, in each case subject to applicable law, regulation, stock exchange listing standard or committee composition standard.

As long as Borse Dubai maintains at least 25% of its initial 19.99% investment, Borse Dubai will be entitled to nominate one director for election to Nasdaq's Board of Directors, but will have no right to appoint members of any committees of Nasdaq's Board of Directors.

### *Standstill Restrictions*

Under the terms of the Nasdaq Stockholders' Agreement, until the earliest to occur (the "Standstill Termination Date"), of:

- the 10th anniversary of the Nasdaq Stockholders' Agreement;
- Borse Dubai owning less than 10% of Nasdaq's outstanding common stock;
- Nasdaq entering into a definitive agreement with respect to a change of control of Nasdaq;
- a change of control of Nasdaq;
- directors nominated by Borse Dubai are not elected by shareholders at two consecutive meetings of shareholders for the election of Nasdaq's Board of Directors; and
- Nasdaq holds less than 25% of its original interest in the Dubai International Financial Exchange, subject to certain exceptions;

Borse Dubai will be restricted from (i) acquiring shares in excess of 19.99% on a fully-diluted basis of Nasdaq, (ii) soliciting proxies with respect to Nasdaq, (iii) proposing or seeking to effect a merger or change of control of Nasdaq, (iv) making public statements or otherwise directly or indirectly seeking to control the management or policies of Nasdaq or its subsidiaries or seeking additional board representatives or removal of directors, (v) forming a "group" with respect to Nasdaq or (vi) otherwise acting in concert with others regarding any of the foregoing.

In addition, if any third party makes a tender or exchange offer that is not recommended against by the Nasdaq's Board of Directors, after 10 business days Borse Dubai may tender into that offer.

### *Preemptive Rights*

At any time prior to the Standstill Termination Date, if Nasdaq effects an issuance of Nasdaq Common Stock or any securities exchangeable for, or convertible into, Nasdaq Common

Stock in any capital raising transaction, which we refer to as a preemptive issuance, that would cause Borse Dubai to own less than 19.99% (as may be reduced in certain circumstances) of Nasdaq Common Stock calculated on a fully diluted basis, Borse Dubai will have the right to purchase securities in such issuance to maintain the same total voting power as Borse Dubai owned immediately prior to such issuance. Borse Dubai's purchase rights will not apply to the following issuances:

- upon conversion of shares of Nasdaq's current or future issued options, warrants or similar securities exercisable, convertible, or exchangeable for capital stock of Nasdaq;
- any stock split or subdivision or similar transaction with respect to Nasdaq's capital stock;
- a preemptive issuance with respect to which Borse Dubai's participation would require approval of Nasdaq's stockholders regardless of the number of shares offered, which Nasdaq will use its reasonable best efforts to obtain, unless and until shareholder approval is obtained (but this exception shall not apply if the approval of Nasdaq's stockholders is required for any other reason);
- a preemptive issuance with respect to which Borse Dubai's participation would require regulatory approvals, which Nasdaq will use its commercially reasonable efforts to obtain, unless and until such regulatory approvals have been obtained;
- any issuance of capital stock of Nasdaq to employees, officers, directors of, and consultants, customers and vendors to, Nasdaq;
- in connection with acquisitions by Nasdaq, whether by merger, consolidation, share exchange or other reorganization or business combination; and
- upon exercise of securities issued pursuant to rights distributed to holders of Nasdaq Common Stock generally.

### **Registration Rights Agreement**

Nasdaq, Borse Dubai and the Trust entered into the Registration Rights Agreement, which governs the registration of the Nasdaq Common Stock acquired by Borse Dubai and the Trust.

#### *Demand Registrations*

Following the 12 month anniversary of the date of the Registration Rights Agreement, each of Borse Dubai and the Trust will have the right to demand registration of the shares of Nasdaq Common Stock that it receives. Pursuant to the Registration Rights Agreement, each of Borse Dubai and the Trust may only demand registration for sales of Nasdaq Common Stock having a value (based on the average closing sale price per share of Nasdaq Common Stock for the 10 trading days preceding the registration request) of not less than \$50 million. Borse Dubai will be entitled to six demand registrations and the Trust will be entitled to three demand registrations, each subject to certain exceptions.

## *Piggyback Registration*

The Registration Rights Agreement also provides Borse Dubai and the Trust with piggyback registration rights such that if at any time Nasdaq proposes to file a registration statement with respect to any underwritten offering of its securities for its own account or for the account of any stockholder that holds its securities (subject to certain exceptions), Nasdaq is required to give written notice of such proposed filing to Borse Dubai and the Trust, and the notice must offer Borse Dubai and the Trust the opportunity to register such number of registrable securities as each of Borse Dubai and the Trust may request in writing.

The registration rights granted in the Registration Rights Agreement are subject to customary restrictions such as blackout periods and limitations on the number of shares to be included in any underwritten offering imposed by the managing underwriter. In addition, the Registration Rights Agreement contains other limitations on the timing and ability of Borse Dubai and the Trust to exercise demands.

## **2.50% Convertible Senior Notes Due 2013**

On February 26, 2008, Nasdaq completed the offering of \$425 million aggregate principal amount (the "Initial Notes") of its 2.50% Convertible Senior Notes due 2013 (the "Notes"). On February 29, 2008, the initial purchasers notified Nasdaq of their intention to exercise in full their over-allotment option to purchase up to an additional \$50 million aggregate principal amount of Notes (the "Additional Notes"). The closing for the sale of the Additional Notes will occur on March 5, 2008. The Initial Notes were (and the Additional Notes will be) sold to the initial purchasers in a private placement (the "Notes Offering"), in reliance on the exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended (the "Securities Act") and were (or, in the case of the Additional Notes, will be) resold by the initial purchasers to "qualified institutional buyers" pursuant to the exemption from registration provided by Rule 144A under the Securities Act. In connection with the offering of the Notes, Nasdaq entered into an indenture and a registration rights agreement.

## *Indenture*

The Notes bear interest at a rate of 2.50% per year. Interest on the Notes is payable semi-annually in arrears on February 15 and August 15 of each year, beginning August 15, 2008. The Notes will mature on August 15, 2013, subject to earlier repurchase or conversion.

Holders may convert their Notes at their option at any time prior to the close of business on the business day immediately preceding the maturity date for such Notes under the following circumstances: (1) during any fiscal quarter after the fiscal quarter ending June 30, 2008 (and only during such fiscal quarter), if the last reported sale price of Nasdaq's common stock for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the immediately preceding fiscal quarter is equal to or more than 130% of the conversion price of the Notes on the last day of such preceding fiscal quarter; (2) during the five business-day period after any five consecutive trading-day period, or the measurement period, in which the trading price per \$1,000 principal amount of the Notes for each day of that measurement period was less than 98% of the product of the last reported sale price of Nasdaq's common stock and the conversion rate of the Notes on each such day; or (3) upon the occurrence of certain corporate transactions. In addition, holders may also convert their Notes at their option at any time beginning on May 15, 2013, and ending at the close of business on the business day immediately preceding the maturity date for the Notes, without regard to the foregoing circumstances. Upon conversion, Nasdaq will pay or deliver, as the case may be, cash, shares of

Nasdaq common stock or a combination thereof at Nasdaq's election. The initial conversion rate for the Notes will be 18.1386 shares of Nasdaq common stock per \$1,000 principal amount of Notes, equivalent to an initial conversion price of approximately \$55.13 per share of common stock. Such conversion rate will be subject to adjustment in certain events but will not be adjusted for accrued interest, including any additional interest.

Following certain corporate transactions, Nasdaq will increase the applicable conversion rate for a holder who elects to convert its Notes in connection with such corporate transactions by a number of additional shares of common stock.

Nasdaq may not redeem the Notes prior to their stated maturity date. If Nasdaq undergoes a fundamental change, holders may require it to purchase all or a portion of their Notes for cash at a price equal to 100% of the principal amount of the Notes to be purchased plus any accrued and unpaid interest, including any additional interest, to, but excluding, the fundamental change purchase date.

The Indenture contains customary events of default.

The Notes and the underlying Nasdaq common stock issuable upon conversion of the Notes have not been registered under the Securities Act or the securities laws of any jurisdiction and are subject to certain restrictions on transfer.

#### *Registration Rights Agreement*

On February 26, 2008, Nasdaq entered into a registration rights agreement with the initial purchasers for the benefit of holders of the Notes (the "Registration Rights Agreement"). Pursuant to the Registration Rights Agreement, in the event that "registrable securities" are held by non-affiliates on the day that is six months after the last date of original issuance of the Notes, Nasdaq will file, and have declared effective, by such date a shelf registration statement under the Securities Act to register resales of the registrable securities. "Registrable securities" is defined in the Registration Rights Agreement to mean the Notes and any shares of Nasdaq Common Stock into which the Notes are convertible, excluding any Notes or shares of Nasdaq Common Stock into which the Notes are convertible that are eligible to be sold to the public pursuant to Rule 144 under the Securities Act on any relevant date of determination.

If at anytime thereafter, Nasdaq is not current on its reporting obligations under the Securities Exchange Act of 1934, as amended, it will file and have declared effective a shelf registration statement covering the resale of the registrable securities and use its best efforts to keep any such shelf registration statement effective until the earliest of:

- one year from the last date of original issuance of the Notes;
- the date by which all registrable securities have been sold pursuant to such shelf registration statement; and
- the date on which none of the securities available for sale under such shelf registration statement constitute registrable securities.

Nasdaq is permitted to suspend the use of the prospectus that is a part of such shelf registration statement for a period not to exceed an aggregate of 30 days in any 90-day period or an aggregate of 90 days in any 12-month period under certain circumstances relating to pending corporate developments, public filings with the Securities and Exchange Commission (the "Commission") and similar events.

Nasdaq also agreed to file with, and have declared by, the Commission a shelf registration statement for any holder of registrable securities from the day that is six months after the last date of original issuance of the Notes until one year from the last date of the original issuance of the Notes, provided that such holder of registrable securities has requested such registration at least 30 days prior to the date such shelf registration statement is to be filed.

In addition, as of the one year-anniversary of the last date of original issuance of the notes, Nasdaq will remove restrictive legends from the Notes and any shares of Nasdaq Common Stock issued upon conversion of the Notes.

Subject to certain exceptions, if Nasdaq does not file a shelf registration for holders of registrable securities (or the prospectus contained therein ceases to be usable in connection with resales of Notes and any Nasdaq Common Stock issuable upon conversion of the Notes) or fails to remove the restrictive legends within the specified time periods, Nasdaq will pay additional interest on the Notes.

## **Financing**

On February 27, 2008 (the "Closing Date"), Nasdaq entered into the Credit Agreement (the "Credit Agreement"), among Nasdaq, as borrower, the financial institutions party thereto as lenders, Bank of America, N.A., as administrative agent, collateral agent, swingline lender and issuing bank, JPMorgan Chase Bank, N.A., as syndication agent, Bank of America Securities LLC and JP Morgan Securities Inc., as joint lead arrangers and joint bookrunners, and Wachovia Bank, National Association, as documentation agent, which Credit Agreement provides for up to \$2,075.0 million of senior secured loans, including (i) a five-year, \$2,000.0 million senior secured term loan facility (the "Term Loan Facility"), which consists of (a) a \$625.0 million term loan facility allocated to the OMX acquisition and drawn by Nasdaq on the Closing Date; (b) a \$425.0 million delayed draw term loan facility allocated to the purchase of the remaining OMX shares not purchased by Nasdaq on the Closing Date, which facility is available for six months following the Closing Date, (c) a \$650.0 million delayed draw term loan facility allocated to Nasdaq's contemplated acquisition of Philadelphia Stock Exchange, Inc., a Delaware corporation ("PHLX"), which facility is available until July 31, 2008, and (d) a \$300.0 million delayed draw term loan facility allocated to Nasdaq's contemplated acquisition of certain assets of Nord Pool ASA, a public limited company incorporated and existing under the laws of Norway ("Nord Pool"), which facility is available for six months following the Closing Date, and (ii) a five-year, \$75.0 million senior secured revolving credit facility, with a letter of credit subfacility and swingline loan subfacility (the "Revolving Credit Facility", and together with the Term Loan Facility, the "Credit Facilities"), which revolving credit facility was undrawn on the Closing Date. In addition, Nasdaq may request that prospective additional lenders under the Credit Agreement agree to make available incremental term loans and incremental revolving commitments from time to time after the Closing Date in an aggregate amount not to exceed \$200.0 million.

In addition to providing financing for the acquisitions of OMX, PHLX and certain assets of Nord Pool, Nasdaq is using the debt financing under the Credit Facilities to (i) pay fees and expenses incurred in connection with such acquisitions, (ii) repay certain indebtedness of OMX, PHLX and their respective subsidiaries and (iii) provide ongoing working capital and provide for other general corporate purposes of Nasdaq and its subsidiaries.

Borrowings under the Credit Facilities (other than swingline loans) bear interest at (i) the base rate (the higher of the prime rate announced by the Bank of America, N.A. and the federal funds effective rate plus 0.50%), plus an applicable margin, or (ii) the LIBO rate (set by the British Bankers Association LIBOR Rate), plus an applicable margin. The interest rate on swingline loans made under the Credit Facilities is the base rate, plus an applicable margin.

Nasdaq's obligations under the Credit Facilities (i) are guaranteed by each of the existing and future direct and indirect material wholly-owned domestic subsidiaries of Nasdaq, subject to certain exceptions, and (ii) are secured, subject to certain exceptions, by all the capital stock of each of Nasdaq's present and future subsidiaries (limited, in the case of foreign subsidiaries, to 65.0% of the voting stock of such subsidiaries) and all of the present and future property and assets (real and personal) of Nasdaq and the guarantors.

The Credit Facilities contain customary negative covenants applicable to Nasdaq and its subsidiaries, including the following:

- limitations on the payment of dividends and redemptions of Nasdaq's capital stock;
- limitations on changes in Nasdaq's business;
- limitations on amendment of subordinated debt agreements;
- limitations on prepayments, redemptions and repurchases of debt;
- limitations on liens and sale-leaseback transactions;
- limitations on mergers, recapitalizations, acquisitions and asset sales;
- limitations on transactions with affiliates;
- limitations on restrictions on liens and other restrictive agreements; and
- limitations on loans, guarantees, investments, incurrence of debt and hedging arrangements.

In addition, the Credit Facilities contain financial covenants, specifically, maintenance of a minimum interest expense coverage ratio and a maximum total leverage ratio, each defined in the Credit Facilities.

The Credit Facilities also contain customary affirmative covenants, including access to financial statements, notice of defaults and certain other material events, and maintenance of business and insurance, and events of default, including cross-defaults to our material indebtedness.



Nasdaq is permitted to repay borrowings under the Credit Facilities at any time in whole or in part, without penalty. Nasdaq is required to repay loans outstanding under the Credit Facilities (i) with net cash proceeds from sales of property and assets of Nasdaq and its subsidiaries (excluding inventory sales and other sales in the ordinary course of business) and casualty and condemnation proceeds, in each case subject to exceptions and thresholds to be agreed and subject to reinvestment rights; (ii) with net cash proceeds from the issuance or incurrence of additional indebtedness other than indebtedness permitted by the Credit Facilities; and (iii) with a percentage of Nasdaq's excess cash flow, and the percentage of such excess cash flow Nasdaq is required to use for repayments varies depending on Nasdaq's leverage ratio at the end of the year for which cash flow is calculated, starting in 2008, with the maximum repayment percentage set at 50.0% of excess cash flow.

The foregoing summary of the Indenture, the Note and the Notes Registration Rights Agreement, the Amendment, the Nasdaq Stockholders' Agreement, the Registration Rights Agreement, the Credit Agreement and the transactions contemplated thereby does not purport to be complete and is subject to, and qualified in its entirety by, the full texts of the Indenture, the Note and the Notes Registration Rights Agreement, the Amendment, the Nasdaq Stockholders' Agreement, the Registration Rights Agreement and the Credit Agreement, which are attached as Exhibits 4.1, 4.2, 4.3, 10.1, 10.2, 10.3 and 10.4, respectively, and incorporated herein by reference.

**Item 2.01. Completion of Acquisition or Disposition of Assets.**

On February 27, 2008, Nasdaq completed its previously announced acquisition of OMX from Borse Dubai. Nasdaq acquired 117,227,931 shares, representing approximately 97%, of OMX from Borse Dubai in exchange for SEK 11,678,630,352 and 60,561,515 shares of Nasdaq Common Stock issued to Borse Dubai and the Trust.

**Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

On February 26, 2008, Nasdaq entered into the Indenture. The description of the Indenture set forth under Item 1.01 is hereby incorporated by reference into this Item 2.03 as if fully set forth herein.

On February 27, 2008, Nasdaq entered into the Credit Agreement. The description of the Credit Agreement set forth under Item 1.01 is hereby incorporated by reference into this Item 2.03 as if fully set forth herein.

**Item 3.02. Unregistered Sales of Equity Securities.**

On February 27, 2008, Nasdaq completed the sale of 60,561,515 shares of Nasdaq Common Stock to Borse Dubai, 17,660,367 of which were deposited into the Trust, in a transaction exempt from registration pursuant to Section 4(2) of the Securities Act of 1933, as amended. The shares formed a portion of the consideration used to acquire OMX. In total, Nasdaq paid SEK 11,678,630,352 and issued 60,561,515 shares of Nasdaq Common Stock to acquire 117,227,931 shares of OMX.

The information under the caption "Item 3.02. Unregistered Sales of Equity Securities" in the Current Report on Form 8-K of Nasdaq filed with the Commission on February 21, 2008 (File No. 000-32651) is attached hereto as Exhibit 99.3 and incorporated herein by reference.

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

(c) Appointment of Principal Officers

*Magnus Böcker*

(1) On March 3, 2008, Nasdaq announced the appointment of Magnus Böcker, age 46, as President effective February 27, 2008 upon the consummation of the combination of OMX and The Nasdaq Stock Market, Inc.

(2) Mr. Böcker previously was the President and Chief Executive Officer of OMX and was an OMX employee since 1986. From 1996 to 2003, he served as the Vice President of OM and the President of OM Technology. Mr. Böcker was the Chief Financial Officer of OMX and its predecessor from 1989 to 1996.

(3) Mr. Böcker was appointed President pursuant to the transaction agreement between Nasdaq and OMX, dated May 25, 2007, as supplemented on September 30, 2007, and as clarified on January 2, 2008. In connection with Mr. Böcker's appointment, the Management Compensation Committee of Nasdaq's Board of Directors approved for 2008 a base salary of \$750,000, a target bonus opportunity of \$1,000,000 and a future equity award valued at \$2,500,000.

**Item 8.01. Other Information.**

On February 27, 2008, Nasdaq issued a press release regarding the acquisition of OMX. This press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

On March 3, 2008, Nasdaq issued a press release announcing the appointment of executive officers of Nasdaq. This press release is attached as Exhibit 99.2 to the Current Report on Form 8-K and is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.****(a) Financial Statements of Business Acquired.**

Any required financial statements of OMX will be filed by amendment to this Current Report on Form 8-K not later than 71 days after the date on which this Current Report on Form 8-K is required to be filed.

**(b) Pro Forma Financial Information.**

Any required pro forma financial information will be filed by amendment to this Current Report on Form 8-K not later than 71 days after the date on which this Current Report on Form 8-K is required to be filed.

**(d) Exhibits.**

<b>Exhibit No.</b>	<b>Exhibit Description</b>
4.1	Indenture, dated as February 26, 2008, between The Nasdaq Stock Market, Inc. and The Bank of New York
4.2	Form of 2.50% Convertible Senior Note due 2013
4.3	Registration Rights Agreement, dated February 26, 2008, among The Nasdaq Stock Market, Inc., J.P. Morgan Securities Inc. and Banc of America Securities LLC
10.1	Amendment to the OMX Transaction Agreement, dated as of February 27, 2008, among The Nasdaq Stock Market, Inc., Borse Dubai Limited and BD Stockholm AB
10.2	Nasdaq Stockholders' Agreement, dated as of February 27, 2008, between The Nasdaq Stock Market, Inc. and Borse Dubai Limited
10.3	Registration Rights Agreement, dated as of February 27, 2008, among The Nasdaq Stock Market, Inc., Borse Dubai Limited and Borse Dubai Nasdaq Share Trust
10.4	Credit Agreement, dated February 27, 2008, among The Nasdaq Stock Market, Inc., the Lenders party thereto, Bank of America, N.A., as Administrative Agent, Collateral Agent, Swingline Lender and Issuing Bank, and JPMorgan Chase Bank, N.A., as Syndication Agent
99.1	Press release dated February 27, 2008
99.2	Press release dated March 3, 2008
99.3	The information under the caption "Item 3.02. Unregistered Sales of Equity Securities" in the Current Report on Form 8-K of The Nasdaq Stock Market, Inc., filed on February 21, 2008 (incorporated herein

by reference to the information under the caption "Item 3.02. Unregistered Sales of Equity Securities" in the Current Report on Form 8-K (File No. 000-32651), filed by The Nasdaq Stock Market, Inc. with the Commission on February 21, 2008)

**SIGNATURE**

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

THE NASDAQ OMX GROUP, INC.

By: /s/ Edward S. Knight

Name: Edward S. Knight

Title: Executive Vice President and  
General Counsel

Dated: March 3, 2008

**THE NASDAQ STOCK MARKET, INC.**

**AND**

**THE BANK OF NEW YORK,**

**as Trustee**

**INDENTURE**

**Dated as of February 26, 2008**

**2.50% Convertible Senior Notes due 2013**

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310(a)(1)	8.09
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(a)(3)	N.A.
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312(a)	6.01
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313(a)	6.03
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(b)(2)	6.03
(c)	6.03; 17.03
(d)	6.03(b)
314(a)	5.06; 5.08
(b)	N.A.
(c)(1)	17.05
(c)(2)	17.05
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315(a)	8.01; 8.02
(b)	7.08; 17.03
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316(a)(last sentence)	9.04
(a)(1)(A)	7.07
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(c)	9.01
317(a)(1)	7.02; 7.05
(a)(2)	7.02
(b)	5.04
318(a)	17.08

N.A. means not applicable

Note: This Cross-Reference table shall not, for any purpose, be deemed to be part of this Indenture.

INDENTURE dated as of February 26, 2008 between The Nasdaq Stock Market, Inc., a Delaware corporation, as issuer (hereinafter sometimes called the “**Company**”, as more fully set forth in Section 1.01) and The Bank of New York, a New York banking corporation, as trustee (hereinafter sometimes called the “**Trustee**”, as more fully set forth in Section 1.01).

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issue of its 2.50% Convertible Senior Notes due 2013 (hereinafter sometimes called the “**Notes**”), initially in an aggregate principal amount not to exceed \$425,000,000 (or \$475,000,000 if the Initial Purchasers exercise their option to purchase additional Notes in full as set forth in the Purchase Agreement), and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided for; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as in this Indenture provided, the valid, binding and legal obligations of the Company, and to constitute these presents a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issue hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE 1  
DEFINITIONS

Section 1.01. *Definitions.* The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All other terms used in this Indenture that are defined in the Trust Indenture Act or that are by reference therein defined in the Securities Act (except as herein otherwise expressly provided or unless the context otherwise requires) shall have the meanings assigned to such terms in said Trust Indenture Act and in said Securities Act as in force at the date of the execution of this Indenture. The words “herein,” “hereof,” “hereunder,” and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

“**Additional Interest**” means all Interest Amounts as defined in the Registration Rights Agreement.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control,” when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Board of Directors**” means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

“**Board Resolution**” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“**Business Day**” means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which the banking institutions in The City of New York are authorized or obligated by law or executive order to close or be closed.

“**Capital Stock**” means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

“**Cash Settlement Averaging Period**” means, with respect to any Note surrendered for conversion, the thirty consecutive Trading Day period beginning on and including the third Trading Day after the Conversion Date for such Note; *provided* that with respect to any Conversion Date occurring during the period beginning on May 15, 2013, and ending at close of business on the Business Day immediately prior to the Maturity Date, the “**Cash Settlement Averaging Period**” means the thirty consecutive Trading Days beginning on and including the thirty-second Scheduled Trading Day prior to the Maturity Date.

“**close of business**” means 5:00 p.m. (New York City time).

“**Commission**” means the Securities and Exchange Commission.

“**Common Equity**” of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“**Common Stock**” means, subject to Section 15.06, shares of common stock of the Company, par value \$0.01 per share, at the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and that have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and that are not subject to redemption by

the Company; *provided* that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion that the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

“**Company**” means The Nasdaq Stock Market, Inc., a Delaware corporation, and subject to the provisions of Article 12, shall include its successors and assigns.

“**Company Order**” means a written order of the Company, signed by (a) the Company’s Chief Executive Officer, President, Executive or Senior Vice President, Managing Director or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”) and (b) any such other officer designated in clause (a) of this definition or the Company’s Treasurer or Assistant Treasurer or Secretary or any Assistant Secretary, and delivered to the Trustee.

“**Continuing Director**” means a director who either was a member of the Board of Directors on February 21, 2008 or who becomes a member of the Board of Directors subsequent to that date and whose election, appointment or nomination for election by the stockholders of the Company, is duly approved by a majority of the continuing directors on the Board of Directors at the time of such approval, either by a specific vote or by approval of the proxy statement issued by the Company on behalf of the entire Board of Directors in which such individual is named as nominee for director.

“**Conversion Agent**” shall have the meaning specified in Section 5.02.

“**Conversion Date**” shall have the meaning specified in Section 15.02(e).

“**Conversion Obligation**” shall have the meaning specified in Section 15.01(a).

“**Conversion Price**” means as of any date, \$1,000, *divided by* the Conversion Rate as of such date.

“**Conversion Rate**” shall have the meaning specified in Section 15.01(a).

“**Conversion Rate Cap**” shall have the meaning specified in Section 15.12.

“**Conversion Trigger Price**” shall have the meaning specified in Section 15.01(b)(iv).

“**Corporate Trust Office**” means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the dated hereof is located at 101 Barclay Street, Floor 8 West, New York, New York 10286, Attention: Corporate Trust Administration, or such other address as the Trustee may designate from time to time by notice to the Noteholders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Noteholders and the Company).

“**Custodian**” means The Bank of New York, as custodian for The Depository Trust Company, with respect to the Global Notes, or any successor entity thereto.

**“Daily Conversion Value”** means, for each of the thirty consecutive Trading Days during the Cash Settlement Averaging Period, one-thirtieth (1/30<sup>th</sup>) of the product of (a) the then-applicable Conversion Rate on such Trading Day and (b) the Daily VWAP of the Common Stock on such Trading Day.

**“Daily Measurement Value”** is equal to the Specified Dollar Amount, *divided by* 30.

**“Daily Settlement Amount,”** for each of the thirty consecutive Trading Days during the Cash Settlement Averaging Period, shall consist of:

(a) cash equal to the lesser of the Daily Measurement Value and the Daily Conversion Value for such Trading Day; and

(b) to the extent such Daily Conversion Value for such Trading Day exceeds the Daily Measurement Value, a number of shares of Common Stock equal to the Daily Share Amount.

**“Daily Share Amount”** means, to the extent the Daily Conversion Value exceeds the Daily Measurement Value, (i) the difference between the Daily Conversion Value *and* the Daily Measurement Value, *divided by* (ii) the Daily VWAP of the Common Stock for such Trading Day.

**“Daily VWAP”** for the Common Stock means the per share volume-weighted average price on The NASDAQ Global Select Market as displayed under the heading “Bloomberg VWAP” on Bloomberg page “NDAQ.UQ <equity> AQR” (or any successor page thereto) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such Trading Day as determined in a commercially reasonable manner by the Board of Directors using a volume-weighted method) and will be determined without regard to after hours trading or any other trading outside of the regular trading session.

**“Default”** means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

**“Defaulted Interest”** means any interest on any Note that is payable, but is not punctually paid or duly provided for, on any February 15 or August 15.

**“Depositary”** means, with respect to the Global Notes the Person specified in Section 2.06 as the Depositary with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, **“Depositary”** shall mean or include such successor.

**“Designated Institution”** shall have the meaning specified in Section 15.11(a)(i)

**“Distributed Property”** shall have the meaning specified in Section 15.04(c).

**“Effective Date”** shall have the meaning specified in Section 15.03(a).

**“Event of Default”** shall have the meaning specified in Section 7.01.

**“Ex-Dividend Date”** means, with respect to any issuance, dividend or distribution in which the holders of Common Stock (or other security) have the right to receive any cash, securities or other property, the first date on which the shares of the Common Stock (or other security) trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

**“Fiscal Quarter”** means a fiscal quarter of any Fiscal Year.

**“Fiscal Year”** means a fiscal year of the Company ending on December 31 of each calendar year.

**“Fundamental Change”** means the occurrence after the original issuance of the Notes of any of the following events:

(a) any “person” or “group” (within the meaning of Section 13(d) of the Exchange Act) other than the Company, its Subsidiaries or the employee benefit plans of the Company or any such Subsidiary, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of the Company’s Common Equity representing more than 50% of the voting power of the Company’s Common Equity;

(b) consummation of any share exchange, exchange offer, tender offer, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one of the Company’s Subsidiaries;

(c) Continuing Directors cease to constitute at least a majority of the Board of Directors;

(d) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company; or

(e) the Common Stock ceases to be listed on a United States national or regional securities exchange,



*provided, however*, in the case of a transaction or event described in clause (a) or (b) above, if at least 90% of the consideration, excluding cash payments for fractional shares, in the transaction or transactions constituting the Fundamental Change consists of shares of Publicly Traded Securities, and as a result of such transaction or transactions, the Notes become convertible into such Publicly Traded Securities, excluding cash payments for fractional shares (subject to the provisions of Section 15.02(b)), such event shall not be a Fundamental Change.

For purposes of this definition, whether a “**person**” is a “**beneficial owner**” shall be determined in accordance with Rule 13d-3 under the Exchange Act and “**person**” includes any syndicate or group that would be deemed to be a “**person**” under Section 13(d)(3) of the Exchange Act.

“**Fundamental Change Company Notice**” shall have the meaning specified in Section 16.02(b).

“**Fundamental Change Expiration Time**” shall have the meaning specified in Section 16.02(b)(ix).

“**Fundamental Change Repurchase Date**” shall have the meaning specified in Section 16.02(a).

“**Fundamental Change Repurchase Notice**” shall have the meaning specified in Section 16.02(a)(i).

“**Fundamental Change Repurchase Price**” shall have the meaning specified in Section 16.02(a).

“**Global Note**” shall have the meaning specified in Section 2.06(b).

“**Indenture**” means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

“**Initial Purchasers**” means J.P. Morgan Securities Inc. and Banc of America Securities LLC.

“**Interest Payment Date**” means each February 15 and August 15 of each year, beginning on August 15, 2008; *provided, however*, that if any Interest Payment Date falls on a date that is not a Business Day, such payment of interest (or principal in the case of the Maturity Date) will be postponed until the next succeeding Business Day, and no interest or other amount will be paid as a result of such postponement.

“**Interest Record Date**,” with respect to any Interest Payment Date, shall mean the February 1 or August 1 (whether or not such day is a Business Day) immediately preceding the applicable February 15 or August 15 Interest Payment Date, respectively.

“**Last Reported Sale Price**” of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional

securities exchange on which the Common Stock is listed for trading. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange on the relevant date, then the “**Last Reported Sale Price**” will be the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization. If the Common Stock is not so quoted, the “**Last Reported Sale Price**” will be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

“**Make-Whole Conversion Rate Adjustment**” shall have the meaning specified in Section 15.03(a).

“**Make-Whole Fundamental Change**” means any transaction or event that constitutes a Fundamental Change as described in clause (a) or (b) of the definition thereof, and subject to the *proviso* to such definition.

“**Market Disruption Event**” means (a) a failure by the primary exchange or quotation system on which the Common Stock trades or is quoted, as the case may be, to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m. New York City time, on any Trading Day for the Common Stock for an aggregate one-half hour period of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock.

“**Maturity Date**” means August 15, 2013.

“**Measurement Period**” shall have the meaning specified in Section 15.01(b)(i).

“**Merger Event**” shall have the meaning specified in Section 15.06.

“**Note**” or “**Notes**” shall mean any note or notes, as the case may be, authenticated and delivered under this Indenture.

“**Noteholder**” or “**holder**,” as applied to any Note, or other similar terms (but excluding the term “beneficial holder”), shall mean any person in whose name at the time a particular Note is registered on the Note Register.

“**Note Register**” shall have the meaning specified in Section 2.06(a).

“**Note Registrar**” shall have the meaning specified in Section 2.06(a).

“**Notice of Conversion**” shall have the meaning specified in Section 15.02(d).

“**Offering Memorandum**” means the final offering memorandum dated February 20, 2008 relating to the offering and sale of the Notes.

“**Officer**” means, with respect to the Company, the President, the Chief Executive Officer, the Treasurer, the Secretary, any Executive or Senior Vice President, Managing Director or any Vice President (whether or not designated by a number or numbers or word added before or after the title “Vice President”).

**“Officers’ Certificate,”** when used with respect to the Company, means a certificate signed by (a) one Officer of the Company and (b) another officer of the Company or one of the Treasurer or any Assistant Treasurer, Secretary or any Assistant Secretary or Controller of the Company that is delivered to the Trustee. Each such certificate shall include the statements provided for in Section 17.05 if and to the extent required by the provisions of such Section. One of the officers giving an Officers’ Certificate pursuant to Section 5.08 shall be the principal executive, financial or accounting officer of the Company.

**“opening of business”** means 9:00 a.m. (New York City time).

**“Opinion of Counsel”** means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, or other counsel acceptable to the Trustee, that is delivered to the Trustee. Each such opinion shall include the statements provided for in Section 17.05 if and to the extent required by the provisions of such Section.

**“outstanding,”** when used with reference to Notes, shall, subject to the provisions of Section 9.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

(a) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation;

(b) Notes, or portions thereof, for the payment or repurchase of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent); *provided* that, if any such Note is repurchased, the holder thereof shall have delivered a Fundamental Change Repurchase Notice in accordance with Section 16.02;

(c) Notes that have been paid pursuant to Section 2.07 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.07 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course; and

(d) Notes converted pursuant to Article 15.

**“Paying Agent”** shall have the meaning specified in Section 5.02.

**“Person”** means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

**“Portal Market”** means The Portal Market operated by the Company or any successor thereto.

**“Predecessor Note”** of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.07 in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

**“Publicly Traded Securities”** means shares of common stock, depositary receipts or other certificates representing common equity interests, in each case, that are traded on a national securities exchange or that will be so traded when issued or exchanged in connection with a Fundamental Change described in clause (a) or (b) of the definition thereof.

**“Purchase Agreement”** means that certain Purchase Agreement, dated as of February 20, 2008, among the Company and the Initial Purchasers.

**“Record Date”** shall have the meaning specified in Section 15.04(f).

**“Reference Property”** shall have the meaning specified in Section 15.06(b).

**“Registration Rights Agreement”** means that certain Registration Rights Agreement, dated as of February 26, 2008, among the Company and the Initial Purchasers, as amended from time to time.

**“Resale Restriction Termination Date”** shall have the meaning specified in Section 2.06(d).

**“Responsible Officer”** means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

**“Restricted Securities”** shall have the meaning specified in Section 2.06(d).

**“Rule 144A”** means Rule 144A as promulgated under the Securities Act.

**“Scheduled Trading Day”** means any day that is scheduled to be a Trading Day.

**“Securities Act”** means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

**“Settlement Amount”** has the meaning specified in Section 15.02(b).

**“Settlement Method”** means, with respect to a conversion of Notes, the relative proportions of cash and/or shares of Common Stock with which such conversion is settled under this Indenture, as elected (or deemed elected) by the Company.

“**Settlement Notice**” has the meaning specified in Section 15.02(b)(iii).

“**Specified Dollar Amount**” means the amount of cash per \$1,000 principal amount of converted Note specified in the Settlement Notice related to such converted Note.

“**Spin-Off**” shall have the meaning specified in Section 15.04(c).

“**Stock Price**” means (a) in the case of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change in which holders of Common Stock receive solely cash consideration in connection with such Make-Whole Fundamental Change, the amount of cash paid per share of the Common Stock and (b) in the case of all other Make-Whole Fundamental Changes, the average of the Last Reported Sale Prices per share of Common Stock over the period of five consecutive Trading Days ending on the Trading Day immediately preceding the Effective Date of such Make-Whole Fundamental Change. The Board of Directors will make appropriate adjustments, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date of the event occurs, during such five consecutive Trading Days.

“**Subsidiary**” means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

“**Successor Company**” shall have the meaning specified in Section 12.01(a).

“**Supplementary Interest**” shall have the meaning specified in Section 7.01.

“**Trading Day**” means a day during which trading in the Common Stock generally occurs and there is no Market Disruption Event.

“**Trading Price**” with respect to the Notes, on any date of determination means the average of the secondary market bid quotations obtained by the Trustee for \$5.0 million principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent U.S. nationally recognized securities dealers selected by the Company; *provided* that if three such bids cannot reasonably be obtained by the Trustee, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Trustee, that one bid shall be used. If the Trustee cannot reasonably obtain at least one bid for \$5.0 million principal amount of Notes from any such nationally recognized securities dealer, then the Trading Price per \$1,000 principal amount of Notes will be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate.

“**transfer**” shall have the meaning specified in Section 2.06(d).

“**Trigger Event**” shall have the meaning specified in Section 15.04(c).

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture, except as provided in Section 11.03 and Section 15.06; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term “**Trust Indenture Act**” shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

“**Trustee**” means the Person named as the “Trustee” in the first paragraph of this Indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder.

“**Weighted Average Consideration**” shall have the meaning specified in Section 15.06(c)(iv).

ARTICLE 2  
ISSUE, DESCRIPTION, EXECUTION, REGISTRATION  
AND EXCHANGE OF NOTES

Section 2.01. *Designation and Amount.* The Notes shall be designated as the “2.50% Convertible Senior Notes due 2013.” The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to \$425,000,000 (or \$475,000,000 if the Initial Purchasers exercise their option to purchase additional Notes in full as set forth in the Purchase Agreement), subject to Section 2.11 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes pursuant to Section 2.06, Section 2.07, Section 11.04, Section 15.02 and Section 16.04 hereof.

Section 2.02. *Form of Notes.* The Notes and the Trustee’s certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in Exhibit A, which are incorporated in and made a part of this Indenture.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian, the Depository or by the National Association of Securities Dealers, Inc. in order for the Notes to be tradable on The Portal Market or as may be required for the Notes to be tradable on any other market developed for trading of securities pursuant to Rule 144A or required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with

the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

The Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect repurchases, conversions, transfers or exchanges permitted hereby. Any endorsement of the Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the holder of such Notes in accordance with this Indenture. Payment of principal, accrued and unpaid interest, and Additional Interest, if any, and premium, if any (including any Fundamental Change Repurchase Price), on the Global Note shall be made to the holder of such Note on the date of payment, unless a record date or other means of determining holders eligible to receive payment is provided for herein.

The terms and provisions contained in the form of Note attached as Exhibit A hereto shall constitute, and are hereby expressly made, a part of this Indenture and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Section 2.03. *Date and Denomination of Notes; Payments of Interest.* The Notes shall be issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of the form of Note attached as Exhibit A hereto. Interest on the Notes shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Interest Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. Interest (including Additional Interest, if any) shall be payable at the office or agency of the Company maintained by the Company for such purposes in The Borough of Manhattan, City of New York, which shall initially be the office of the Paying Agent at 101 Barclay Street, Floor 8 West, New York, New York 10286, Attention: Corporate Trust Administration. The Company shall pay interest (including Additional Interest, if any) (a) on any Notes in certificated form by check mailed to the address of the Person entitled thereto as it appears in the Note Register (or upon written application by such Person to the Trustee and Paying Agent (if different from the Trustee) not later than the relevant Interest Record Date, by wire transfer in immediately available funds to such Person's account within the United States, if such Person is entitled to interest on an aggregate principal in excess of \$1,000,000, which application shall remain in effect until the Noteholder notifies the Trustee and Paying Agent to the contrary) or (b) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee.

Any Defaulted Interest shall forthwith cease to be payable to the Noteholder on the relevant Interest Record Date by virtue of its having been such Noteholder, and such Defaulted Interest shall be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment (which shall be not less than twenty-five days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Interest which shall be not more than fifteen days and not less than ten days prior to the date of the proposed payment, and not less than ten days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee of such special record date and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be mailed, first-class postage prepaid, to each holder at its address as it appears in the Note Register, not less than ten days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (2) of this Section 2.03.

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04. *Payments of Additional Interest.* If required by the Registration Rights Agreement, the Company shall pay Additional Interest in the manner and to the Persons set forth in the Registration Rights Agreement. Whenever in this Indenture there is mentioned, in any context, the payment of interest on, or in respect of, any Note, such mention shall be deemed to include mention of the payment of "Additional Interest" provided for in the Registration Rights Agreement to the extent that, in such context, Additional Interest is, was or would be payable in respect thereof pursuant to the provisions of the Registration Rights Agreement and express mention of the payment of Additional Interest (if applicable) in any provisions hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

Section 2.05. *Execution, Authentication and Delivery of Notes.* The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its Chief Executive Officer, President, Treasurer, Secretary or any of its Executive or Senior Vice Presidents.



At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the form of Note attached as Exhibit A hereto, executed manually or by facsimile by an authorized officer of the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 17.11), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture.

In case any officer of the Company who shall have signed any of the Notes shall cease to be such officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such officer of the Company; and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such an officer.

Section 2.06. *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary.* (a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 5.02 being herein sometimes collectively referred to as the “**Note Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Trustee is hereby appointed “**Note Registrar**” for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-registrars in accordance with Section 5.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or any co-registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.06, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 5.02. Whenever any Notes are

so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes that the Noteholder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange, repurchase or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any co-registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and duly executed, by the Noteholder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be charged to the Noteholder for any exchange or registration of transfer of Notes, but the Company or the Trustee may require payment of a sum sufficient to cover any tax, assessments or other governmental charges that may be imposed in connection therewith as a result of the name of the Noteholder of the new Notes issued upon such exchange or registration of transfer of Notes being different from the name of the Noteholder of the old Notes presented or surrendered for such exchange or registration of transfer.

None of the Company, the Trustee, the Note Registrar or any co-registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion or (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 16 hereof.

All Notes issued upon any registration of transfer or exchange of Notes in accordance with this Indenture shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

(b) So long as the Notes are eligible for book-entry settlement with the Depository, unless otherwise required by law, all Notes shall be represented by one or more Notes in global form (each, a “**Global Note**”) registered in the name of the Depository or the nominee of the Depository. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a definitive Note, shall be effected through the Depository (but not the Trustee or the Custodian) in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depository therefor.

(c) [Reserved.]

(d) Every Note that bears or is required under this Section 2.06(d) to bear the legend set forth in this Section 2.06(d) (together with any Common Stock issued upon conversion of the Notes and required to bear the legend set forth in Section 2.06(e), collectively, the “**Restricted Securities**”) shall be subject to the restrictions on transfer set forth in this Section 2.06(d) (including the legend set forth below), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the holder of each such Restricted Security, by such holder’s acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in Section 2.06(d) and Section 2.06(e), the term “**transfer**” encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

Until the date (the “**Resale Restriction Termination Date**”) the later of (1) the date that is one year after the last date of original issuance of the Notes, or such other period of time as permitted by Rule 144 under the Securities Act or any successor provision thereto, and (2) such later date, if any, as may be required by applicable laws, any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof which shall bear the legend set forth in Section 2.06(e), if applicable) shall bear a legend in substantially the following form (unless such Notes have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A “QUALIFIED INSTITUTIONAL BUYER” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER, AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE NASDAQ STOCK MARKET, INC. (THE “COMPANY”) OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

No transfer of any Note prior to the Resale Restriction Termination Date will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked.

Any Note (or security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.06, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.06(d). The Company shall notify the Trustee upon the occurrence of the Resale Restriction Termination Date and promptly after a Registration Statement with respect to the Notes or any Common Stock issued upon conversion of the Notes has been declared effective under the Securities Act.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.06(d)), a Global Note may not be transferred as a whole or in part except (i) by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary and (ii) for transfers of portions of a Global Note in certificated form made upon request of a member of, or a participant in, the Depositary (for itself or on behalf of a beneficial owner) by written notice given to the Trustee by or on behalf of the Depositary in accordance with customary procedures of the Depositary and in compliance with this Section.

The Depositary shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depositary with respect to the Global Note. Initially, the Global Note shall be issued to the Depositary, registered in the name of Cede & Co., as the nominee of the Depositary, and deposited with the Trustee as custodian for Cede & Co.

If (i) the Depositary notifies the Company at any time that the Depositary is unwilling or unable to continue as depositary for the Global Notes and a successor depositary is not appointed within 90 days, (ii) the Depositary ceases to be registered as a clearing agency

under the Exchange Act and a successor depository is not appointed within 90 days or (iii) an Event of Default in respect of the Notes has occurred and is continuing, upon the request of the beneficial owner of the Notes, the Company will execute, and the Trustee, upon receipt of an Officers' Certificate and a Company Order for the authentication and delivery of Notes, will authenticate and deliver Notes in definitive form to each such beneficial owner of the related Notes (or a portion thereof) in an aggregate principal amount equal to the principal amount of such Global Note, in exchange for such Global Note, and upon delivery of the Global Note to the Trustee such Global Note shall be canceled.

Definitive Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.06(d) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such definitive Notes to the Persons in whose names such definitive Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and instructions existing between the Depository and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is exchanged for definitive Notes, converted, canceled, repurchased or transferred to a transferee who receives definitive Notes therefor or any definitive Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depository and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

None of the Company, the Trustee nor any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

(e) Until the Resale Restriction Termination Date, any stock certificate representing Common Stock issued upon conversion of such Note shall bear a legend in substantially the following form (unless the Note or such Common Stock has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or pursuant to the exemption from registration provided by Rule 144 under the Securities Act or any similar provision then in force under the Securities Act, or such Common Stock has been issued upon conversion of Notes that have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or pursuant to the exemption from registration provided by Rule 144 under the Securities Act, or unless otherwise agreed by the Company with written notice thereof to the Trustee and any transfer agent for the Common Stock):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE

OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER, AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE NASDAQ STOCK MARKET, INC. (THE "COMPANY") OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Any such Common Stock as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like aggregate number of shares of Common Stock, which shall not bear the restrictive legend required by this Section 2.06(e).

(f) Any Note or Common Stock issued upon the conversion or exchange of a Note that is purchased or owned by the Company or any Affiliate thereof may not be resold by the Company or such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Notes or Common Stock, as the case may be, no longer being “restricted securities” (as defined under Rule 144).

(g) Notwithstanding any provision of Section 2.06 to the contrary, in the event Rule 144 as promulgated under the Securities Act (or any successor rule) is amended to change the one-year holding period thereunder (or the corresponding period under any successor rule), from and after receipt by the Trustee of the Officers’ Certificate and Opinion of Counsel provided for in this Section 2.06(g), (i) each reference in Section 2.06(d) to “one year” and in the restrictive legend set forth in such paragraph to “ONE YEAR” shall be deemed for all purposes hereof to be references to such changed period, (ii) each reference in Section 2.06(e) to “one year” and in the restrictive legend set forth in such paragraph to “ONE YEAR” shall be deemed for all purposes hereof to be references to such changed period and (iii) all corresponding references in the Notes (including the definition of Resale Restriction Termination Date) and the restrictive legends thereon shall be deemed for all purposes hereof to be references to such changed period, *provided* that such changes shall not become effective if they are otherwise prohibited by, or would otherwise cause a violation of, the then-applicable federal securities laws. The provisions of this Section 2.06(g) will not be effective until such time as the Opinion of Counsel and Officers’ Certificate have been received by the Trustee hereunder. This Section 2.06(g) shall apply to successive amendments to Rule 144 (or any successor rule) changing the holding period thereunder.

Section 2.07. *Mutilated, Destroyed, Lost or Stolen Notes.* In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon its written request the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, a new Note, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Trustee or such authenticating agent may authenticate any such substituted Note and deliver the same upon the receipt of such security or indemnity as the Trustee, the Company and, if applicable, such authenticating agent may require. Upon the issuance of any substitute Note, the Company or the Trustee may require the payment by the holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. In case any Note that has matured or is about to mature or has been tendered for repurchase upon a Fundamental Change or is about

to be converted into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, the Trustee and, if applicable, any Paying Agent or Conversion Agent evidence of their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.07 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment or conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment or conversion of negotiable instruments or other securities without their surrender.

Section 2.08. *Temporary Notes.* Pending the preparation of Notes in certificated form, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon written request of the Company, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Notes in certificated form but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Notes in certificated form. Without unreasonable delay the Company will execute and deliver to the Trustee or such authenticating agent Notes in certificated form (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 5.02 and the Trustee or such authenticating agent shall authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Notes in certificated form. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Notes in certificated form authenticated and delivered hereunder.

Section 2.09. *Cancellation of Notes Paid, Etc.* All Notes surrendered for the purpose of payment, repurchase, conversion, exchange or registration of transfer, shall, if surrendered to the Company or any Paying Agent or any Note Registrar or any Conversion Agent, be surrendered to the Trustee and promptly canceled by it, or, if surrendered to the Trustee, shall be promptly canceled by it, and no Notes shall be issued in lieu thereof except as expressly permitted by any of the provisions of this



Indenture. The Trustee shall dispose of canceled Notes in accordance with its customary procedures and, after such disposition, shall deliver a certificate of such disposition to the Company, at the Company's written request. If the Company shall acquire any of the Notes, such acquisition shall not operate as satisfaction of the indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation.

Section 2.10. *CUSIP Numbers*. The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in all notices issued to Noteholders as a convenience to holders of the Notes; *provided*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company will promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

Section 2.11. *Additional Notes; Repurchases*. The Company may, without the consent of the Noteholders and notwithstanding Section 2.01, reopen this Indenture and issue additional Notes hereunder with the same terms and with the same CUSIP number as the Notes initially issued hereunder in an unlimited aggregate principal amount, which will form the same series with the Notes initially issued hereunder, *provided* that no such additional Notes may be issued unless they will be fungible with the original Notes for U.S. federal income tax and securities law purposes. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee a Company Order, an Officers' Certificate and an Opinion of Counsel, such Officers' Certificate and Opinion of Counsel to cover such matters, in addition to those required by Section 17.05, as the Trustee shall reasonably request. The Company may also from time to time repurchase the Notes in open market purchases or negotiated transactions without prior notice to Noteholders.

ARTICLE 3  
[INTENTIONALLY OMITTED]

ARTICLE 4  
SATISFACTION AND DISCHARGE

Section 4.01. *Satisfaction and Discharge*. This Indenture shall upon request of the Company contained in an Officers' Certificate cease to be of further effect, and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when (a) (i) all Notes theretofore authenticated and delivered (other than (x) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.07 and (y) Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 5.04(d)) have been delivered to the Trustee for cancellation; and (ii) the Company has deposited with the Trustee or delivered to Noteholders, as applicable, after the Notes have become due and payable, whether at the Maturity Date, any Fundamental Change Repurchase Date, upon conversion or otherwise, cash or cash and shares of Common Stock, if any (solely to satisfy the Company's Conversion Obligation, if applicable), sufficient to pay all of the outstanding Notes and all other sums due payable under this Indenture by the Company; and (b) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 8.06 shall survive.

ARTICLE 5  
PARTICULAR COVENANTS OF THE COMPANY

Section 5.01. *Payment of Principal, Premium, Interest and Additional Interest.* The Company covenants and agrees that it will cause to be paid the principal of and premium, if any (including the Fundamental Change Repurchase Price), and accrued and unpaid interest and Additional Interest, if any, on each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes. Each installment of accrued and unpaid interest, and Additional Interest, if any, on the Notes due on any Additional Interest Payment Date (as defined in the Registration Rights Agreement), may be paid by mailing checks for the amount payable to Noteholders entitled thereto as they shall appear on the registry books of the Company; *provided* that, with respect to any Noteholder with an aggregate principal amount in excess of \$1,000,000, at the application of such holder in writing to the Trustee and Paying Agent (if different from the Trustee) not later than the relevant Interest Record Date, accrued and unpaid interest and Additional Interest, if any, on such holder's Notes shall be paid by wire transfer in immediately available funds to such holder's account in the United States, which application shall remain in effect until the Noteholder notifies the Trustee and Paying Agent to the contrary; *provided further* that payment of accrued and unpaid interest and Additional Interest, if any, made to the Depository shall be paid by wire transfer in immediately available funds in accordance with such wire transfer instructions and other procedures provided by the Depository from time to time.

Section 5.02. *Maintenance of Office or Agency.* The Company will maintain in the Borough of Manhattan, The City of New York, an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase ("**Paying Agent**") or for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office or the office or agency of the Trustee in the Borough of Manhattan, The City of New York.

The Company may also from time to time designate co-registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York, for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms "Paying Agent" and "Conversion Agent" include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Note Registrar, Custodian and Conversion Agent and the Corporate Trust Office and the office or agency of the Trustee in the Borough of Manhattan each shall be considered as one such office or agency of the Company for each of the aforesaid purposes.

Section 5.03. *Appointments to Fill Vacancies in Trustee's Office.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 8.10, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 5.04. *Provisions as to Paying Agent.* (a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 5.04:

(i) that it will hold all sums held by it as such agent for the payment of the principal of and premium, if any, and accrued and unpaid interest and Additional Interest, if any, on the Notes in trust for the benefit of the holders of the Notes;

(ii) that it will give the Trustee prompt notice of any failure by the Company to make any payment of the principal of and premium, if any, and accrued and unpaid interest and Additional Interest, if any, on the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal of, or premium (including the Fundamental Change Repurchase Price), if any, or accrued and unpaid interest or Additional Interest, if any, on the Notes, deposit with the Paying Agent a sum sufficient to pay such principal, premium (including the Fundamental Change Repurchase Price), if any, or accrued and unpaid interest or Additional Interest, if any, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action, *provided* that if such deposit is made on the due date, such deposit must be received by the Paying Agent by 11:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal of, premium (including the Fundamental Change Repurchase Price), if any, accrued and unpaid interest and Additional Interest, if any, on the Notes, set aside, segregate and hold in trust for the benefit of the holders of the Notes a sum sufficient to pay such principal, premium (including the Fundamental Change Repurchase Price), if any, accrued and unpaid interest and Additional Interest, if any, so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal of, premium (including the Fundamental Change Repurchase Price), if any, accrued and unpaid interest and Additional Interest, if any, on the Notes when the same shall become due and payable.

(c) Anything in this Section 5.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Company or any Paying Agent hereunder as required by this Section 5.04, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability with respect to such sums.

(d) Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of or premium (including the Fundamental Change Repurchase Price), if any, accrued and unpaid interest and Additional Interest, if any, on any Note and remaining unclaimed for two years after such principal, premium (including the Fundamental Change Repurchase Price), interest or Additional Interest has become due and payable shall be paid to the Company on request of the Company contained in an Officers' Certificate, or (if then held by the Company) shall be discharged from such trust; and the holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in The Borough of Manhattan, The City of New York, New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 5.05. *Existence*. Subject to Article 12, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 5.06. *Rule 144A Information Requirement and Annual Reports*. (a) At any time the Company is not subject to Sections 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes or any shares of Common Stock issuable upon conversion thereof shall, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and shall, upon written request, provide to any holder, beneficial owner or prospective purchaser of such Notes or any shares of Common Stock issued upon conversion of such Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or shares of Common Stock pursuant to Rule 144A under the Securities Act. The Company shall take such further action as any holder or beneficial owner of such Notes or such Common Stock may reasonably request to the extent required from time to time to enable such holder or beneficial holder to sell such Notes or shares of Common Stock in accordance with Rule 144A under the Securities Act, as such rule may be amended from time to time.

(b) The Company shall deliver to the Trustee within three Business Days after the same is required to be filed with the Commission, copies of the quarterly and annual reports and of the information, documents and other reports, if any, that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, and, to the extent required by Section 17.08, the Company shall otherwise comply with the requirements of Trust Indenture Act section 314(a). Any such report, information or document that the Company files with the Commission through the Commission's EDGAR database shall be deemed delivered to the Trustee for purposes of this Section 5.06(b) at the time of such filing through the EDGAR database.

(c) Delivery of the reports, information and documents described in clause (b) above to the Trustee is for informational purposes only, and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from

information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely exclusively on an Officers' Certificate).

Section 5.07. *Stay, Extension and Usury Laws.* The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 5.08. *Compliance Certificate; Statements as to Defaults.* The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2008) an Officers' Certificate stating whether or not the signer thereof has knowledge of any failure by the Company to comply with all conditions and covenants then required to be performed under this Indenture and, if so, specifying each such failure and the nature thereof.

In addition, the Company shall deliver to the Trustee, as soon as possible, and in any event within thirty days after the Company becomes aware of the occurrence of any Event of Default or Default, an Officers' Certificate setting forth the details of such Event of Default or Default, its status and the action that the Company proposes to take with respect thereto.

Section 5.09. *Additional Interest.* If Additional Interest is payable by the Company pursuant to the Registration Rights Agreement, the Company shall deliver to the Trustee an Officers' Certificate to that effect stating (a) the amount of such Additional Interest that is payable and (b) the date on which such interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. If the Company has paid Additional Interest directly to the Persons entitled to them, the Company shall deliver to the Trustee an Officers' Certificate setting forth the particulars of such payment.

Section 5.10. *Further Instruments and Acts.* Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

#### ARTICLE 6 LISTS OF NOTEHOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 6.01. *Lists of Noteholders.* The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, not more than fifteen days after each February 1 and August 1 in each year beginning with August 1, 2008, and at such other times as the

Trustee may request in writing, within thirty days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Noteholders as of a date not more than fifteen days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Note Registrar.

Section 6.02. *Preservation and Disclosure of Lists.* (a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Noteholders contained in the most recent list furnished to it as provided in Section 6.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 6.01 upon receipt of a new list so furnished.

(b) The rights of Noteholders to communicate with other Noteholders with respect to their rights under this Indenture or under the Notes and the corresponding rights and duties of the Trustee, shall be as provided by the Trust Indenture Act.

(c) Every Noteholder, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Noteholders made pursuant to the Trust Indenture Act.

Section 6.03. *Reports by Trustee.* (a) The Trustee shall transmit to holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within sixty days after each May 15 following the date of this Indenture, deliver to holders a brief report, dated as of such May 15, that complies with the provisions of such Section 313(a).

(b) A copy of each such report shall, at the time of such transmission to Noteholders, be filed by the Trustee with each stock exchange and automated quotation system upon which the Notes are listed and with the Company. The Company will notify the Trustee in writing within a reasonable time when the Notes are listed on any stock exchange or automated quotation system and when any such listing is discontinued.

## ARTICLE 7 DEFAULTS AND REMEDIES

Section 7.01. *Events of Default.* The following events shall be “**Events of Default**” with respect to the Notes:

(a) default in any payment of interest, including any Additional Interest, on any Note when due and payable, and the default continues for a period of thirty days;

(b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon required repurchase, upon declaration of acceleration or otherwise;

(c) failure by the Company to comply with its obligation to convert the Notes into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, upon exercise of a holder's conversion right and such failure continues for a period of five days;

(d) failure by the Company to comply with its obligations under Article 12;

(e) failure by the Company to issue a Fundamental Change Company Notice for a period of ten days after such notice becomes due in accordance with Section 16.02(b);

(f) failure by the Company for sixty days after written notice from the Trustee or the holders of at least 25% in principal amount of the Notes then outstanding (a copy of which notice, if given by holders, also to be given to the Trustee) has been received by the Company to comply with any of its other agreements contained in the Notes or this Indenture, which notice shall state that it is a "Notice of Default" hereunder;

(g) default by the Company or any Subsidiary of the Company in the payment of the principal or interest on any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any debt for money borrowed in excess of \$30 million in the aggregate of the Company and/or any such Subsidiary, whether such debt now exists or shall hereafter be created, resulting in such debt becoming or being declared due and payable, and such acceleration shall not have been rescinded or annulled within thirty days after written notice of such acceleration has been received by the Company or such Subsidiary;

(h) a final judgment for the payment of \$30 million or more rendered against the Company or any Subsidiary of the Company, and such amount is not covered by insurance or indemnity or not discharged or stayed within thirty days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

(i) the Company or any Subsidiary of the Company that is a "significant subsidiary" (as defined in Regulation S-X under the Exchange Act) or any group of Subsidiaries of the Company that in the aggregate would constitute a "significant subsidiary" shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Subsidiary or group of Subsidiaries or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Subsidiary or group of Subsidiaries or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or

(j) an involuntary case or other proceeding shall be commenced against the Company or any Subsidiary of the Company that is a "significant subsidiary" (as defined in Regulation S-X under the Exchange Act) or any group of Subsidiaries of the Company that in the aggregate would constitute a "significant subsidiary" seeking liquidation, reorganization or other

relief with respect to the Company or such Subsidiary or group of Subsidiaries or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Subsidiary or group of Subsidiaries or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of thirty consecutive days.

In case one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 7.01(i) or Section 7.01(j) with respect to the Company (and not solely with respect to a “significant subsidiary” (as defined in Regulation S-X under the Exchange Act) of the Company, or a group of Subsidiaries of the Company that in aggregate would constitute a “significant subsidiary” of the Company), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 9.04, by notice in writing to the Company (and to the Trustee if given by Noteholders), may declare 100% of the principal of and premium, if any, and accrued and unpaid interest and accrued and unpaid Additional Interest, if any, on all the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, anything in this Indenture or in the Notes contained to the contrary notwithstanding. If an Event of Default specified in Section 7.01(i) or Section 7.01(j) with respect to the Company (and not solely with respect to a “significant subsidiary” (as defined in Regulation S-X under the Exchange Act) of the Company, or a group of Subsidiaries of the Company that in aggregate would constitute a “significant subsidiary” of the Company) occurs and is continuing, the principal of all the Notes and accrued and unpaid interest and accrued and unpaid Additional Interest, if any, shall be immediately due and payable. This provision, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay installments of accrued and unpaid interest and accrued and unpaid Additional Interest, if any, upon all Notes and the principal of and premium, if any, on any and all Notes that shall have become due otherwise than by acceleration (with interest on overdue installments of accrued and unpaid interest and accrued and unpaid Additional Interest, if any, (to the extent that payment of such interest is enforceable under applicable law) and on such principal and premium, if any, at the rate borne by the Notes at such time) and amounts due to the Trustee pursuant to Section 8.06, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all Events of Defaults under this Indenture, other than the nonpayment of principal of and premium, if any, and accrued and unpaid interest and accrued and unpaid Additional Interest, if any, on Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 7.07, then and in every such case the holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes (other than a Default or an Event of Default resulting from a failure to repurchase any Notes when required upon a Fundamental Change or a failure to deliver, upon



conversion, cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, due upon conversion) and rescind and annul such declaration and its consequences (other than a declaration or consequences, as the case may be, resulting from a failure to repurchase any Notes when required upon a Fundamental Change or a failure to deliver, upon conversion, cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, due upon conversion) and such Default (other than a Default resulting from a failure to repurchase any Notes when required upon a Fundamental Change or a failure to deliver, upon conversion, cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, due upon conversion) shall cease to exist, and any Event of Default arising therefrom (other than a Default resulting from a failure to repurchase any Notes when required upon a Fundamental Change or a failure to deliver, upon conversion, cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, due upon conversion) shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon.

Notwithstanding anything in this Indenture or in the Notes to the contrary, for the first 360 days immediately following any violation of any obligations the Company may be deemed to have pursuant to (1) Section 314(a)(1) of the Trust Indenture Act, or (2) Section 5.06(b), and the continuation thereof, the sole remedy for any such violation shall be the accrual of additional interest on the Notes at a rate per year equal to 0.50% of the outstanding principal amount of the Notes ("**Supplementary Interest**"), payable semi-annually at the same time and in the same manner as regular interest on the Notes pursuant to Section 2.03 and Section 5.01. In no event shall Supplementary Interest accrue at a rate per year in excess of 0.50%, regardless of the number of events or circumstances giving rise to the requirement to pay Supplementary Interest. In addition to the accrual of Supplementary Interest, on and after the 360th day, any violation of any obligations the Company may be deemed to have pursuant to (1) Section 314(a)(1) of the Trust Indenture Act or (2) Section 5.06(b), either the Trustee or the Noteholders of not less than 25% in aggregate principal amount of the Notes then outstanding may declare the principal amount of the Notes and any accrued and unpaid interest, including any Additional Interest, through the date of such declaration, to be immediately due and payable. Whenever in this Indenture there is mentioned, in any context, the payment of interest on, or in respect of, any Note, such mention shall be deemed to include mention of the payment of "Supplementary Interest" provided for in this paragraph to the extent that, in such context, Supplementary Interest is, was or would be payable in respect thereof pursuant to the provisions of this paragraph, and express mention of the payment of Supplementary Interest (if applicable) in any provisions hereof shall not be construed as excluding Supplementary Interest in those provisions hereof where such express mention is not made.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such waiver or rescission and annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Noteholders, and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Noteholders, and the Trustee shall continue as though no such proceeding had been instituted.

Section 7.02. *Payments of Notes on Default; Suit Therefor.* If an Event of Default described in clause (a) or (b) of Section 7.01 shall have occurred, the Company shall, upon demand of the Trustee, pay to it, for the benefit of the holders of the Notes, the whole amount then due and payable on the Notes for principal, premium, if any, and interest and Additional Interest, if any, with interest on any overdue principal, premium, if any, interest and Additional Interest, if any, at the rate borne by the Notes at such time, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 8.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 7.02, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal premium, if any, and accrued and unpaid interest and accrued and unpaid Additional Interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Noteholders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due the Trustee under Section 8.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Noteholders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Noteholders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee under Section 8.06 hereof, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Noteholder any plan of reorganization, arrangement, adjustment or composition affecting the Noteholder or the rights of any Noteholder thereof, or to authorize the Trustee to vote in respect of the claim of any Noteholder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Notes, and it shall not be necessary to make any holders of the Notes parties to any such proceedings.

Section 7.03. *Application of Monies Collected by Trustee.* Any monies collected by the Trustee pursuant to this Article 7 with respect to the Notes shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First, to the payment of all amounts due the Trustee under Section 8.06;

Second, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on the Notes, including Additional Interest, if any, in default in the order of the date due of the installments of such interest, with interest (to the extent that such interest has been collected by the Trustee) upon the overdue installments of interest at the rate borne by the Notes at such time, such payments to be made ratably to the Persons entitled thereto;

Third, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount including the payment of the Fundamental Change Repurchase Price and the cash component of the Conversion Obligation, if any, then owing and unpaid upon the Notes for principal and premium, if any, and interest, including Additional Interest, if any, with interest on the overdue principal and premium, if any, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest at the rate borne by the Notes at such time, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal and premium, if any, and interest without preference or priority of principal and premium, if any, over interest, or of interest over principal and premium, if any, or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal and premium, if any, and accrued and unpaid interest; and

Fourth, to the payment of the remainder, if any, to the Company.

Section 7.04. *Proceedings by Noteholders.* No holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as hereinbefore provided, and unless also the holders of not less than 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such security or indemnity reasonably satisfactory to it against any loss, liability or expense to be incurred therein or thereby, and the Trustee for sixty days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding and no direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the holders of a majority in principal amount of the Notes outstanding within such sixty-day period pursuant to Section 7.07; it being understood and intended, and being expressly covenanted by the taker and holder of every Note with every other taker and holder and the Trustee that no one or more Noteholders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Noteholder, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Noteholders (except as otherwise provided herein). For the protection and enforcement of this Section 7.04, each and every Noteholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any Noteholder to receive payment of the principal of and premium, if any (including the Fundamental Change Repurchase Price upon repurchase pursuant to Section 16.02), and accrued and unpaid interest and accrued and unpaid Additional Interest, if any, on such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, or to institute suit for the enforcement of any such payment on or after such respective dates against the Company shall not be impaired or affected without the consent of such Noteholder.

Anything in this Indenture or the Notes to the contrary notwithstanding, the holder of any Note, without the consent of either the Trustee or the holder of any other Note, in its own behalf and for its own benefit, may enforce, and may institute and maintain any proceeding suitable to enforce, its rights of conversion as provided herein.

Section 7.05. *Proceedings by Trustee.* In case of an Event of Default the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 7.06. *Remedies Cumulative and Continuing.* Except as provided in the last paragraph of Section 2.07, all powers and remedies given by this Article 7 to the Trustee or to the Noteholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or any acquiescence therein; and, subject to the provisions of Section 7.04, every power and remedy given by this Article 7 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Noteholders.

Section 7.07. *Direction of Proceedings and Waiver of Defaults by Majority of Noteholders.* The holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 9.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to Notes; *provided, however,* that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that it determines is unduly prejudicial to the rights of any other holder or that would involve the Trustee in personal liability. The holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 9.04 may on behalf of the holders of all of the Notes waive any past Default or Event of Default hereunder and its consequences except (i) a default in the payment of premium, accrued and unpaid interest or accrued and unpaid Additional Interest, if any, on, or the principal (including any Fundamental Change Repurchase Price) of, the Notes when due that has not been cured pursuant to the provisions of Section 7.01, (ii) a failure by the Company to deliver cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, upon conversion of the Notes or (iii) a default in respect of a covenant or provision hereof which under Article 11 cannot be modified or amended without the consent of each holder of an outstanding Note affected. Upon any such waiver the Company, the Trustee and the holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 7.07, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 7.08. *Notice of Defaults.* The Trustee shall, within ninety days after the occurrence and continuance of a Default of which a Responsible Officer has actual knowledge, mail to all Noteholders as the names and addresses of such holders appear upon the Note Register, notice of all Defaults known to a Responsible Officer, unless such Defaults shall have been cured or waived before the giving of such notice; and *provided* that, except in the case of a Default in the payment of the principal of, or premium, if any, accrued and unpaid interest or accrued and unpaid Additional Interest, if any, on any of the Notes, including without limiting the generality of the foregoing any Default in the payment of any Fundamental Change Repurchase Price, then in any such event the Trustee shall be protected in withholding such notice if and so long as a committee of Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Noteholders.

Section 7.09. *Undertaking to Pay Costs.* All parties to this Indenture agree, and each holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 7.09 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 9.04, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or premium, if any, accrued and unpaid interest or accrued and unpaid Additional Interest, if any, on any Note (including, but not limited to, the Fundamental Change Repurchase Price with respect to the Notes being repurchased as provided in this Indenture) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article 15.

ARTICLE 8  
CONCERNING THE TRUSTEE

Section 8.01. *Duties and Responsibilities of Trustee.* The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided* that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the holders unless such holders have offered to the Trustee reasonable indemnity or security against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and, after it has been qualified thereunder, the Trust Indenture Act, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture and the Trust Indenture Act against the Trustee; and

(ii) in the absence of bad faith and willful misconduct on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the

opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in principal amount of the Notes at the time outstanding determined as provided in Section 9.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-registrar with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred, unless such Responsible Officer of the Trustee had actual knowledge of such event;

(g) in the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction from the Company; and

(h) in the event that the Trustee is also acting as Custodian, Note Registrar, Paying Agent, Conversion Agent or transfer agent hereunder, the rights and protections afforded to the Trustee pursuant to this Article 8 shall also be afforded to such Custodian, Note Registrar, Paying Agent, Conversion Agent or transfer agent.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 8.02. *Reliance on Documents, Opinions, Etc.* Except as otherwise provided in Section 8.01:

(a) the Trustee may conclusively rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, Note, coupon or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(c) the Trustee may consult with counsel and require an opinion of counsel and any advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Noteholders pursuant to the provisions of this Indenture, unless such Noteholders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities that may be incurred therein or thereby;

(e) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation;

(f) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, custodian, nominee or attorney appointed by it with due care hereunder; and

(g) the permissive rights of the Trustee enumerated herein shall not be construed as duties.

In no event shall the Trustee be liable for any consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action other than any such loss or damage caused by the Trustee's willful misconduct or gross negligence. The Trustee



shall not be charged with knowledge of any Default or Event of Default with respect to the Notes, unless either (1) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (2) written notice of such Default or Event of Default shall have been given to the Trustee by the Company or by any holder of the Notes.

Section 8.03. *No Responsibility for Recitals, Etc.* The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

Section 8.04. *Trustee, Paying Agents, Conversion Agents or Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent or Note Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent or Note Registrar.

Section 8.05. *Monies to Be Held in Trust.* All monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed from time to time by the Company and the Trustee.

Section 8.06. *Compensation and Expenses of Trustee.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee and the Company, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture in any capacity thereunder (including the reasonable compensation and the expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as shall have been caused by its gross negligence, willful misconduct or bad faith. The Company also covenants to indemnify the Trustee in any capacity under this Indenture and any other document or transaction entered into in connection herewith and its agents and any authenticating agent for, and to hold them harmless against, any loss, claim, damage, liability or expense incurred without gross negligence, willful misconduct or bad faith on the part of the Trustee, its officers, directors, agents or employees, or such agent or authenticating agent, as the case may be, and arising out of or in connection with the acceptance or administration of this trust or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim of liability in the premises. The obligations of the Company under this Section 8.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 7.03, funds held in trust herewith for the benefit of the holders of particular Notes. The Trustee's right to receive payment of any amounts due under this Section 8.06 shall not be subordinate to any other liability or indebtedness of the Company (even though the Notes may be so subordinated). The obligation of the Company under this Section 8.06 shall survive the satisfaction and discharge of

this Indenture and the earlier resignation or removal of the Trustee. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The indemnification provided in this Section 8.06 shall extend to the officers, directors, agents and employees of the Trustee.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 7.01(i) or Section 7.01(j) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 8.07. *Officers' Certificate as Evidence.* Except as otherwise provided in Section 8.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence, willful misconduct, recklessness and bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee, and such Officers' Certificate, in the absence of gross negligence, willful misconduct, recklessness and bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 8.08. *Conflicting Interests of Trustee.* After qualification of this Indenture under the Trust Indenture Act, if the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either (a) eliminate such interest within ninety days, (b) apply to the Commission for permission to continue as Trustee or (c) resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

Section 8.09. *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 8.10. *Resignation or Removal of Trustee.* (a) The Trustee may at any time resign by giving written notice of such resignation to the Company and by mailing notice thereof to the Noteholders at their addresses as they shall appear on the Note Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within sixty days after the mailing of such notice of resignation to the Noteholders, the resigning Trustee may, upon ten Business Days' notice to the Company and the Noteholders, petition any court of competent jurisdiction for the appointment of a successor trustee, or any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, subject to the provisions of Section 7.09, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with Section 8.08 within a reasonable time after written request therefor by the Company or by any Noteholder who has been a bona fide holder of a Note or Notes for at least six months, or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 8.09 and shall fail to resign after written request therefor by the Company or by any such Noteholder, or

(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 7.09, any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 9.04, may at any time remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Noteholder, upon the terms and conditions and otherwise as in Section 8.10(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 8.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 8.11.

Section 8.11. *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 8.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon

payment of any amounts then due it pursuant to the provisions of Section 8.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 8.06.

No successor trustee shall accept appointment as provided in this Section 8.11 unless at the time of such acceptance such successor trustee shall be qualified under the provisions of Section 8.08 and be eligible under the provisions of Section 8.09.

Upon acceptance of appointment by a successor trustee as provided in this Section 8.11, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall mail or cause to be mailed notice of the succession of such trustee hereunder to the Noteholders at their addresses as they shall appear on the Note Register. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 8.12. *Succession by Merger, Etc.* Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, *provided* that in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be qualified under the provisions of Section 8.08 and eligible under the provisions of Section 8.09.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or an authenticating agent appointed by such successor trustee may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have; *provided, however*, that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 8.13. *Limitation on Rights of Trustee as Creditor.* If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Notes), after qualification under the Trust Indenture Act, the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of the claims against the Company (or any such other obligor).

Section 8.14. *Trustee's Application for Instructions from the Company.* Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer that the Company has indicated to the Trustee should receive such application actually receives such application, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in accordance with this Indenture in response to such application specifying the action to be taken or omitted.

ARTICLE 9  
CONCERNING THE NOTEHOLDERS

Section 9.01. *Action by Noteholders.* Whenever in this Indenture it is provided that the holders of a specified percentage in aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Noteholders in person or by agent or proxy appointed in writing, or (b) by the record of the Noteholders voting in favor thereof at any meeting of Noteholders duly called and held in accordance with the provisions of Article 10, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Noteholders. Whenever the Company or the Trustee solicits the taking of any action by the holders of the Notes, the Company or the Trustee may fix, but shall not be required to, in advance of such solicitation, a date as the record date for determining Noteholders entitled to take such action. The record date if one is selected shall be not more than fifteen days prior to the date of commencement of solicitation of such action.

Section 9.02. *Proof of Execution by Noteholders.* Subject to the provisions of Section 8.01, Section 8.02 and Section 10.05, proof of the execution of any instrument by a Noteholder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Noteholders' meeting shall be proved in the manner provided in Section 10.06.

Section 9.03. *Who Are Deemed Absolute Owners.* The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal of, premium, if any, and (subject to Section 2.03) accrued and unpaid interest and accrued and unpaid Additional Interest, if

any, on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. All such payments so made to any holder for the time being, or upon its order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for monies payable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture.

Section 9.04. *Company-Owned Notes Disregarded.* In determining whether the holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes that a Responsible Officer knows are so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 9.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to so act with respect to such Notes and that the pledgee is not the Company or a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 8.01, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 9.05. *Revocation of Consents; Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 9.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Notes specified in this Indenture in connection with such action, any holder of a Note that is shown by the evidence to be included in the Notes the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 9.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the holder of any Note shall be conclusive and binding upon such holder and upon all future holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

## ARTICLE 10 NOTEHOLDERS' MEETINGS

Section 10.01. *Purpose of Meetings.* A meeting of Noteholders may be called at any time and from time to time pursuant to the provisions of this Article 10 for any of the following purposes:

(a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder and its consequences, or to take any other action authorized to be taken by Noteholders pursuant to any of the provisions of Article 7;

(b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 8;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 11.02; or

(d) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 10.02. *Call of Meetings by Trustee.* The Trustee may at any time call a meeting of Noteholders to take any action specified in Section 10.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Noteholders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 9.01, shall be mailed to holders of such Notes at their addresses as they shall appear on the Note Register. Such notice shall also be mailed to the Company. Such notices shall be mailed not less than twenty nor more than ninety days prior to the date fixed for the meeting.

Any meeting of Noteholders shall be valid without notice if the holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the holders of all Notes outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 10.03. *Call of Meetings by Company or Noteholders.* In case at any time the Company, pursuant to a Board Resolution, or the holders of at least 10% in aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Noteholders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within twenty days after receipt of such request, then the Company or such Noteholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 10.01, by mailing notice thereof as provided in Section 10.02.

Section 10.04. *Qualifications for Voting.* To be entitled to vote at any meeting of Noteholders a Person shall (a) be a holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Noteholders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 10.05. *Regulations.* Notwithstanding any other provisions of this

Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Noteholders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Noteholders as provided in Section 10.03, in which case the Company or the Noteholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 9.04, at any meeting of Noteholders each Noteholder or proxyholder shall be entitled to one vote for each \$1,000 principal amount of Notes held or represented by him; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Noteholders. Any meeting of Noteholders duly called pursuant to the provisions of Section 10.02 or Section 10.03 may be adjourned from time to time by the holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 10.06. *Voting.* The vote upon any resolution submitted to any meeting of Noteholders shall be by written ballot on which shall be subscribed the signatures of the Noteholders or of their representatives by proxy and the outstanding principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Noteholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 10.02. The record shall show the principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 10.07. *No Delay of Rights by Meeting.* Nothing contained in this Article 10 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Noteholders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Noteholders under any of the provisions of this Indenture or of the Notes.



ARTICLE 11  
SUPPLEMENTAL INDENTURES

Section 11.01. *Supplemental Indentures Without Consent of Noteholders.* The Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for one or more of the following purposes:

- (a) to cure any ambiguity, omission, defect or inconsistency in this Indenture or conform the terms of the Indenture or the Notes to the description thereof in the Offering Memorandum;
- (b) to provide for the assumption by a Successor Company of the obligations of the Company under this Indenture pursuant to Article 12;
- (c) to add guarantees with respect to the Notes;
- (d) to secure the Notes;
- (e) to add to the covenants of the Company such further covenants, restrictions or conditions for the benefit of the Noteholders or surrender any right or power conferred upon the Company;
- (f) to make any other change that does not adversely affect the rights of any holder; or
- (g) to comply with any requirements of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act.

Upon the written request of the Company, the Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 11.01 may be executed by the Company and the Trustee without the consent of the holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 11.02.

Section 11.02. *Supplemental Indentures With Consent of Noteholders.* With the consent (evidenced as provided in Article 9) of the holders of at least a majority in aggregate principal amount of the Notes at the time outstanding (determined in accordance with Article 9 and including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), the Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures

supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or of modifying in any manner the rights of the holders of the Notes; *provided, however*, that no such supplemental indenture shall:

- (a) reduce the percentage in aggregate principal amount of Notes outstanding necessary to modify or amend this Indenture or to waive any past Default or Event of Default;
- (b) reduce the rate or extend the stated time for payment of interest, including Additional Interest, on any Note;
- (c) reduce the principal of, or extend the Maturity Date of, any Note;
- (d) make any change that impairs or adversely affects the conversion rights of any Notes;
- (e) reduce the Fundamental Change Repurchase Price of any Note or amend or modify in any manner adverse to the holders of the Notes the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (f) make any Note payable in a currency other than that stated in the Note;
- (g) impair the right of any holder to receive payment of principal of and interest, including Additional Interest, if any, on such holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such holder's Note;
- (h) make any change in this Article 11 that requires each holder's consent or in the waiver provisions in Section 7.01 or Section 7.07; or
- (i) modify the ranking provisions of this Indenture in a manner that is adverse to the holder of the Notes;

in each case without the consent of each holder of an outstanding Note affected.

Upon the written request of the Company, and upon the filing with the Trustee of evidence of the consent of Noteholders as aforesaid and subject to Section 11.05, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the Noteholders under this Section 11.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof. After an amendment under this Indenture becomes effective, the Company shall mail to the holders a notice briefly describing such amendment. However, the failure to give such notice to all the holders, or any defect in the notice, will not impair or affect the validity of the amendment.

Section 11.03. *Effect of Supplemental Indentures.* Any supplemental indenture executed pursuant to the provisions of this Article 11 shall comply with the Trust Indenture Act, as then in effect; *provided* that this Section 11.03 shall not require such supplemental indenture to be qualified under the Trust Indenture Act prior to the time such qualification is in fact required under the terms of the Trust Indenture Act or this Indenture has been qualified under the Trust Indenture Act, nor shall any such qualification constitute any admission or acknowledgment by any party to such supplemental indenture that any such qualification is required prior to the time such qualification is in fact required under the terms of the Trust Indenture Act or this Indenture has been qualified under the Trust Indenture Act. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 11, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Noteholders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 11.04. *Notation on Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 11 may, at the Company's expense, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 17.11) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 11.05. *Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee.* In addition to the documents required by Section 17.05, the Trustee shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 11 and is permitted or authorized by the Indenture.

## ARTICLE 12 CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 12.01. *Company May Consolidate, Etc. on Certain Terms.*

Subject to the provisions of Section 12.02, the Company shall not consolidate with, merge with or into, or convey, transfer or lease its properties and assets substantially as an entirety to another Person, unless:

(a) the resulting, surviving or transferee Person (the "**Successor Company**"), if not the Company, shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Company (if not the Company) shall expressly assume, by supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of the Company under the Notes, this Indenture and, to the extent that it is otherwise still operative, the Registration Rights Agreement; and

(b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture.

Upon any such consolidation, merger, conveyance, transfer or lease the Successor Company (if not the Company) shall succeed to, and may exercise every right and power of, the Company under this Indenture.

For purposes of this Section 12.01, the conveyance, transfer or lease of the properties and assets of one or more Subsidiaries of the Company substantially as an entirety to another Person, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute the properties and assets of the Company substantially as an entirety on a consolidated basis, shall be deemed to be the transfer of the properties and assets of the Company substantially as an entirety to another Person.

Section 12.02. *Successor Corporation to Be Substituted.* In case of any such consolidation, merger, conveyance, transfer or lease and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and premium, if any, accrued and unpaid interest and accrued and unpaid Additional Interest, if any, on all of the Notes, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, conveyance or transfer (but not in the case of a lease), the Person named as the "Company" in the first paragraph of this Indenture or any successor that shall thereafter have become such in the manner prescribed in this Article 12 may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture.

In case of any such consolidation, merger, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 12.03. *Opinion of Counsel to Be Given Trustee.* No merger,

consolidation, conveyance, transfer or lease shall be effective unless the Trustee shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, conveyance, transfer or lease and any such assumption and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, complies with the provisions of this Article 12.

ARTICLE 13  
IMMUNITY OF INCORPORATORS, STOCKHOLDERS,  
OFFICERS AND DIRECTORS

Section 13.01. *Indenture and Notes Solely Corporate Obligations.* No recourse for the payment of the principal of or premium, if any, or accrued and unpaid interest and accrued and unpaid Additional Interest, if any, on any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer or director or Subsidiary, as such, past, present or future, of the Company or of any successor corporation or entity, either directly or through the Company or any successor corporation or entity, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 14  
[INTENTIONALLY OMITTED]

ARTICLE 15  
CONVERSION OF NOTES

Section 15.01. *Conversion Privilege.* (a) Upon compliance with the provisions of this Article 15, a Noteholder shall have the right, at such holder's option, to convert all or any portion (if the portion to be converted is \$1,000 principal amount or an integral multiple thereof) of such Note (i) subject to satisfaction of the conditions described in Section 15.01(b) below, at any time prior to May 15, 2013 under the circumstances and during the periods set forth in Section 15.01(b) below, and (ii) irrespective of the conditions described in Section 15.01(b) below, on or after May 15, 2013 and prior to the close of business on the Business Day immediately preceding the Maturity Date, in each case, at an initial conversion rate (the "**Conversion Rate**") of 18.1386 shares of Common Stock (subject to adjustment as provided in Section 15.04 of this Indenture) per \$1,000 principal amount of Notes (subject to the settlement provisions of Section 15.02, the "**Conversion Obligation**").

(b) (i) The Notes may be surrendered for conversion during the five Business Day period immediately after any five consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price per \$1,000 principal amount of Notes for each day of such Measurement Period was less than 98% of the product of the then-applicable Conversion Rate on such Trading Day and the Last Reported Sale Price of the Common Stock on such Trading Day. The Trading Prices shall be determined by the Trustee pursuant to this clause and the definition of Trading Price set forth in this

Indenture. The Company shall provide written notice to the Trustee of the three independent nationally recognized securities dealers selected by the Company pursuant to the definition of Trading Price, along with appropriate contact information for each. The Trustee shall have no obligation to determine the Trading Price of the Notes unless requested by the Company, and the Company shall have no obligation to make such request unless a Noteholder provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of the Notes would be less than 98% of the product of the then-applicable Conversion Rate and the Last Reported Sale Price of the Common Stock at such time, at which time the Company shall instruct the Trustee to determine the Trading Price of the Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per Note is greater than or equal to 98% of the product of the then-applicable Conversion Rate and the Last Reported Sale Price of the Common Stock on such Trading Day. If the Company does not, when obligated to, instruct the Trustee to determine the Trading Price of the Notes as provided in the preceding sentence, or if the Company gives such instruction to the Trustee, and the Trustee fails to make such determination, then the Trading Price per \$1,000 principal amount of Notes will be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the then-applicable Conversion Rate. If the Trading Price condition set forth above has been met, the Company shall so notify the Noteholders, the Trustee and the Conversion Agent. If, at any time after the Trading Price condition set forth above has been met, the Trading Price per \$1,000 principal amount of Notes is greater than 98% of the product of the then-applicable Conversion Rate and the Last Reported Sale Price of the Common Stock on such Trading Day, the Company shall so notify the holders of the Notes, the Trustee and the Conversion Agent. In either case, the Company shall promptly publish a notice indicating that the Trading Price condition set forth above has been met or, at any time after the Trading Price condition set forth above has been met, that the Trading Price per \$1,000 principal amount of Notes is greater than 98% of the product of the then-applicable Conversion Rate and the Last Reported Sale Price of the Common Stock on the relevant Trading Day, as the case may be, in a newspaper of general circulation in The City of New York or publish such information on its website or through such other public medium as the Company may use at that time.

(ii) In the event that the Company elects to:

(A) distribute to all or substantially all holders of its Common Stock rights, options or warrants entitling them, for a period of not more than sixty calendar days from the declaration date of such distribution, to subscribe for or purchase its Common Stock, at a price per share less than the Last Reported Sale Price of the Common Stock for the Trading Day immediately preceding the declaration date for such distribution; or

(B) distribute to all or substantially all holders of its Common Stock the Company's assets, debt securities, or rights to purchase securities of the Company, which distribution has a per share value (as determined by the Board of Directors) exceeding 10% of the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the date of declaration for such distribution,

then, in each case, the Company shall notify all holders of the Notes, the Trustee and the Conversion Agent not less than thirty-five Business Days prior to the Ex-Dividend Date for such distribution. Once the Company has given such notice, the Notes may be surrendered for conversion at any time until the earlier of (1) the close of business on the Business Day immediately prior to such Ex-Dividend Date and (2) the Company's announcement that such distribution will not take place, even if the Notes are not otherwise convertible at such time.

(iii) In the event of a Fundamental Change, a Noteholder may surrender Notes for conversion at any time from and after the thirty-fifth Business Day prior to the anticipated effective date of such Fundamental Change until the Business Day immediately preceding the Fundamental Change Repurchase Date corresponding to such Fundamental Change. The Company shall give notice of the anticipated effective date of any Fundamental Change as promptly as practicable after the Company first determines the anticipated effective date of such Fundamental Change, but in any event at least thirty-five Business Days prior to such anticipated effective date.

(iv) The Notes may be surrendered for conversion in any Fiscal Quarter after the Fiscal Quarter ending June 30, 2008, and only during such Fiscal Quarter, if the Last Reported Sale Price of the Common Stock for at least twenty Trading Days in a period of thirty consecutive Trading Days ending on the last Trading Day of the immediately preceding Fiscal Quarter is equal to or more than 130% of the then-applicable Conversion Price on the last day of such preceding Fiscal Quarter (such price, the "**Conversion Trigger Price**"). The Conversion Agent, on behalf of the Company, shall determine at the beginning of each Fiscal Quarter commencing after June 30, 2008 whether the Notes may be surrendered for conversion in accordance with this clause (iv) and shall notify the Company and the Trustee.

Section 15.02. *Conversion Procedure.*

(a) [Reserved].

(b) Subject to this Section 15.02, upon any conversion of any Note, the Company shall deliver to converting Noteholders, in respect of each \$1,000 principal amount of Notes being converted, solely cash, solely shares of Common Stock or a combination of cash and Common Stock (the "**Settlement Amount**"), at its election, as set forth in this Section 15.02.

(i) All conversions after May 15, 2013 will be settled using the same Settlement Method.

(ii) Prior to May 15, 2013, the Company will elect (or be deemed to have elected) the same Settlement Method for all conversions occurring on any given Conversion Date. Except for any conversions that occur on or after May 15, 2013, the Company need not elect the same Settlement Method with respect to conversions that occur on different Trading Days.

(iii) If, in respect of any Conversion Date (or the period beginning on, but excluding, May 15, 2013 and ending on, and including, the Business Day immediately preceding the Maturity Date, as the case may be), the Company elects to deliver a notice (the "**Settlement Notice**") of the relevant Settlement Method in respect of such Conversion Date (or such period, as the case may be), the Company, through the Trustee, shall deliver such Settlement Notice to

converting Noteholders no later than the second Trading Day immediately following the relevant Conversion Date. Such Settlement Notice shall specify whether the Company shall satisfy its Conversion Obligation by (A) delivering solely shares of Common Stock, (B) paying solely cash or (C) paying and delivering, as the case may be, a combination of cash and shares of Common Stock. In the case of an election to pay and deliver, as the case may be, a combination of cash and shares of Common Stock, the relevant Settlement Notice shall indicate the Specified Dollar Amount. If the Company does not deliver a Settlement Notice, the Company will be deemed to have elected to deliver a combination of cash and shares of Common Stock in respect of its Conversion Obligation, and the Specified Dollar Amount shall be deemed to be equal to \$1,000. If the Company delivers a Settlement Notice electing to pay and deliver, as the case may be, a combination of cash and shares of Common Stock in respect of its Conversion Obligation but does not indicate a Specified Dollar Amount in such Settlement Notice, the Specified Dollar Amount shall be deemed to be equal to \$1,000.

(iv) The Settlement Amount in respect of any conversion of Notes shall be computed as follows:

(A) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by delivering solely Common Stock, the Company will deliver to the converting Noteholder a number of shares of Common Stock equal to (1) the aggregate principal amount of Notes to be converted, *divided by* \$1,000, *multiplied by* (2) the then-applicable Conversion Rate;

(B) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by paying solely cash, the Company shall pay to the converting Noteholder cash in an amount per \$1,000 principal amount of Notes being converted equal to the sum of the Daily Conversion Values for each of the thirty consecutive Trading Days during the related Cash Settlement Averaging Period; and

(C) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by paying and delivering, as the case may be, a combination of cash and shares of Common Stock, if any, the Company shall pay and deliver, as the case may be, in respect of each \$1,000 principal amount of Notes being converted, a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the thirty consecutive Trading Days during the related Cash Settlement Averaging Period.

(v) The Company will also deliver to each converting Noteholder cash in lieu of fractional shares of Common Stock as set forth pursuant to clause (l) below.

(vi) The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Cash Settlement Averaging Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash deliverable



in lieu of fractional shares (if any), the Company shall notify the Trustee and the Conversion Agent of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash deliverable in lieu of fractional shares of Common Stock. The Trustee and the Conversion Agents shall have no responsibility for any such determination.

(c) [Reserved.]

(d) Before any holder of a Note shall be entitled to convert the same as set forth above, such holder shall (i) in the case of a Global Note, comply with the procedures of the Depositary in effect at that time and, if required, pay funds equal to interest payable on the next Interest Payment Date to which such holder is not entitled as set forth in Section 15.02(j) and, if required, all transfer or similar taxes, if any, and (ii) in the case of a Note issued in certificated form, (1) complete and manually sign and deliver an irrevocable notice to the Conversion Agent in the form on the reverse of such certificated Note (or a facsimile thereof) (Exhibit B hereto) (a “**Notice of Conversion**”) at the office of the Conversion Agent and shall state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such holder wishes the certificate or certificates for any shares of Common Stock, if any, to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (3) if required, pay funds equal to interest payable on the next Interest Payment Date to which such holder is not entitled as set forth in Section 15.02(j), (4) if required, furnish appropriate endorsements and transfer documents, and (5) if required, pay all transfer or similar taxes, if any as set forth in Section 15.02(g). The Trustee (and if different, the relevant Conversion Agent) shall notify the Company of any conversion pursuant to this Article 15 on the date of such conversion. No Notice of Conversion with respect to any Notes may be surrendered by a holder thereof if such holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 16.03.

If more than one Note shall be surrendered for conversion at one time by the same holder, the Conversion Obligation with respect to such Notes, if any, that shall be payable upon conversion shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

(e) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the “**Conversion Date**”) that the holder has complied with the requirements set forth in clause (d). The Company shall pay and deliver, as the case may be, the cash and/or shares of Common Stock due in respect of its Conversion Obligation on the third Trading Day immediately following the relevant Conversion Date, if the Company elects to satisfy the related Conversion Obligation solely in shares of Common Stock, or by the third Trading Day immediately following the last Trading Day of the Cash Settlement Averaging Period, in the case of any other Settlement Method. If any shares of Common Stock are due to converting Noteholders, the Company shall issue or cause to be issued, and deliver to the Conversion Agent or to such Noteholder, or such Noteholder’s nominee or nominees, certificates or a book-entry transfer through the Depositary for the number of full shares of Common Stock to which such Noteholder shall be entitled in satisfaction of such Conversion Obligation.

(f) In case any Note shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the holder of the Note so surrendered, without charge to such holder, a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note.

(g) If a holder submits a Note for conversion, the Company shall pay all stamp and other duties, if any, that may be imposed by the United States or any political subdivision thereof or taxing authority thereof or therein with respect to the issuance of shares of Common Stock, if any, upon the conversion. However, the holder shall pay any such tax that is due because the holder requests any shares of Common Stock to be issued in a name other than the holder's name. The Conversion Agent may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the holder's name until the Trustee receives a sum sufficient to pay any tax that will be due because the shares are to be issued in a name other than the holder's name. Nothing herein shall preclude any tax withholding required by law or regulations.

(h) Except as provided in Section 15.04, no adjustment shall be made for dividends on any shares issued upon the conversion of any Note as provided in this Article.

(i) Upon the conversion of an interest in a Global Note, the Trustee, or the Custodian at the direction of the Trustee, shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(j) Upon conversion, a Noteholder shall not receive any separate cash payment for accrued and unpaid interest and Additional Interest, if any, except as set forth below. The Company's settlement of the Conversion Obligations as described above shall be deemed to satisfy its obligation to pay the principal amount of the Note and accrued and unpaid interest and Additional Interest, if any, to, but not including, the Conversion Date. As a result, accrued and unpaid interest and Additional Interest, if any, to, but not including, the Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Notwithstanding the preceding sentence, if Notes are converted after the close of business on a Interest Record Date, holders of such Notes as of the close of business on the Interest Record Date will receive the interest and Additional Interest, if any, payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period from the close of business on any Interest Record Date to the opening of business on the corresponding Interest Payment Date must be accompanied by payment of an amount equal to the interest and Additional Interest, if any, payable on the Notes so converted; *provided, however*, that no such payment shall be required (1) if the Company has specified a Fundamental Change Repurchase Date that is after a Interest Record Date but on or prior to the corresponding Interest Payment Date, (2) to the extent of any Defaulted Interest, if any, existing at the time of conversion with respect to such Note or (3) if the Notes are surrendered for conversion after the close of business on the Interest Record Date immediately preceding the Maturity Date. Except as described above, no payment or adjustment will be made for accrued and unpaid interest and Additional Interest, if any, on converted Notes.

(k) The Person in whose name the certificate for any shares of Common Stock delivered upon conversion is registered shall be treated as a stockholder of record as of the close of business on the relevant Conversion Date (if the Company elects to satisfy the related Conversion Obligation solely in shares of Common Stock) or the last Trading Day of the related Cash Settlement Averaging Period (in the case of any other Settlement Method), as the case may be; *provided, however*, if such Conversion Date or such last Trading Day of the Cash Settlement Averaging Period occurs on any date when the stock transfer books of the Company shall be closed, such occurrence shall not be effective to constitute the Person or Persons entitled to receive any such shares of Common Stock due upon conversion as the record holder or holders of such shares of Common Stock on such date, but such occurrence shall be effective to constitute the Person or Persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open. Upon conversion of Notes, such Person shall no longer be a Noteholder.

(l) For each Note surrendered for conversion, if the Company has elected to deliver a combination of cash and shares of Common Stock in respect of its Conversion Obligation, the number of full shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate Daily Settlement Amounts for the applicable Cash Settlement Averaging Period and any fractional shares remaining after such computation shall be paid in cash. If more than one Note shall be surrendered for conversion at one time by the same holder, the number of full shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof) so surrendered. The Company shall not issue fractional shares of Common Stock upon conversion of Notes. Instead, the Company shall pay cash in lieu of fractional shares based on the Daily VWAP on the relevant Conversion Date (if the Company elects to satisfy its Conversion Obligation solely in shares of Common Stock) or based on the Daily VWAP on the last Trading Day of the relevant Cash Settlement Averaging Period (in the case of any other Settlement Method).

*Section 15.03. Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes.*

(a) Notwithstanding anything herein to the contrary, the Conversion Rate applicable to each Note that is surrendered for conversion, in accordance with this Article 15, at any time from, and including, the effective date of a Make-Whole Fundamental Change until, and including, the close of business on the Business Day immediately prior to the related Fundamental Change Repurchase Date corresponding to such Make-Whole Fundamental Change, shall be increased to an amount equal to the Conversion Rate that would, but for this Section 15.03, otherwise apply to such Note pursuant to this Article 15, *plus* an amount equal to the Make-Whole Conversion Rate Adjustment.

As used herein, “**Make-Whole Conversion Rate Adjustment**” shall mean, with respect to a Make-Whole Fundamental Change, the amount set forth in the following table that corresponds to the effective date of such Make-Whole Fundamental Change (the “**Effective Date**”) and the Stock Price for such Make-Whole Fundamental Change, all as determined by the Company:

**Make-Whole Conversion Rate Adjustment  
(per \$1,000 principal amount of Notes)**

**Stock Price**

<b>Effective Date</b>	<b>\$ 39.10</b>	<b>\$ 45.00</b>	<b>\$ 50.00</b>	<b>\$ 55.00</b>	<b>\$ 60.00</b>	<b>\$ 65.00</b>	<b>\$ 70.00</b>	<b>\$ 75.00</b>	<b>\$ 80.00</b>	<b>\$ 85.00</b>	<b>\$ 90.00</b>	<b>\$ 95.00</b>	<b>\$100.00</b>	<b>\$105.00</b>
February 26, 2008	7.4368	6.0724	5.0165	4.2062	3.5717	3.0664	2.6579	2.3233	2.0462	1.8142	1.6181	1.4511	1.3076	1.1836
February 15, 2009	7.4368	5.9797	4.8752	4.0354	3.3845	2.8715	2.4612	2.1288	1.8564	1.6307	1.4421	1.2829	1.1476	1.0317
February 15, 2010	7.4368	5.8317	4.6659	3.7907	3.1216	2.6018	2.1925	1.8660	1.6027	1.3880	1.2113	1.0645	0.9416	0.8378
February 15, 2011	7.4368	5.6723	4.4122	3.4818	2.7842	2.2540	1.8461	1.5287	1.2790	1.0808	0.9219	0.7933	0.6884	0.6020
February 15, 2012	7.4368	5.2031	3.8418	2.8657	2.1603	1.6467	1.2699	0.9915	0.7842	0.6287	0.5110	0.4212	0.3520	0.2982
February 15, 2013	7.4368	4.3758	2.7864	1.7258	1.0410	0.6122	0.3509	0.1955	0.1051	0.0539	0.0257	0.0110	0.0040	0.0013
August 15, 2013	7.4368	4.0780	1.8563	0.0386	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

*provided, however, that:*

(i) if the actual Stock Price of such Make-Whole Fundamental Change is between two Stock Prices listed in the table above under the column titled “Stock Price,” or if the actual Effective Date of such Make-Whole Fundamental Change is between two Effective Dates listed in the table above in the row immediately below the title “Effective Date,” then the Make-Whole Conversion Rate Adjustment for such Make-Whole Fundamental Change shall be determined by the Company by linear interpolation between the Make-Whole Conversion Rate Adjustment set forth for such higher and lower Stock Prices, or for such earlier and later Effective Dates based on a 365 day year, as applicable;

(ii) if the actual Stock Price of such Make-Whole Fundamental Change is greater than \$105.00 per share (subject to adjustment in the same manner as the Stock Price as provided in clause (iii) below), or if the actual Stock Price of such Make-Whole Fundamental Change is less than \$39.10 per share (subject to adjustment in the same manner as the Stock Price as provided in clause (iii) below), then the Make-Whole Conversion Rate Adjustment shall be equal to zero and this Section 15.03 shall not require the Company to increase the Conversion Rate with respect to such Make-Whole Fundamental Change;

(iii) if an event occurs that requires, pursuant to this Article 15 (other than solely pursuant to this Section 15.03), an adjustment to the Conversion Rate, then, on the date and at the time such adjustment is so required to be made, each price set forth in the table above under the column titled “Stock Price” shall be deemed to be adjusted so that such Stock Price, at and after such time, shall be equal to the product of (1) such Stock Price as in effect immediately before such adjustment to such Stock Price and (2) a fraction whose numerator is the Conversion Rate in effect immediately before such adjustment to the Conversion Rate and whose denominator is the Conversion Rate to be in effect, in accordance with this Article 15, immediately after such adjustment to the Conversion Rate;

(iv) [Reserved.];

(v) each Make-Whole Conversion Rate Adjustment set forth in the table above shall be adjusted in the same manner in which, and for the same events for which, the Conversion Rate is to be adjusted pursuant to Section 15.04; and

(vi) in no event will the total number of shares of Common Stock issuable upon conversion of the Notes exceed 25.5754 per \$1,000 principal amount of Notes, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 15.04.

(b) As soon as practicable after the Company determines the anticipated Effective Date of any proposed Make-Whole Fundamental Change, but in any event at least thirty-five Business Days prior to such anticipated Effective Date, the Company shall mail to each Noteholder, the Trustee and the Conversion Agent written notice of, and shall issue a press release indicating, and publicly announce, through a public medium that is customary for such announcements, and publish on the Company's website, the anticipated effective date of such proposed Make-Whole Fundamental Change. Each such press release notice, announcement and publication shall also state that in connection with such Make-Whole Fundamental Change, the Company shall increase, in accordance herewith, the Conversion Rate applicable to Notes entitled as provided herein to such increase (along with a description of how such increase shall be calculated and the time periods during which Notes must be surrendered in order to be entitled to such increase). No later than the actual Effective Date of each Make-Whole Fundamental Change, the Company shall mail to each Noteholder, the Trustee and the Conversion Agent written notice of, and shall issue a press release indicating, and publicly announce, through a public medium that is customary for such announcements, and publish on the Company's website, such Effective Date and the amount by which the Conversion Rate has been so increased.

Nothing in this Section 15.03 shall prevent an adjustment to the Conversion Rate pursuant to Section 15.04 in respect of a Make-Whole Fundamental Change.

Section 15.04. *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company as follows:

(a) If the Company issues shares of Common Stock as a dividend or distribution to all holders of the outstanding Common Stock on shares of Common Stock, or if the Company effects a share split or share combination, the Conversion Rate will be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

where

$CR_0$  = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

$CR'$  = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

OS <sub>0</sub>	=	the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be; and
OS'	=	the number of shares of Common Stock outstanding immediately after such dividend or distribution, or the effective date of such share split or share combination, as the case may be.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such dividend or distribution, or the effective date for such share split or share combination. If any dividend or distribution of the type described in this Section 15.04(a) is declared but not so paid or made, or the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, or split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Rate that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(b) In case the Company shall distribute to all or substantially all holders of its Common Stock any rights, options or warrants entitling them for a period of not more than sixty days after the declaration date of such distribution to subscribe for or purchase shares of the Common Stock, at a price per share less than the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the declaration date for such distribution, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where

CR <sub>0</sub>	=	the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;
CR'	=	the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;
OS <sub>0</sub>	=	the number of shares of the Common Stock that are outstanding immediately prior to the open of business on the Ex-Dividend Date for such distribution;
X	=	the total number of shares of the Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of the Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, divided by the average of the Last Reported Sale Prices of Common Stock over the ten consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date relating to such distribution of such rights, options or warrants.

Such adjustment shall be successively made whenever any such rights, options or warrants are distributed and shall become effective immediately after the opening of business on the Ex-Dividend Date for such distribution. The Company shall not issue any such rights, options or warrants in respect of shares of the Common Stock held in treasury by the Company. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such Ex-Dividend Date for such distribution had not been fixed.

In determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at less than such Last Reported Sale Price of the Common Stock, and in determining the aggregate offering price of such shares of the Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors. In no event shall the Conversion Rate be decreased pursuant to this Section 15.04(b).

(c) In case the Company shall distribute shares of its Capital Stock, evidences of its indebtedness or other of its assets or property other than (i) dividends or distributions covered by Section 15.04(a) and Section 15.04(b), (ii) dividends or distributions paid exclusively in cash, and (iii) Spin-Offs to which the provisions set forth below in this Section 15.04(c) shall apply (any of such shares of Capital Stock, indebtedness, or other asset or property hereinafter in this Section 15.04(c) called the “**Distributed Property**”), to all or substantially all holders of its Common Stock, then, in each such case the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR' = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;

SP <sub>0</sub>	=	the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and
FMV	=	the fair market value (as determined by the Board of Directors) of the shares of Capital Stock, evidences of indebtedness, assets or property distributed with respect to each outstanding share of the Common Stock as of the open of business on the Ex-Dividend Date for such distribution.

Such adjustment shall become effective immediately prior to the opening of business on the Ex-Dividend Date for such distribution; *provided* that if “FMV” as set forth above is equal to or greater than “SP<sub>0</sub>” as set forth above, in lieu of the foregoing adjustment, adequate provision shall be made so that each Noteholder shall receive on the date on which the Distributed Property is distributed to holders of Common Stock, for each \$1,000 principal amount of Notes the amount of Distributed Property such holder would have received had such holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines “FMV” for purposes of this Section 15.04(c) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this Section 15.04(c) where there has been a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company (a “**Spin-Off**”), the Conversion Rate in effect immediately before the close of business on the tenth Trading Day immediately following, and including, the effective date of the Spin-Off will be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where

CR <sub>0</sub>	=	the Conversion Rate in effect immediately prior to the close of business on the tenth Trading Day immediately following, and including, the effective date of the Spin-Off;
CR'	=	the Conversion Rate in effect immediately after the close of business on the tenth Trading Day immediately following, and including, the effective date of the Spin-Off;
FMV <sub>0</sub>	=	the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock over the first ten consecutive Trading Day period immediately following, and including, the effective date of the Spin-Off; and



$MP_0$  = the average of the Last Reported Sale Prices of the Common Stock over the first ten consecutive Trading Day period immediately following and including the effective date of the Spin-Off.

The adjustment to the Conversion Rate under the preceding paragraph shall become effective at the close of business on the tenth Trading Day immediately following, and including, the effective date of the Spin-Off; *provided* that, for purposes of determining the Conversion Rate, in respect of any conversion during the ten Trading Days immediately following, and including, the effective date of any Spin-Off, references in the portion of this Section 15.04(c) related to Spin-Offs to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the effective date of such Spin-Off and the Conversion Date for such conversion.

Subject in all respect to Section 15.10, rights, options or warrants distributed by the Company to all holders of its Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 15.04 (and no adjustment to the Conversion Rate under this Section 15.04 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 15.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 15.04 was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of this Section 15.04(c), Section 15.04(a), and Section 15.04(b), any dividend or distribution to which this Section 15.04(c) is applicable that also includes shares of Common Stock, or rights, options or warrants to subscribe for or purchase shares of Common Stock to which Section 15.04(b) applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of capital stock other than such shares of Common Stock or rights, options or warrants to which Section 15.04(c) applies (and any Conversion Rate adjustment required by this Section 15.04(c) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights, options or warrants (and any further Conversion Rate adjustment required by Section 15.04(a) and Section 15.04(b) with respect to such dividend or distribution shall then be made), except (A) the Ex-Dividend Date of such dividend or distribution shall be substituted as “the Ex-Dividend Date,” “the Ex-Dividend Date relating to such distribution of such rights, options or warrants” and “the Ex-Dividend Date for such distribution” within the meaning of Section 15.04(a) and Section 15.04(b) and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding immediately prior to the Ex-Dividend Date for such dividend or distribution, or the effective date of such share split or share combination, as the case may be” within the meaning of Section 15.04(a) or “outstanding immediately prior to the Ex-Dividend Date for such dividend or distribution” within the meaning of Section 15.04(b).

In no event shall the Conversion Rate be decreased pursuant to this Section 15.04(c).

(d) If any cash dividend or distribution is made to all or substantially all holders of its Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;
- CR' = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;
- SP<sub>0</sub> = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and
- C = the amount in cash per share the Company distributes to holders of its Common Stock.

Such adjustment shall become effective immediately after the opening of business on the Ex-Dividend Date for such dividend or distribution; *provided that* if “C” as set forth above is equal

to or greater than “SP<sub>0</sub>” as set forth above, in lieu of the foregoing adjustment, adequate provision shall be made so that each Noteholder shall have the right to receive on the date on which the relevant cash dividend or distribution is distributed to holders of Common Stock, for each \$1,000 principal amount of Notes, the amount of cash such holder would have received had such holder owned a number of shares equal to the Conversion Rate on the Record Date for such distribution. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

For the avoidance of doubt, for purposes of this Section 15.04(d), in the event of any reclassification of the Common Stock, as a result of which the Notes become convertible into more than one class of Common Stock, if an adjustment to the Conversion Rate is required pursuant to this Section 15.04(d), references in this Section to one share of Common Stock or Last Reported Sale Price of one share of Common Stock shall be deemed to refer to a unit or to the price of a unit consisting of the number of shares of each class of Common Stock into which the Notes are then convertible equal to the numbers of shares of such class issued in respect of one share of Common Stock in such reclassification. The above provisions of this paragraph shall similarly apply to successive reclassifications.

In no event shall the Conversion Rate be decreased pursuant to this Section 15.04(d).

(e) If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for the Common Stock and the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading-Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{AC + (SP' \times OS')}{OS_0 \times SP'}$$

where

- CR<sub>0</sub> = the Conversion Rate in effect at the close of business on the last Trading Day of the period of ten consecutive Trading Days commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- CR' = the Conversion Rate in effect at the open of business on first day following the last Trading Day of the period of ten consecutive Trading Days commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS <sub>0</sub>	=	the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to such tender offer or exchange offer);
OS'	=	the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to such tender offer or exchange offer); and
SP'	=	the average of the Last Reported Sale Prices of Common Stock over the ten consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

Such adjustment shall become effective at the close of business on the tenth Trading Day next succeeding the date such tender or exchange offer expires; *provided* that, for purposes of determining the Conversion Rate, in respect of any conversion during the ten Trading Days following the date that any such tender or exchange offer expires, references in this Section 15.04(e) to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the date that such tender or exchange offer expires and the Conversion Date for such conversion. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any or all or any portion of such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that had been effected. In no event shall the Conversion Rate be decreased pursuant to this Section 15.04(e).

(f) The term “**Record Date**” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other security) have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of shares of its Common Stock or any securities convertible into or exchangeable for shares of its Common Stock or the right to purchase shares of its Common Stock or such convertible or exchangeable securities.

(h) Notwithstanding this Section 15.03 or any other provision of this Indenture or the Notes, if any Conversion Rate adjustment becomes effective, or any Ex-Dividend Date for any issuance, dividend or distribution (relating to a required Conversion Rate adjustment) occurs, during the period beginning on, and including, the open of business on a Conversion Date and ending on, and including, (x) the close of business on the third Trading Day immediately

following the relevant Conversion Date (if the Company elects to satisfy the related Conversion Obligation solely in shares of Common Stock) or (y) the close of business on the last Trading Day of a related Cash Settlement Averaging Period (in the case of any other Settlement Method), the Board of Directors shall make adjustments to the Conversion Rate and the amount of cash or number of shares of Common Stock issuable upon conversion of the Notes, as the case may be, as is necessary or appropriate to effect the intent of this Section 15.03 and the other provisions of Article 15 and to avoid unjust or inequitable results, as determined in good faith by the Board of Directors. Any adjustment made pursuant to this Section 15.03(h) shall apply in lieu of the adjustment or other term that would otherwise be applicable.

(i) In addition to those required by clauses (a), (b), (c), (d) and (e) of this Section 15.04, and to the extent permitted by applicable law and subject to the applicable rules of the Nasdaq Global Select Market, the Company from time to time may increase the Conversion Rate by any amount for a period of at least twenty Business Days if the Board of Directors determines that such increase would be in the Company's best interest. In addition, the Company may also (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with any dividend or distribution of shares (or rights to acquire shares) or similar event. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to the holder of each Note at its last address appearing on the Note Register provided for in Section 2.06 a notice of the increase at least fifteen days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(j) The applicable Conversion Rate will not be adjusted:

(i) upon the issuance of any shares of the Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of the Common Stock under any plan;

(ii) upon the issuance of any shares of the Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;

(iii) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of the date the Notes were first issued;

(iv) for a change in the par value of the Common Stock;

(v) for accrued and unpaid interest, including Additional Interest, if any; or

(vi) for any transactions described in this Section 15.04 if Noteholders participate (as a result of holding the Notes, and at the same time as holders of Common Stock participate) in such transactions as if such Noteholders held a number shares of Common Stock equal to the Conversion Rate at the time such adjustment would be required, *multiplied* by the principal amount (expressed in thousands) of Notes held by such Noteholder, without having to convert their Notes.

(k) All calculations and other determinations under this Article 15 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of a share.

(l) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent other than the Trustee an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the holder of each Note at its last address appearing on the Note Register provided for in Section 2.06 of this Indenture, within ten days of the effective date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(m) For purposes of this Section 15.04, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

Section 15.05. *Shares to Be Fully Paid.* The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for conversion of the Notes from time to time as such Notes are presented for conversion.

Section 15.06. *Effect of Reclassification, Consolidation, Merger or Sale.* Upon the occurrence of (i) any reclassification or change of the outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a split, subdivision or combination covered by Section 15.04(a)), (ii) any consolidation, merger or combination involving the Company, or (iii) any sale or conveyance of all or substantially all of the property and assets of the Company to any other Person, in each case as a result of which holders of Common Stock shall be entitled to receive cash, securities or other property or assets with respect to or in exchange for such Common Stock (any such event a "**Merger Event**"), then:

(a) the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture if such supplemental indenture is then required to so comply) permitted under Section 11.01(f) providing for the conversion and settlement of the Notes as set forth in this Indenture. Such supplemental indenture shall provide for adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 15. If, in the case of any Merger Event, the

Reference Property includes shares of stock or other securities and assets of a corporation other than the successor or purchasing corporation, as the case may be, in such reclassification, change, consolidation, merger, combination, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the holders of the Notes as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including to the extent required by the Board of Directors and practicable the provisions providing for the repurchase rights set forth in Article 16 herein.

In the event the Company shall execute a supplemental indenture pursuant to this Section 15.06, the Company shall promptly file with the Trustee an Officers' Certificate briefly stating the reasons therefore, the kind or amount of cash, securities or property or asset that will comprise the Reference Property after any such Merger Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly mail notice thereof to all Noteholders. The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Noteholder, at its address appearing on the Note Register provided for in this Indenture, within twenty days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(b) Notwithstanding the provisions of Section 15.02(b), and subject to the provisions of Section 15.01 and Section 15.03, at and after the effective time of such Merger Event, (i) the right to convert each \$1,000 principal amount of Notes into cash, shares of Common Stock or a combination of cash and shares of Common Stock at the Company's election as set forth in Section 15.02 will be changed to a right to convert such Note into cash, the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such transaction would have owned or been entitled to receive (the "**Reference Property**") or a combination of cash and Reference Property at the Company's election and (ii) the related Conversion Obligation shall be settled as set forth under clause (c) below, it being understood and agreed that for purposes of Section 15.01(b), references therein to "the Last Reported Sale Price of the Common Stock" shall be deemed at and after the effective time of such Merger Event to be references to "the Last Reported Sale Price of a unit of Reference Property comprised of the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event would have owned or been entitled to receive based on the Weighted Average Consideration." The Company shall not become a party to any Merger Event unless its terms are consistent with this Section 15.06. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, as set forth in Section 15.01 and Section 15.02 prior to the effective date of such Merger Event.

(c) With respect to each \$1,000 principal amount of Notes surrendered for conversion after the effective date of any such Merger Event, the Company's Conversion Obligation shall be settled in cash or units of Reference Property, at the Company's election, in accordance with Section 15.02(b) as follows:

(i) (A) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by delivering solely Reference Property, the Company shall deliver to the converting Noteholder a number of units of Reference Property (each such unit comprised of the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event would have owned or been entitled to receive based on the Weighted Average Consideration) equal to (1) the aggregate principal amount of Notes to be converted, *divided by* \$1,000, *multiplied by* (2) the then-applicable Conversion Rate; (B) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by paying solely cash, the Company shall pay to the converting Noteholder cash in an amount, per \$1,000 principal amount of Notes equal to the sum of the Daily Conversion Values for each of the thirty consecutive Trading Days during the related Cash Settlement Averaging Period, such Daily Conversion Values determined as if the reference to “the Daily VWAP of the Common Stock” in definition thereof were instead a reference to “the Daily VWAP of a unit of Reference Property comprised of the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event would have owned or been entitled to receive based on the Weighted Average Consideration”; and (C) if the Company elects to satisfy its Conversion Obligation through delivery of a combination of cash and Reference Property, the Company shall deliver in respect of each \$1,000 principal amount of Notes being converted, a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the thirty consecutive Trading Days during the Cash Settlement Averaging Period for such Note, such Daily Settlement Values determined as if the reference to “the Daily VWAP of the Common Stock” in definition of Daily Conversion Value and Daily Share Amount were instead a reference to “the Daily VWAP of a unit of Reference Property comprised of the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event would have owned or been entitled to receive based on the Weighted Average Consideration.”

(ii) The Company will deliver the cash in lieu of fractional units of Reference Property as set forth pursuant to Section 15.02(l) (*provided that the amount of such cash shall be determined as if references in such Section to “the Last Reported Sale Price of the Common Stock” were instead a reference to “the Last Reported Sale Price of a unit of Reference Property composed of the kind and amount of shares of stock, securities or other property or assets (including cash or any combination thereof) that a holder of one share of Common Stock immediately prior to such Merger Event would have owned or been entitled to receive based on the Weighted Average Consideration”*).

(iii) The Daily Settlement Amounts (if applicable) and Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Cash Settlement Averaging Period.

(iv) For purposes of this Section 15.06, the “**Weighted Average Consideration**” shall mean the weighted average of the types and amounts of consideration received by the holders of the Common Stock entitled to receive cash, securities or other property or assets with respect to or in exchange for such Common Stock in any Merger Event who affirmatively make such an election.



(v) The Company shall notify the holders of the Weighted Average Consideration as soon as practicable after the Weighted Average Consideration is determined.

(d) The above provisions of this Section shall similarly apply to successive Merger Events.

Section 15.07. *Certain Covenants.* (a) The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any shares of Common Stock to be provided for the purpose of conversion of Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued upon conversion, the Company will, to the extent then permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company further covenants that if at any time the Common Stock shall be listed on any national securities exchange or automated quotation system the Company will list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Common Stock issuable upon conversion of the Notes.

Section 15.08. *Responsibility of Trustee.* The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Noteholder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 15.06 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Noteholders upon the conversion of their Notes after any event referred to in such Section 15.06 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 8.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto. Neither the Trustee nor the Conversion Agent shall be responsible for determining whether any event contemplated by Section 15.01(b) has occurred that makes the Notes eligible for conversion or no longer eligible therefor until the Company has delivered to the Trustee and the Conversion Agent the notices referred to in Section 15.01(b) with respect to the commencement or termination of such conversion rights, on which notices

the Trustee and the Conversion Agent may conclusively rely, and the Company agrees to deliver such notices to the Trustee and the Conversion Agent immediately after the occurrence of any such event or at such other times as shall be provided for in Section 15.01(b).

Section 15.09. *Notice to Holders Prior to Certain Actions.* In case: (a) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 15.04; or

(b) the Company shall authorize the granting to all of the holders of its Common Stock of rights, options or warrants to subscribe for or purchase any share of any class or any other rights, options or warrants; or

(c) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or

(d) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company;

the Company shall cause to be filed with the Trustee and to be mailed to each Noteholder at its address appearing on the Note Register, provided for in Section 2.06 of this Indenture, as promptly as possible but in any event at least twenty days prior to the applicable date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such dividend, distribution or rights, options or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (ii) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up.

Section 15.10. *Stockholder Rights Plans.* To the extent that the Company has a stockholder rights plan or other “poison pill” in effect upon conversion of the Notes, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan or poison pill, as the same may be amended from time to time. If at the time of conversion, however, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights agreement so that the holders of the Notes would not be entitled to receive any rights in respect of Common Stock, if any, issuable upon conversion of the Notes, the Conversion Rate will be adjusted at the time of separation as if the Company has distributed to all holders of Common Stock, shares of Capital Stock of the Company, evidence of indebtedness or assets as provided in Section 15.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 15.11. *Exchange in Lieu of Conversion.* When a holder surrenders its Notes for conversion, the Company may, at its election, direct the Conversion Agent to surrender, on or prior to the second Business Day following the relevant Conversion Date, such Notes to a financial institution designated by the Company (the “**Designated Institution**”) for exchange in lieu of conversion. In order to accept any Notes surrendered for conversion for exchange in lieu of conversion, the Designated Institution must agree to timely deliver, in exchange for such Notes, the shares of Common stock and/or cash that would otherwise be due upon conversion as described in Section 15.02 above and in respect of which the Company has notified to converting Noteholders. If the Company makes the election described above, the Company shall, by the close of business on the second Business Day following the relevant Conversion Date as part of its Settlement Notice, notify the holder surrendering its Notes for conversion that it has made such election. In addition, the Company shall concurrently notify the Designated Institution of the Settlement Method (and, if applicable, the Specified Dollar Amount) that Company has elected with respect to such conversion and the relevant deadline for delivery of the consideration due upon conversion. Any Notes exchanged by the Designated Institution will remain outstanding.

(a) If the Designated Institution agrees to accept any Notes for exchange but does not timely deliver the related consideration due upon conversion to the Conversion Agent, or if the Designated Institution does not accept such Notes for exchange, the Company shall, within the time period specified in Section 15.02(e), convert such Notes into cash and/or shares of Common Stock, as applicable in accordance with the provisions of Section 15.02.

(b) For the avoidance of doubt, in no event will the Company’s designation of a Designated Institution pursuant to this Section 15.11 require the Designated Institution to accept any Notes for exchange.

Section 15.12. *Limit on Issuance of Shares of Common Stock upon Conversion.* Notwithstanding anything contained elsewhere in this Indenture, if and to the extent required by the shareholder approval rules or listing standards of any national or regional securities exchange that are applicable to the Company at the time any Notes are converted hereunder, in no event will the aggregate number of shares of Common Stock issuable upon conversion of the Notes exceed 19.99% of the Common Stock outstanding as of February 20, 2008 (which is equivalent to issuing upon conversion approximately 65.4050 shares of Common Stock per \$1,000 principal amount of Notes (if the Initial Purchasers do not exercise their option to purchase additional Notes in full as set forth in the Purchase Agreement) or approximately 58.5203 shares per \$1,000 principal amount of Notes (if the Initial Purchasers exercise their option to purchase additional Notes in full as set forth in the Purchase Agreement) (as applicable, the “**Conversion Rate Cap**,” and subject to *pro rata* adjustment for any partial exercise by the Initial Purchasers of their option to purchase additional Notes as set forth in the Purchase Agreement) and if an event occurs that would otherwise result in an increase in the Conversion Rate above the Conversion Rate Cap, if and to the extent required by the shareholder approval rules or listing standards of any national or regional securities exchange that are applicable to the Company at the time any Notes are converted hereunder, the Company will either obtain stockholder approval of any issuance of Common Stock upon conversion of the Notes in excess such limitations or deliver cash in lieu of any shares of Common Stock otherwise deliverable upon conversions in excess of such limitations (based on the Last Reported Sale Price of the Company’s Common Stock on the Trading Day immediately prior to the relevant Conversion Date).

ARTICLE 16  
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 16.01. [Reserved.]

Section 16.02. *Repurchase at Option of Holders upon a Fundamental Change.* (a) If there shall occur a Fundamental Change at any time prior to the Maturity Date, then each Noteholder shall have the right, at such holder's option, to require the Company to repurchase for cash all of such holder's Notes, or any portion thereof that is an integral multiple of \$1,000 principal amount, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than twenty Business Days and not more than thirty five Business Days after the date of the Fundamental Change Company Notice (as defined below) at a repurchase price equal to 100% of the principal amount thereof, together with accrued and unpaid interest, including unpaid Additional Interest, if any, thereon to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"), unless the Fundamental Change Repurchase Date is after an Interest Record Date and on or prior to the related Interest Payment Date, in which case interest accrued to the Interest Payment Date will be paid to holders of the Notes as of the preceding Interest Record Date and the Fundamental Change Repurchase Price payable to the holder surrendering the Note for repurchase pursuant to this Article 16 shall be equal to the principal amount of Notes subject to repurchase. Repurchases of Notes under this Section 16.02 shall be made, at the option of the holder thereof, upon:

(i) delivery to the Paying Agent by a holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth on the reverse of the Note as Exhibit C thereto on or prior to the Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery or book-entry transfer of the Notes to the Paying Agent at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements) at the Corporate Trust Office of the Paying Agent in The Borough of Manhattan, such delivery being a condition to receipt by the holder of the Fundamental Change Repurchase Price therefor; *provided* that such Fundamental Change Repurchase Price shall be so paid pursuant to this Section 16.02 only if the Note so delivered to the Paying Agent shall conform in all respects to the description thereof in the related Fundamental Change Repurchase Notice.

The Fundamental Change Repurchase Notice shall state:

- (A) if certificated, the certificate numbers of Notes to be delivered for repurchase;
- (B) the portion of the principal amount of Notes to be repurchased, which must be \$1,000 or an integral multiple thereof; and
- (C) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and the Indenture;

*provided, however,* that if the Notes are not in certificated form, the Fundamental Change Repurchase Notice must comply with appropriate Depository procedures.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 16.02 shall be consummated by the payment of the Fundamental Change Repurchase Price on the later of the Fundamental Change Repurchase Date and the time of the book-entry transfer or delivery of the Note as described in Section 16.04(a).

Notwithstanding anything herein to the contrary, any holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 16.02 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 16.03 below.

The Paying Agent shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

(b) On or before the twentieth day after the occurrence of the effective date of a Fundamental Change, the Company shall mail or cause to be mailed to all holders of record of the Notes a notice (the “**Fundamental Change Company Notice**”) of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the holders arising as a result thereof. Such mailing shall be by first class mail. The Company shall also deliver a copy of the Fundamental Change Company Notice to the Trustee, the Paying Agent and the Conversion Agent within five Business Days after the effective date of the Fundamental Change. Simultaneously with the providing of such notice, the Company will also publish a notice containing the information set forth in the Fundamental Change Company Notice in a newspaper of general circulation in The City of New York or publish such information on the Company’s website or through such other public medium as the Company may use at that time. Each Fundamental Change Company Notice shall specify:

- (i) the events causing the Fundamental Change;
- (ii) the effective date of the Fundamental Change;
- (iii) the last date on which a holder may exercise the repurchase right pursuant to this Article 16;
- (iv) the Fundamental Change Repurchase Price;
- (v) the Fundamental Change Repurchase Date;
- (vi) the name and address of the Paying Agent and the Conversion Agent, if applicable;
- (vii) if applicable, the applicable Conversion Rate, any adjustments to the applicable Conversion Rate;

(viii) if applicable, that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a holder may be converted only if the holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of the Indenture;

(ix) that the holder must exercise the repurchase right on or prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date (the “**Fundamental Change Expiration Time**”);

(x) that the holder shall have the right to withdraw any Notes surrendered prior to the Fundamental Change Expiration Time; and

(xi) the procedures that holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Noteholders’ repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 16.02.

(c) Notwithstanding the foregoing, no Notes may be repurchased by the Company at the option of the holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Fundamental Change Repurchase Date (except in the case of an acceleration resulting from a default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes).

(d) In connection with any purchase offer, the Company will:

(i) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act, if required under the Exchange Act,

(ii) file a Schedule TO or any successor or similar schedule, if required under the Exchange Act, and

(iii) otherwise comply with all federal and state securities laws in connection with any offer by the Company to purchase the Notes.

Section 16.03. *Withdrawal of Fundamental Change Repurchase Notice.* (a) A Fundamental Change Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the Corporate Trust Office of the Paying Agent in accordance with this Section 16.03 at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, specifying:

(i) the certificate number, if any, of the Note in respect of which such notice of withdrawal is being submitted, or the appropriate Depositary information if the Note in respect of which such notice of withdrawal is being submitted is represented by a Global Note,

(ii) the principal amount of the Note with respect to which such notice of withdrawal is being submitted, and

(iii) the principal amount, if any, of such Note that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of \$1,000 or an integral multiple of \$1,000;

*provided, however*, that if the Notes are not in certificated form, the notice must comply with appropriate procedures of the Depository.

Section 16.04. *Deposit of Fundamental Change Repurchase Price.* (a) The Company will deposit with the Trustee (or other Paying Agent appointed by the Company, or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 5.04) on or prior to 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Company), payment for Notes surrendered for repurchase (and not withdrawn prior to the Fundamental Change Expiration Time) will be made on the later of (i) the Fundamental Change Repurchase Date with respect to such Note (*provided* the holder has satisfied the conditions in Section 16.02) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the holder thereof in the manner required by Section 16.02 by mailing checks for the amount payable to the holders of such Notes entitled thereto as they shall appear in the Note Register, *provided, however*, that payments to the Depository shall be made by wire transfer of immediately available funds to the account of the Depository or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(b) If by 11:00 a.m. New York City time, on the Fundamental Change Repurchase Date, the Trustee (or other Paying Agent appointed by the Company) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased as a result of the corresponding Fundamental Change, then (i) such Notes will cease to be outstanding, (ii) interest, including Additional Interest, if any, will cease to accrue on such Notes, and (iii) all other rights of the holders of such Notes will terminate (other than the right to receive the Fundamental Change Repurchase Price, and previously accrued but unpaid interest, including Additional Interest, if any, upon delivery of the Notes), whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent.

(c) Upon surrender of a Note that is to be repurchased in part pursuant to 16.02, the Company shall execute and the Trustee shall authenticate and deliver to the holder a new Note in an authorized denomination equal in principal amount to the unreurchased portion of the Note surrendered.

#### ARTICLE 17 MISCELLANEOUS PROVISIONS

Section 17.01. *Provisions Binding on Company's Successors.* All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 17.02. *Official Acts by Successor Corporation.* Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 17.03. *Addresses for Notices, Etc.* Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Noteholders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to The Nasdaq Stock Market, Inc., One Liberty Plaza, New York, New York 10006, Attention: General Counsel. Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to the Corporate Trust Office.

The Trustee, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Noteholder shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed.

Failure to mail a notice or communication to a Noteholder or any defect in it shall not affect its sufficiency with respect to other Noteholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 17.04. *Governing Law.* THIS INDENTURE AND EACH NOTE SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF NEW YORK, AND FOR ALL PURPOSES SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF NEW YORK (WITHOUT REGARD TO THE CONFLICTS OF LAWS PROVISIONS THEREOF).

Section 17.05. *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee.* Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, other than in connection with the actions referred to in Section 2.05, the Company shall, if requested by the Trustee, furnish to the Trustee an Officers' Certificate stating that such action is permitted by the terms of this Indenture.

Each certificate provided for by or on behalf of the Company in this Indenture and delivered to the Trustee with respect to compliance with this Indenture (other than the Officers' Certificates provided for in Section 5.08) shall include (a) a statement that the Person making



such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such Person, such action is permitted by this Indenture.

Notwithstanding anything to the contrary in this Section 17.05, if any provision in this Indenture specifically provides that the Trustee shall or may receive an Opinion of Counsel in connection with any action to be taken by the Trustee or the Company hereunder, the Trustee shall be entitled to, or entitled to request, such Opinion of Counsel.

Section 17.06. *Legal Holidays.* In any case where any Interest Payment Date, Fundamental Change Repurchase Date, Conversion Date or Maturity Date is not be a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue for the period from and after such date.

Section 17.07. *No Security Interest Created.* Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 17.08. *Trust Indenture Act.* This Indenture is hereby made subject to, and shall be governed by, the provisions of the Trust Indenture Act required to be part of and to govern indentures qualified under the Trust Indenture Act upon such qualification; *provided* that this Section 17.08 shall not require that this Indenture or the Trustee be qualified under the Trust Indenture Act prior to the time such qualification is in fact required under the terms of the Trust Indenture Act, nor shall it constitute any admission or acknowledgment by any party hereto that any such qualification is required prior to the time such qualification is in fact required under the terms of the Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with another provision hereof that is required to be included in an indenture qualified under the Trust Indenture Act, such required provision shall control.

Section 17.09. *Benefits of Indenture.* Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any Conversion Agent, any authenticating agent, any Note Registrar and their successors hereunder or the Noteholders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 17.10. *Table of Contents, Headings, Etc.* The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 17.11. *Authenticating Agent.* The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Section 2.05, Section 2.06, Section 2.07, Section 2.08, Section 11.04 and Section 16.04 as fully to all intents and purposes as though the authenticating agent had been expressly

authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes “by the Trustee” and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee’s certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 8.09.

Any corporation or other entity into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation or other entity succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation or other entity is otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation or other entity.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee may appoint a successor authenticating agent (which may be the Trustee), shall give written notice of such appointment to the Company and shall mail notice of such appointment to all Noteholders as the names and addresses of such holders appear on the Note Register.

The Company agrees to pay to the authenticating agent from time to time reasonable compensation for its services although the Company may terminate the authenticating agent, if it determines such agent’s fees to be unreasonable.

The provisions of Section 8.02, Section 8.03, Section 8.04, Section 9.03 and this Section 17.11 shall be applicable to any authenticating agent.

If an authenticating agent is appointed pursuant to this Section, the Notes may have endorsed thereon, in addition to the Trustee’s certificate of authentication, an alternative certificate of authentication in the following form:

\_\_\_\_\_,  
as Authenticating Agent, certifies that this is one of the Notes described  
in the within-named Indenture.

By: \_\_\_\_\_  
Authorized Officer

Section 17.12. *Execution in Counterparts.* This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 17.13. *Severability*. In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 17.14. *Waiver of Jury Trial*. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 17.15. *Force Majeure*. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first written above.

THE NASDAQ STOCK MARKET, INC.

By: /s/ David P. Warren

Name: David P. Warren

Title: Executive Vice President and Chief Financial Officer

THE BANK OF NEW YORK, as Trustee

By: /s/ Beata Hryniewicka

Name: Beata Hryniewicka

Title: Assistant Vice President

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

- (1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A “QUALIFIED INSTITUTIONAL BUYER” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND
- (2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER, AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:
  - (A) TO THE NASDAQ OMX GROUP, INC. (FORMERLY KNOWN AS THE NASDAQ STOCK MARKET, INC. AND HEREINAFTER REFERRED TO AS THE “COMPANY”) OR ANY SUBSIDIARY THEREOF, OR
  - (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR
  - (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR
  - (D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS

MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

## THE NASDAQ STOCK MARKET, INC.

Form of 2.50% Convertible Senior Note due 2013

No. 1

\${ }\$

CUSIP No. 631103AB4

The NASDAQ OMX Group, Inc. (formerly known as The Nasdaq Stock Market, Inc.), a corporation duly organized and validly existing under the laws of the State of Delaware (herein called the “**Company**,” which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to CEDE & CO., or registered assigns, the principal sum of [ ] Dollars (which amount may from time to time be increased or decreased to such other principal amounts (which, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed \$425,000,000 in aggregate at any time (or \$475,000,000 if the Initial Purchasers exercise their option to purchase additional Notes in full as set forth in the Purchase Agreement)) by adjustments made on the records of the Trustee or the Custodian of the Depository as set forth in Schedule A hereto, in accordance with the rules and procedures of the Depository) on August 15, 2013, and interest thereon as set forth below and Additional Interest in the manner, at the rates and to the Persons set forth in the Registration Rights Agreement.

This Note shall bear interest at the rate of 2.50% per year (subject to increase pursuant to Section 7.01 of the Indenture) from February 26, 2008, or from the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until August 15, 2013. Interest is payable semi-annually in arrears on each February 15 and August 15, commencing August 15, 2008, to holders of record at the close of business on the preceding February 1 and August 1 (whether or not such day is a Business Day), respectively.

Payment of the principal of and premium, if any, and accrued and unpaid interest and Additional Interest, if any, on this Note shall be made at the office or agency of the Company maintained for that purpose in the Borough of Manhattan, The City of New York, in such lawful money of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts; *provided, however*, interest, including Additional Interest, if any, may be paid by check mailed to such holder’s address as it appears in the Note Register; *provided further, however*, that, with respect to any Noteholder with an aggregate principal amount in excess of \$1,000,000, at the application of such holder in writing to the Trustee and Paying Agent (if different from the Trustee) not later than the relevant Interest Record Date, accrued and unpaid interest and Additional Interest, if any, on such holder’s Notes shall be paid by wire transfer in immediately available funds to such holder’s account in the United States, which application shall remain in effect until the Noteholder notifies the Trustee and Paying Agent to the contrary; *provided* that any payment to the Depository or its nominee shall be paid by wire transfer in immediately available funds in accordance with the wire transfer instruction supplied by the Depository or its nominee from time to time to the Trustee and Paying Agent (if different from Trustee).

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the holder of this Note the right to convert this Note into cash, shares of Common Stock of the Company or a combination of cash and shares of Common Stock, as applicable, on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with and governed by the laws of said State (without regard to the conflicts of laws provisions thereof).

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

THE NASDAQ OMX GROUP, INC.

By: \_\_\_\_\_  
Name: David P. Warren  
Title: Executive Vice President,  
Chief Financial Officer

Dated: [                    ], 2008

TRUSTEE'S CERTIFICATE OF AUTHENTICATION  
THE BANK OF NEW YORK  
as Trustee, certifies that this is one of the Notes  
described in the within-named Indenture.

By: \_\_\_\_\_  
Authorized Officer

This Note is one of a duly authorized issue of Notes of the Company, designated as its 2.50% Convertible Senior Notes due 2013 (herein called the “**Notes**”), limited to the aggregate principal amount of \$425,000,000 (or \$475,000,000 if the Initial Purchasers exercise their option to purchase additional Notes in full as set forth in the Purchase Agreement) all issued or to be issued under and pursuant to an Indenture dated as of February 26, 2008 (herein called the “**Indenture**”), between the Company and The Bank of New York (herein called the “**Trustee**”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture.

In case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of, premium, if any, and interest, including Additional Interest, if any, on all Notes may be declared, by either the Trustee or Noteholders of not less than 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Fundamental Change Repurchase Price and the principal amount on the Maturity Date, as the case may be, to the holder who surrenders a Note to a Paying Agent to collect such payments in respect of the Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the holders of the Notes, and in other circumstances, with the consent of the holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, premium, if any, and accrued and unpaid interest, and Additional Interest, if any, on this Note at the place, at the respective times, at the rate and in the lawful money herein prescribed.

The Notes are issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes

may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any tax, assessments or other governmental charges that may be imposed in connection therewith as a result of the name of the Noteholder of the new Notes issued upon such exchange of Notes being different from the name of the Noteholder of the old Notes surrendered for such exchange.

The Notes are not subject to redemption through the operation of any sinking fund or otherwise.

Upon the occurrence of a Fundamental Change, the holder has the right, at such holder's option, to require the Company to repurchase for cash all of such holder's Notes or any portion thereof (in principal amounts of \$1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

Subject to the provisions of the Indenture, the holder hereof has the right, at its option, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the close of business on the Business Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is \$1,000 or an integral multiple thereof, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, at a Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

Terms used in this Note and defined in the Indenture are used herein as therein defined.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

UNIF GIFT MIN ACT

Custodian

\_\_\_\_\_  
(Cust)

TEN ENT - as tenants by the entirety

\_\_\_\_\_  
(Minor)

JT TEN - as joint tenants with right of survivorship and not as tenants in common

Uniform Gifts to Minors Act

\_\_\_\_\_ (State)

Additional abbreviations may also be used though not in the above list.



NOTICE OF CONVERSION

To: THE NASDAQ OMX GROUP, INC. (FORMERLY KNOWN AS THE NASDAQ STOCK MARKET, INC.)

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, in accordance with the terms of the Indenture referred to in this Note, and directs that any shares of Common Stock issuable and deliverable upon such conversion, together with any cash comprising the Daily Conversion Values or a portion of the Daily Settlement Amounts for each of the thirty Trading Days during the Cash Settlement Averaging Period and for any fractional shares, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. Any amount required to be paid to the undersigned on account of interest accompanies this Note.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if shares of Common Stock are to be issued, or Notes to be delivered, other than to and in the name of the registered holder.

Fill in for registration of shares if to be issued, and Notes if to be delivered, other than to and in the name of the registered holder:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State and Zip Code)

Please print name and address

Principal amount to be converted (if less than all): \$\_\_\_\_\_,000

NOTICE: The above signature(s) of the holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

\_\_\_\_\_  
Social Security or Other Taxpayer Identification Number

FUNDAMENTAL CHANGE REPURCHASE NOTICE

To: THE NASDAQ OMX GROUP, INC. (FORMERLY KNOWN AS THE NASDAQ STOCK MARKET, INC.)

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from The NASDAQ OMX Group, Inc. (formerly known as The Nasdaq Stock Market, Inc. and hereinafter referred to as the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to repay to the registered holder hereof in accordance with the applicable provisions of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after an Interest Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, including Additional Interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date.

In the case of certificated Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Social Security or Other Taxpayer Identification Number

Principal amount to be repaid (if less than all): \$\_\_\_\_\_,000

NOTICE: The above signature(s) of the holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.



ASSIGNMENT AND TRANSFER

For value received \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Resale Restriction Termination Date, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

- To The NASDAQ OMX Group, Inc. (formerly known as The Nasdaq Stock Market, Inc.) or a subsidiary thereof; or
- Pursuant to the registration statement that has become or been declared effective under the Securities Act of 1933, as amended; or
- Pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or
- Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended; or
- Pursuant to another available exemption from registration under the Securities Act of 1933, as amended.

Dated: \_\_\_\_\_

\_\_\_\_\_

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 Notes are to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

\$425,000,000

The Nasdaq Stock Market, Inc.

2.50% Convertible Senior Notes Due 2013

Registration Rights Agreement

February 26, 2008

J.P. Morgan Securities Inc.  
Banc of America Securities LLC  
As Initial Purchasers  
c/o J.P. Morgan Securities Inc.  
277 Park Avenue  
New York, NY 10172

Ladies and Gentlemen:

The Nasdaq Stock Market, Inc., a Delaware corporation (the "**Company**") proposes to issue and sell to J.P. Morgan Securities Inc. and Banc of America Securities LLC (the "**Initial Purchasers**") as listed in Schedule 1 of the purchase agreement dated February 20, 2008, between the Company and the Initial Purchasers (the "**Purchase Agreement**"), \$425,000,000 aggregate principal amount of its 2.50% Convertible Senior Notes due 2013 (the "**Firm Notes**"), and at the election of the Initial Purchasers an additional \$50,000,000 aggregate principal amount of the Company's 2.50% Convertible Securities due 2013 solely to cover over-allotments (the "**Additional Notes**" and, together with the Firm Securities, the "**Notes**"), in each case, upon the terms and subject to the conditions set forth in the Purchase Agreement.

As an inducement to the Initial Purchasers to enter into the Purchase Agreement and in satisfaction of a condition to the obligations of the Initial Purchasers thereunder, the Company agrees with the Initial Purchasers, for the benefit of the Holders (as defined below), as follows:

1. *Certain Definitions.*

Capitalized terms used but not defined herein shall have the meanings given to such terms in the Purchase Agreement. For purposes of this Registration Rights Agreement, the following terms shall have the following meanings:

- (a) "**Additional Notes**" has the meaning specified in the first paragraph of this Agreement.
- (b) "**Additional Interest**" has the meaning assigned thereto in Section 2(d).

- (c) “**Additional Interest Payment Date**” has the meaning assigned thereto in Section 2(d)(v).
- (d) “**Affiliate**” has the meaning set forth in Rule 405 under the Securities Act, except as otherwise expressly provided herein.
- (e) “**Agreement**” means this Registration Rights Agreement, as the same may be amended from time to time pursuant to the terms hereof.
- (f) “**Automatic Shelf Registration Statement**” has the meaning set forth in Rule 405 under the Securities Act.
- (g) “**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.
- (h) “**Closing Date**” means the date on which any Notes are initially issued.
- (i) “**Commission**” means the Securities and Exchange Commission, or any other federal agency at the time administering the Exchange Act or the Securities Act, whichever is the relevant statute for the particular purpose.
- (j) “**Company**” has the meaning assigned thereto in the first paragraph of this Agreement.
- (k) “**Deferral Notice**” has the meaning assigned thereto in Section 3(b).
- (l) “**Deferral Period**” has the meaning assigned thereto in Section 3(b).
- (m) “**Effective Period**” has the meaning assigned thereto in Section 2(a).
- (n) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.
- (o) “**FINRA**” means the Financial Industry Regulatory Authority, Inc.
- (p) “**Holder**” means each holder, from time to time, of Registrable Securities (including the Initial Purchasers).
- (q) “**Indemnified Holder**” has the meaning assigned thereto in Section 6(a).
- (r) “**Indenture**” means the Indenture dated as of February 26, 2008 between the Company and the Trustee, pursuant to which the Securities are being issued.
- (s) “**Initial Purchasers**” has the meaning assigned thereto in the first paragraph of this Agreement.

(t) “**Material Event**” has the meaning assigned thereto in Section 3(a)(iv).

(u) “**Majority Holders**” means, on any date, holders of the majority of the Shares constituting Registrable Securities hereunder (except as used in Section 9, in which case, holders of the majority of the Shares); for the purposes of this definition, holders of Notes constituting Registrable Securities (or as used in Section 9, holders of the Notes) shall be deemed to be the holders of the number of Shares into which such Notes are or would be convertible as of such date.

(v) “**Notice and Questionnaire**” means a written notice delivered to the Company containing substantially the information called for by the Form of Selling Securityholder Notice and Questionnaire attached as Annex A to the Offering Memorandum.

(w) “**Notice Holder**” means, on any date, any Holder that has delivered a properly completed Notice and Questionnaire to the Company on or prior to such date.

(x) “**Notes**” has the meaning assigned thereto in the first paragraph of this Agreement.

(y) “**Offering Memorandum**” means the Final Offering Memorandum dated February 20, 2008 relating to the offer and sale of the Notes.

(z) “**Person**” means a corporation, limited liability company, association, partnership, organization, business, individual, government or political subdivision thereof or governmental agency.

(aa) “**Prospectus**” means the prospectus included in any Shelf Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A, 430B or 430C under the Securities Act), as amended or supplemented by any amendment or prospectus supplement, including post-effective amendments, and all materials incorporated by reference or explicitly deemed to be incorporated by reference in such Prospectus.

(bb) “**Purchase Agreement**” has the meaning assigned thereto in the first paragraph of this Agreement.

(cc) “**Registrable Securities**” means the Securities; *provided, however*, that such Securities shall not be Registrable Securities if as of the applicable date of determination (i) such Securities have ceased to be outstanding; (ii) in the circumstances contemplated by Section 2(a), a registration statement registering such Securities under the Securities Act has been declared or becomes effective and such Securities have been sold or otherwise transferred or disposed of by the Holder thereof pursuant to such effective registration statement; or (iii) such Securities are eligible to be sold to the public by the Holder thereof without restriction pursuant to Rule 144.

- (dd) “**Registration Default**” has the meaning assigned thereto in Section 2(d).
- (ee) “**Registration Expenses**” has the meaning assigned thereto in Section 5.
- (ff) “**Rule 144**,” “**Rule 144A**,” “**Rule 405**,” “**Rule 415**” and “**Rule 433**” mean, in each case, such rule as promulgated under the Securities Act.
- (gg) “**Securities**” means the Notes and the Shares.
- (hh) “**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.
- (ii) “**Shares**” means the shares of common stock of the Company, par value \$0.01 per share, into which the Notes are convertible or that have been issued upon any conversion of Notes into common stock of the Company.
- (jj) “**Shelf Inspectors**” has the meaning assigned thereto in Section 3(a)(vii).
- (kk) “**Shelf Registration Statement**” means the shelf registration statement referred to in Section 2(a), as amended or supplemented by any amendment or supplement, including post-effective amendments and any additional information contained in a form of prospectus or prospectus supplement that is deemed retroactively to be a part of the Shelf Registration Statement pursuant to Rules 430A, 430B or 430C, and all materials incorporated by reference or explicitly deemed to be incorporated by reference in such Shelf Registration Statement, which may be an Automatic Shelf Registration Statement.
- (ll) “**Special Counsel**” shall have the meaning assigned thereto in Section 5.
- (mm) “**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, or any successor thereto, and the rules, regulations and forms promulgated thereunder, all as the same shall be amended from time to time.
- (nn) “**Trustee**” shall have the meaning assigned such term in the Indenture.

Unless the context otherwise requires, any reference herein to a “Section” or “clause” refers to a Section or clause, as the case may be, of this Agreement, and the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision. Unless the context otherwise requires, any reference to a statute, rule or regulation refers to the same (including any successor statute, rule or regulation thereto) as it may be amended from time to time.

2. *Registration Under the Securities Act.*

(a) The Company agrees that if:

- (i) on the six-month anniversary of the last date of original issuance of the Notes any Registrable Securities are held by any Person other than an Affiliate of the Company;

(ii) at any time after the six-month anniversary of the last date of original issuance of the Notes the conditions set forth in paragraph (c)(1) of Rule 144 are not satisfied with respect to the Securities; or

(iii) a Holder of Registrable Securities requests;

the Company shall file an Automatic Shelf Registration Statement, if the Company is eligible to do so and has not already done so (provided such previously filed Automatic Shelf Registration Statement covers all Holders of Registrable Securities determined as of the date such subsequent obligation arose), and, if the Company is not eligible for an Automatic Shelf Registration Statement, then in lieu of the foregoing the Company shall file a Shelf Registration Statement for the registration of, and the sale on a continuous or delayed basis by the Holders of, all of the Registrable Securities pursuant to Rule 415 or any similar rule that may be adopted by the Commission, and use its best efforts to cause the Shelf Registration Statement to become or be declared effective under the Securities Act, (x) on the day that is six months after the last date of original issuance of the Notes, in the case of clause (i) above, (y) as soon as practicable in the case of clause (ii) above and (z) by the 30<sup>th</sup> day after the date of receipt of notice requesting registration from a Notice Holder but not before the six-month anniversary of the last date of original issuance of the Notes, in the case of clause (iii) above. It being understood that if there are no Registrable Securities entitled to be included in the Shelf Registration Statement at such time that the Company shall have no obligation to file such Shelf Registration Statement at such time.

The Company agrees to use its best efforts to keep such Shelf Registration Statement continuously effective, subject to Section 3(b), until the earliest of (x) one year from the last date of original issuance of the Notes; (y) the date by which all Registrable Securities have been sold pursuant to such Shelf Registration Statement; and (z) such date as each of the Registrable Securities covered by the Shelf Registration Statement ceases to be a Registrable Security (the “**Effective Period**”).

(b) The Company further agrees that it shall cause the Shelf Registration Statement, the related Prospectus and any amendment or supplement thereto, as of the effective date of the Shelf Registration Statement, as of the time of sale of any Securities under such Shelf Registration Statement, and as of the date of any such amendment or supplement, (i) to comply in all material respects with the applicable requirements of the Securities Act and (ii) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading, and the Company agrees to furnish to the Holders such number of copies as such Holders may reasonably request of any supplement or

amendment prior to its being used or promptly following its filing with the Commission; *provided, however*, that the Company shall have no obligation to deliver to Holders copies of any amendment consisting exclusively of an Exchange Act report or other Exchange Act filing otherwise publicly available on the Company's website. If the Shelf Registration Statement, as amended or supplemented from time to time, ceases to be effective for any reason at any time during the Effective Period (other than because all Registrable Securities registered thereunder shall have been sold pursuant thereto or shall have otherwise ceased to be Registrable Securities), the Company shall use its reasonable efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof.

(c) Each Holder agrees that if such Holder wishes to sell Registrable Securities pursuant to the Shelf Registration Statement and related Prospectus, it will do so only in accordance with this Section 2(c), Section 3(c) and Section 4. From and after the date the Shelf Registration Statement is initially effective, the Company shall, as promptly as is reasonably practicable after the date a Notice and Questionnaire is delivered by a Notice Holder, and in any event within (x) ten (10) Business Days after the date such Notice and Questionnaire is received by the Company or (y) if a Notice and Questionnaire is so received during a Deferral Period, ten (10) Business Days after the expiration of such Deferral Period,

(i) if required by applicable law, file with the Commission a post-effective amendment to the Shelf Registration Statement or prepare and, if required by applicable law, file a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other required document so that the Holder delivering such Notice and Questionnaire is named as a selling security holder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of the Registrable Securities in accordance with applicable law and, if the Company shall file a post-effective amendment to the Shelf Registration Statement and such amendment is not automatically effective, use its reasonable efforts to cause such post-effective amendment to be declared or to otherwise become effective under the Securities Act as promptly as is reasonably practicable;

(ii) provide such Holder with as many copies of any documents filed pursuant to Section 2(c)(i) as such Holder may reasonably request in connection with the Securities covered by such Holder's Notice and Questionnaire; and

(iii) notify such Holder as promptly as reasonably practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 2(c)(i);

*provided that* if such Notice and Questionnaire is delivered during a Deferral Period, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in this Section 2(c) above upon expiration of the Deferral Period in accordance with Section 3(b). Notwithstanding anything contained herein to the



contrary, the Company shall be under no obligation to name any Holder that is not a Notice Holder as a selling securityholder in any Shelf Registration Statement or related Prospectus or prospectus supplement; *provided, however*, that any Holder that becomes a Notice Holder pursuant to the provisions of this Section 2(c) (whether or not such Holder was a Notice Holder at the time the Shelf Registration Statement was declared or otherwise became effective) shall be named as a selling securityholder in the Shelf Registration Statement or related Prospectus in accordance with the requirements of this Section 2(c).

(d) If any of the following events (any such event a “**Registration Default**”) shall occur, then additional interest (the “**Additional Interest**”) shall become payable by the Company to Holders in respect of the Notes as follows:

(i) if on the day that is six months after the last date of original issuance of the Notes, Registrable Securities are held by any Person other than an Affiliate of the Company and the Shelf Registration Statement has not been filed with and declared effective by the Commission by such date (other than pursuant to Section 3(b) hereof), then, commencing on such date, Additional Interest shall accrue on the principal amount of the outstanding Notes that are Registrable Securities at a rate of 0.50% per annum;

(ii) at any time after the six-month anniversary of the last date of original issuance of the Notes the conditions set forth in paragraph (c)(1) of Rule 144 are not satisfied with respect to the Securities and the Shelf Registration Statement has not been filed with and declared effective by the Commission at or prior to the later of (x) the six month anniversary of the last date of original issuance of the Notes and (y) the time that such conditions cease to be satisfied (other than pursuant to Section 3(b) hereof), then, commencing on such later date, Additional Interest shall accrue on the principal amount of the outstanding Notes that are Registrable Securities at a rate of 0.50% per annum;

(iii) if the Shelf Registration Statement has become or been declared effective but such Shelf Registration Statement ceases to be effective or the prospectus contained therein ceases to be usable in connection with the resales of Registrable Securities at any time during the Effective Period (other than pursuant to Section 3(b) hereof), then, commencing on the day such Shelf Registration Statement ceases to be effective, Additional Interest shall accrue on the principal amount of the outstanding Notes that are Registrable Securities at a rate of 0.50% per annum following such date on which the Shelf Registration Statement ceases to be effective;

(iv) if the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period pursuant to Section 3(b) hereof, then, commencing on the day the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period, Additional Interest shall accrue on the principal amount of the outstanding Notes that are Registrable Securities at a rate of 0.50% per annum;

(v) by the one year anniversary of the last date of issuance of the Notes, the Company has failed to remove the legends from the Securities relating to the Securities Act, then, commencing on such one year anniversary, Additional Interest shall accrue on the principal amount of the outstanding Notes at a rate of 0.50% per annum;

*provided, however*, that the Additional Interest rate on the Notes shall not exceed in the aggregate 0.50% per annum; *provided further*, however, that Additional Interest on the Notes that are Registrable Securities as a result of clauses (i) through (iv) above, shall cease to accrue upon the earlier of (x) the one-year anniversary of the last date of original issuance of the Notes and (y)(1) the filing and effectiveness of the Shelf Registration Statement (in the case of clauses (i) and (ii) above), (2) the effectiveness of the Shelf Registration Statement which had ceased to remain effective (in the case of clause (iii) above) and (3) the termination of the Deferral Period that caused the limit on the aggregate duration of Deferral Periods in a period set forth in Section 3(b) to be exceeded (in the case of clause (iv) above). Additional Interest on the Notes as a result of clause (v) above shall cease to accrue upon the removal from the Securities of the legends relating to the Securities Act.

Additional Interest on the Notes, if any, will be payable in arrears in cash on February 15 and August 15 of each year (the “**Additional Interest Payment Date**”) to holders of record of outstanding Notes that are Registrable Securities at the close of business on February 1 or August 1 (whether or not a Business Day), as the case may be, immediately preceding the relevant interest payment date; *provided* that any Additional Interest accrued with respect to any Notes or portion thereof submitted for repurchase on a repurchase date or converted into Shares on a conversion date prior to the Registration Default shall, in any such event, be paid instead to the Holder who submitted such Notes or portion thereof for repurchase or conversion on the applicable repurchase date or conversion date, as the case may be, on such date (or promptly following the conversion date, in the case of conversion). Following the cure of all Registration Defaults requiring the payment of Additional Interest to the Holders of Notes that are Registrable Securities pursuant to this Section 2(d), the accrual of Additional Interest will cease (without in any way limiting the effect of any subsequent Registration Default requiring the payment of Additional Interest). Additional Interest on the Notes, if any, will accrue beginning on the date provided for in clauses 2(d)(i) through (v) above, as applicable, to, but excluding, the date on which all Registration Defaults have been cured. If a Holder converts some or all of the Notes into Shares, the Holder will not be entitled to receive Additional Interest on such Shares.

The Company shall notify the Trustee promptly upon the happening of each and every Registration Default. The Trustee shall be entitled, on behalf of Holders, to seek any available remedy for the enforcement of this Agreement, including for the payment of any Additional Interest if any becomes due. Notwithstanding the foregoing, the parties

agree that the sole monetary damages payable for a violation of the terms of this Agreement with respect to which additional monetary amounts are expressly provided shall be as set forth in this Section 2(d). Nothing shall preclude a Notice Holder or Holder from pursuing or obtaining specific performance or other equitable relief with respect to this Agreement.

3. *Registration Procedures.*

The following provisions shall apply to the Shelf Registration Statement filed pursuant to Section 2:

(a) The Company shall:

(i) notify the Holders of Registrable Securities at least 10 (ten) Business Days before filing any Shelf Registration Statement pursuant to Section 2 of the Company's intent to file such Shelf Registration Statement and seeking a determination from such Holder as to whether such Holder elects to have its Registrable Securities included in such Shelf Registration Statement;

(ii) before filing any Shelf Registration Statement or Prospectus or any amendments or supplements thereto with the Commission, furnish to each Initial Purchaser copies of all such documents proposed to be filed and use its reasonable efforts to reflect in each such document when so filed with the Commission such comments as such Initial Purchasers reasonably shall propose within three (3) Business Days of the delivery of such copies to the Initial Purchasers; *provided, however*, that the Company shall be permitted to file prospectus supplements or post-effective amendments to reflect additional selling securityholders without prior review of the Initial Purchasers;

(iii) use its reasonable efforts to prepare and file with the Commission such amendments and post-effective amendments to the Shelf Registration Statement and file with the Commission any other required document as may be necessary to keep such Shelf Registration Statement continuously effective until the expiration of the Effective Period; cause the related Prospectus to be supplemented by any required prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) under the Securities Act; and comply with the provisions of the Securities Act applicable to it with respect to the disposition of all Securities covered by such Shelf Registration Statement during the Effective Period in accordance with the intended methods of disposition by the sellers thereof set forth in the Notice and Questionnaire and such Shelf Registration Statement as so amended or such Prospectus as so supplemented;

(iv) as promptly as reasonably practicable, notify the Notice Holders (A) when such Shelf Registration Statement or the Prospectus included therein or any amendment or supplement to the Prospectus or post-effective amendment has been filed with the Commission, and, with respect to such Shelf Registration Statement or any post-effective

amendment that is not an Automatic Shelf Registration Statement, when the same is declared or has become effective, *provided*, that the availability of such Shelf Registration Statement or any Prospectus or post-effective amendment on EDGAR shall be considered notice for the purpose of this Section 3(a)(iv), (B) of any request (but not the nature or details regarding such request), following the effectiveness of the Shelf Registration Statement, by the Commission or any other federal or state governmental authority for amendments or supplements to the Shelf Registration Statement or related Prospectus (other than any such request relating to a review of the Company's Exchange Act filings), (C) of the issuance by the Commission of any stop order suspending the effectiveness of such Shelf Registration Statement or the initiation or written threat of any proceedings for that purpose, (D) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation or written threat of any proceeding for such purpose, (E) of the occurrence of any event or the existence of any fact (but not the nature of or details concerning such event or fact) (a "**Material Event**") as a result of which any Shelf Registration Statement shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or any Prospectus shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that no notice by the Company shall be required pursuant to this clause (E) in the event that the Company either promptly files a prospectus supplement, amendment to the Shelf Registration Statement to update the Prospectus or a Form 8-K or other appropriate Exchange Act report that is incorporated by reference into the Shelf Registration Statement, which, in either case, contains the requisite information with respect to such Material Event that results in such Shelf Registration Statement or Prospectus, as the case may be, no longer containing any untrue statement of material fact or omitting to state a material fact required to be stated therein or necessary to make the statements contained therein (in the case of the Prospectus, in light of the circumstances under which they were made) not misleading, (F) of the determination by the Company that a post-effective amendment to the Shelf Registration Statement (other than for the purpose of naming a Notice Holder as a selling security holder therein) will be filed with the Commission, which notice may, at the discretion of the Company (or as required pursuant to Section 3(b)), state that it constitutes a Deferral Notice, in which event the provisions of Section 3(b) shall apply or (G) at any time when a Prospectus is required (or but for the exemption contained in Rule 172 would be required) to be delivered under the Securities Act, that the Shelf Registration Statement, Prospectus, Prospectus amendment, supplement or post-effective amendment does not conform in all material respects to the applicable requirements of the Securities Act and the rules and regulations of the Commission thereunder;

(v) prior to any public offering of the Registrable Securities pursuant to the Shelf Registration Statement, use its reasonable efforts to register or qualify, or cooperate with the Notice Holders included therein and their respective counsel in connection with the registration or qualification of Securities for offer and sale under the

securities or blue sky laws of such jurisdictions as any such Notice Holders reasonably request in writing and do any and all other reasonable acts or things necessary or advisable to enable the offer and sale in such jurisdictions of the Securities covered by the Shelf Registration Statement; prior to any public offering of the Registrable Securities pursuant to the Shelf Registration Statement, use its reasonable efforts to keep each such registration or qualification (or exemption therefrom) effective during the Effective Period in connection with such Notice Holder's offer and sale of Registrable Securities pursuant to such registration or qualification (or exemption therefrom) and use its reasonable efforts to provide for the disposition in such jurisdictions of such Registrable Securities in the manner set forth in the Shelf Registration Statement and the related Prospectus; *provided* that for purposes of this Section 3(a) (v), the Company will not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action which would subject it to general service of process or to taxation in any such jurisdiction where it is not then so subject;

(vi) use its reasonable efforts to lift any suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction in which they have been qualified for sale, in each case at the earliest practicable date;

(vii) upon reasonable written notice, and only in connection with a disposition of Securities under the Shelf Registration Statement, for a reasonable period prior to the filing of the Shelf Registration Statement, and throughout the Effective Period (but not during a Deferral Period), (i) make reasonably available for inspection by a representative of, and Special Counsel acting for, the Majority Holders and any underwriter (and its counsel) participating in any disposition of Securities pursuant to such Shelf Registration Statement (collectively, the "**Shelf Inspectors**"), all relevant and material financial and other records and pertinent corporate documents of the Company and its subsidiaries and (ii) use its reasonable efforts to have its officers, employees, accountants and counsel make available all relevant material information reasonably requested by such representative, Special Counsel or any such underwriter in connection with such Shelf Registration Statement, in each case as is reasonable and customary for similar "due diligence" examinations of issuers of similar size and business of the Company; *provided, however*, that such persons shall first agree with the Company that any information that is reasonably designated by the Company as confidential at the time of delivery shall be kept confidential by such persons and shall be used solely for the purposes of exercising rights under this Agreement and satisfying "due diligence" obligations under the Securities Act and such person shall not engage in trading any securities of the Company until such material non-public information becomes properly publicly available, unless (w) disclosure of such information is required by court or administrative order or is necessary to respond to inquiries of regulatory authorities, (x) disclosure of such information is required by law, including any disclosure requirements pursuant to federal securities laws in connection with the filing of any Shelf Registration Statement or the use of any Prospectus or prospectus supplement referred to in this Agreement upon a customary opinion of counsel for such persons delivered and reasonably satisfactory to the Company, (y) such information becomes generally

available to the public other than as a result of a disclosure or failure to safeguard by any such person, or (z) such information becomes available to any such person or a source other than the Company and such source is not bound by a confidentiality agreement; *provided, further*, that with respect to any Special Counsel engaged by the Majority Holders, the foregoing inspection and information gathering shall be coordinated by one counsel designated by the Majority Holders;

(viii) if requested by the Majority Holders, their Special Counsel or the managing underwriters (if any) in connection with an underwritten offering of the Registrable Securities pursuant to the Shelf Registration Statement, use its reasonable efforts to cause (i) its counsel to deliver an opinion relating to the Shelf Registration Statement and the Securities in a customary form, (ii) its officers to execute and deliver all customary documents and certificates reasonably requested by the Majority Holders, their Special Counsel or the managing underwriters (if any) and (iii) its registered independent public accounting firm to provide a comfort letter or letters relating to the Shelf Registration Statement in a reasonable and customary form, subject to receipt of appropriate documentation as contemplated, and only if permitted, by Statement of Auditing Standards No. 72 or any successor statement thereto, covering matters of the type customarily covered in comfort letters in connection with secondary underwritten offerings; *provided*, that in no event shall the Company be required to furnish such opinions, documents or comfort letters pursuant to the provisions of this Section in more than three underwritten offerings.

(ix) if reasonably requested in writing by any Initial Purchaser or any Notice Holder as a result of the “due diligence” examination referred to in Section 3(a)(vii) above, promptly incorporate in a prospectus supplement or post-effective amendment to the Shelf Registration Statement such information as such Initial Purchaser or such Notice Holder shall, on the basis of a written opinion of Special Counsel, determine to be required to be included therein by applicable law and make any required filings of such prospectus supplement or such post-effective amendment; *provided*, that the Company shall not be required to take any actions under this Section 3(a)(ix) that are not, in the reasonable opinion of counsel for the Company, in compliance with applicable law; *provided, further*, that the Company shall have no liability for Additional Interest under this Agreement if it reasonably objects to making such additional filing and if such additional filing would otherwise cause the Company to pay Additional Interest.

(x) as promptly as practicable furnish to each Notice Holder and the Initial Purchasers, upon their request and without charge, at least one (1) conformed copy of the Shelf Registration Statement and any amendments thereto, including financial statements but excluding schedules, all documents incorporated or deemed to be incorporated therein by reference and all exhibits; *provided, however*, that the Company shall have no obligation to deliver to Notice Holders or the Initial Purchasers a copy of any amendment consisting exclusively of an Exchange Act report or other Exchange Act filing otherwise publicly available on the Company’s website or in the Commission’s EDGAR database;

(xi) during the Effective Period, deliver to each Notice Holder in connection with any sale of Registrable Securities pursuant to the Shelf Registration Statement, upon their request and without charge, as many copies of the Prospectus relating to such Registrable Securities (including each preliminary prospectus) and any amendment or supplement thereto as such Notice Holder may reasonably request; and the Company hereby consents (except during such periods that a Deferral Notice is outstanding and has not been revoked) to the use of such Prospectus or each amendment or supplement thereto by each Notice Holder in connection with any offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto in the manner set forth therein and subject to applicable law; and

(xii) during the Effective Period, cooperate with the Notice Holders to facilitate the timely preparation and delivery of certificates representing Securities to be sold pursuant to the Shelf Registration Statement free of any restrictive legends, unless required by applicable law, and in such denominations as permitted by the Indenture and registered in such names as the Holders thereof may request in writing at least two (2) Business Days prior to sales of Securities pursuant to such Shelf Registration Statement; *provided*, that nothing herein shall require the Company to deliver certificated Securities to any beneficial holder of Securities, except as required by the Indenture.

(b) Upon (A) the issuance by the Commission of a stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of proceedings with respect to the Shelf Registration Statement under Section 8(d) or 8(e) of the Securities Act, (B) the occurrence of any event or the existence of any Material Event as a result of which the Shelf Registration Statement shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or any Prospectus shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (C) the occurrence or existence of any corporate development or business reason that, in the sole discretion of the Company, makes it appropriate to suspend the availability of the Shelf Registration Statement and the related Prospectus, including, without limitation, the acquisition of assets, pending corporate developments, public filings with Commission and similar events, the Company will (i) in the case of clause (B) above, subject to the second sentence of this provision, use its reasonable efforts to prepare and file an amendment to such Shelf Registration Statement or a supplement to the related Prospectus or any document incorporated therein by reference or file any other required document that would be incorporated by reference into such Shelf Registration Statement and Prospectus so that (1) such Shelf Registration Statement does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and (2) such Prospectus does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, as thereafter delivered or made available to the purchasers of the Registrable

Securities being sold thereunder, and, in the case of a post-effective amendment to the Shelf Registration Statement, subject to the second sentence of this provision, use its reasonable efforts to cause it to be declared effective or otherwise become effective and (ii) give notice to the Notice Holders that the availability of the Shelf Registration Statement is suspended (a “**Deferral Notice**”). The Company will use its reasonable efforts to ensure that the use of the Prospectus may be resumed (x) in the case of clause (A) above, as promptly as reasonably practicable, (y) in the case of clause (B) above, as soon as, in the sole judgment of the Company, public disclosure of such Material Event would not be prejudicial to or contrary to the interests of the Company or, if necessary to avoid unreasonable burden or expense, as soon as practicable thereafter and (z) in the case of clause (C) above, as soon as, in the sole discretion of the Company, such suspension is no longer appropriate; *provided* that the period during which the availability of the Shelf Registration Statement and any Prospectus is suspended (the “**Deferral Period**”), without the Company incurring any obligation to pay Additional Interest pursuant to Section 2(d), shall not exceed thirty (30) days in the aggregate in any ninety (90) day period or an aggregate of ninety (90) days in any 12-month period.

(c) Each Holder agrees that upon receipt of any Deferral Notice from the Company, such Holder shall forthwith discontinue (and cause any placement or sales agent or underwriters acting on their behalf to discontinue) the disposition of Registrable Securities pursuant to the Shelf Registration Statement until such Holder (i) shall have received copies of such amended or supplemented Prospectus (including copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus) and, if so directed by the Company, such Holder shall deliver to the Company (at the Company’s expense) all copies, other than permanent file copies, then in such Holder’s possession of the Prospectus covering such Registrable Securities at the time of receipt of such notice or (ii) shall have received notice from the Company that the disposition of Registrable Securities pursuant to the Shelf Registration may continue. Each Holder shall keep confidential any communication received by it from the Company regarding the reason for the suspension of the use of the Prospectus, except as required by applicable law.

(d) The Company may require each Holder as to which any registration pursuant to Section 2(a) is being effected to furnish to the Company such information regarding such Holder and such Holder’s intended method of distribution of such Registrable Securities as the Company may from time to time reasonably request in writing, but only to the extent such information is required to comply with the Securities Act.

(e) The Company shall comply with all applicable rules and regulations of the Commission and make generally available to its securityholders earning statements (which need not be audited) satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act) no later than 45 days after the end of any 12-month period (or ninety (90) days after the end of any 12-month period if such period is a fiscal year) commencing on the first day



of the first fiscal quarter of the Company commencing after the effective date of the Shelf Registration Statement, which statements shall cover said 12-month periods; *provided*, that earnings statements publicly available on the Company's website or in the Commission's EDGAR database shall be considered generally available for the purpose of this Section 3(e).

(f) The Company shall obtain a CUSIP number for all Registrable Securities covered by the Shelf Registration Statement not later than the initial effective date of such Shelf Registration Statement and provide the Trustee and the transfer agent for the Shares with printed certificates for the Registrable Securities that are in a form eligible for deposit with The Depository Trust Company.

(g) The Company shall use its reasonable efforts to provide such information as is required for any filings required to be made with FINRA.

(h) Until the expiration of the Effective Period, the Company will not, and will not permit any of its "affiliates" (as defined in Rule 144) to, resell any of the Securities that have been reacquired by any of them except pursuant to an effective registration statement under the Securities Act.

(i) The Company shall cause the Indenture to be qualified under the Trust Indenture Act in a the manner prescribed by the Trust Indenture Act and shall enter into any necessary supplemental indentures in connection therewith.

(j) The Company shall enter into such customary agreements and take such other reasonable and lawful actions in connection therewith (including those reasonably requested by the Majority Holders) in order to expedite or facilitate disposition of such Registrable Securities.

#### 4. *Holder's Obligations.*

(a) Each Holder agrees, by acquisition of the Registrable Securities, that no Holder shall be entitled to sell any of such Registrable Securities pursuant to the Shelf Registration Statement or to receive a Prospectus relating thereto, unless such Holder has furnished the Company with a Notice and Questionnaire as required pursuant to Section 2(c) hereof (including the information required to be included in such Notice and Questionnaire) and the information set forth in the next sentence. Each Notice Holder agrees to notify the Company as promptly as practicable of any inaccuracy or change in information previously furnished by such Notice Holder to the Company or of the occurrence of any event in either case as a result of which any Prospectus relating to such registration contains or would contain an untrue statement of a material fact regarding such Notice Holder or such Notice Holder's intended method of disposition of such Registrable Securities or omits to state any material fact regarding such Notice Holder or such Notice Holder's intended method of disposition of such Registrable Securities necessary to make the statements therein, in light of circumstances in which they were

made, not misleading, and promptly to furnish to the Company (i) any additional information required to correct and update any previously furnished information or required so that such Prospectus shall not contain, with respect to such Notice Holder or the disposition of such Registrable Securities, an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they were made, not misleading and (ii) any other information regarding such Notice Holder and the distribution of such Registrable Securities as may be required to be disclosed in the Shelf Registration Statement under applicable law or pursuant to Commission comments. Each Holder further agrees not to sell any Registrable Securities pursuant to the Shelf Registration Statement without delivering, causing to be delivered, or, if permitted by applicable law, making available, a Prospectus to the purchaser thereof and, following termination of the Effective Period, to notify the Company, within ten (10) Business Days of a request by the Company, of the amount of Registrable Securities sold pursuant to the Shelf Registration Statement and, in the absence of a response, the Company may assume that all of the Holder's Registrable Securities were so sold in compliance with applicable law and this Agreement unless and until the Company is notified otherwise.

(b) Any sale of any Registrable Securities by any Holder shall constitute a representation and warranty by such Holder that the information relating to such Holder and its plan of distribution is as set forth in the Prospectus delivered by such Holder in connection with such disposition, that such Prospectus does not as of the time of such sale contain any untrue statement of a material fact relating to or provided by such Holder or its plan of distribution and that such Prospectus does not as of the time of such sale omit to state any material fact relating to or provided by such Holder or its plan of distribution necessary to make the statements in such Prospectus, in the light of the circumstances under which they were made, not misleading. Each Holder further agrees that such Holder will not make any offer relating to the Registrable Securities that would constitute an "issuer free writing prospectus" (as defined in Rule 433) or that would otherwise constitute a "free writing prospectus" (as defined in Rule 405) required to be filed by the Company with the Commission or retained by the Company under Rule 433 of the Securities Act, unless it has obtained the prior written consent of the Company.

(c) The Holders shall not offer Registrable Securities under the Shelf Registration Statement in an underwritten offering without the Company's prior written consent. Any underwritten offering agreed to by the Company shall be on terms and conditions agreed to by the Company in connection with such offering. The Company shall not be required to undertake more than three underwritten offerings pursuant to this Agreement.

##### 5. *Registration Expenses.*

The Company agrees to bear and to pay or cause to be paid promptly after request being made therefore all fees and expenses incident to the Company's performance of or compliance with this Agreement, including, but not limited to, (a) all Commission and any FINRA registration and filing fees and expenses, (b) all fees and expenses in connection with the

qualification of the Securities for offering and sale under the State securities and blue sky laws referred to in Section 3(a)(v) hereof, including reasonable fees and disbursements of one counsel for the placement agent or underwriters, if any, in connection with such qualifications, (c) all expenses relating to the preparation, printing, distribution and reproduction of the Shelf Registration Statement, the related Prospectus, each amendment or supplement to each of the foregoing, the certificates representing the Securities and all other documents relating hereto, (d) fees and expenses of the Trustee under the Indenture, any escrow agent or custodian, and of the registrar and transfer agent for the Shares, (e) in connection with an underwritten offering, fees, disbursements and expenses of counsel and the registered independent public accounting firm of the Company (including the expenses of any opinions or “cold comfort” letters required by or incident to such performance and compliance) and (f) reasonable fees, disbursements and expenses of one counsel for all Holders retained in connection with the Shelf Registration Statement, as selected by the Company (unless reasonably objected to by the Majority Holders, in which case the Majority Holders shall select such counsel for the Holders) (“**Special Counsel**”), and fees, expenses and disbursements of any other Persons, including special experts, retained by the Company in connection with such registration (collectively, the “**Registration Expenses**”). To the extent that any reasonable and proper Registration Expenses are incurred, assumed or paid by any Holder or any underwriter or placement agent therefor, the Company shall reimburse such Person for the full amount of the Registration Expenses so incurred, assumed or paid promptly after receipt of a documented request therefor. Notwithstanding the foregoing, the Holders of the Registrable Securities being registered shall pay all underwriting discounts and commissions and placement agent fees and commissions attributable to the sale of such Registrable Securities and the fees and disbursements of any counsel or other advisors or experts retained by such Holders (severally or jointly), other than the counsel and experts specifically referred to above.

6. *Indemnification.*

(a) The Company shall indemnify and hold harmless each Notice Holder (including, without limitation, the Initial Purchaser), its Affiliates, their respective officers, directors, employees, representatives and agents, and each Person, if any, who controls such Notice Holder within the meaning of the Securities Act or the Exchange Act (collectively referred to for purposes of this Section 6 and Section 7 as an “**Indemnified Holder**”) from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof (including, without limitation, any loss, claim, damage, liability or action relating to purchases and sales of Registrable Securities), to which that Indemnified Holder may become subject, whether commenced or threatened, under the Securities Act, the Exchange Act, any other federal or state statutory law or regulation, at common law or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in any such Shelf Registration Statement or any Prospectus forming part thereof, or (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein (in the case of any Prospectus, in the light of the circumstances under which they were made) not misleading, and shall reimburse each Indemnified Holder promptly upon demand for

any legal or other expenses reasonably incurred by that Indemnified Holder in connection with investigating or defending or preparing to defend against or appearing as a third party witness in connection with any such loss, claim, damage, liability or action as such expenses are incurred; *provided, however*, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, an untrue statement or alleged untrue statement in or omission or alleged omission from any of such documents in reliance upon and in conformity with any information provided by such Indemnified Holder in writing to the Company expressly for use therein including its Notice and Questionnaire. This indemnity agreement shall be in addition to any liability that the Company may otherwise have.

(b) Each Notice Holder shall indemnify and hold harmless the Company, its Affiliates, their respective officers, directors, employees, representatives and agents, and each Person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act (collectively referred to for purposes of this Section 6(b) and Section 7 as the Company), from and against any loss, claim, damage or liability, joint or several, or any action in respect thereof, to which the Company may become subject, whether commenced or threatened, under the Securities Act, the Exchange Act, any other federal or state statutory law or regulation, at common law or otherwise, insofar as such loss, claim, damage, liability or action arises out of, or is based upon, (i) any untrue statement or alleged untrue statement of a material fact contained in any such Shelf Registration Statement or any Prospectus forming part thereof, or (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein (in the case of any Prospectus, in the light of the circumstances under which they were made) not misleading, but in each case only to the extent that the untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with any information furnished to the Company in writing by such Notice Holder expressly for use therein including its Notice and Questionnaire, and shall reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending or preparing to defend against or appearing as a third party witness in connection with any such loss, claim, damage, liability or action as such expenses are incurred; *provided, however*, that no such Notice Holder shall be liable for any indemnity claims hereunder in excess of the amount of net proceeds received by such Notice Holder from the sale of Registrable Securities pursuant to such Shelf Registration Statement. This indemnity agreement will be in addition to any liability which any such Notice Holder may otherwise have.

(c) Promptly after receipt by an indemnified party under this Section 6 of notice of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party pursuant to Section 6(a) or 6(b), notify the indemnifying party in writing of the claim or the commencement of that action; *provided, however*, that the failure to notify the indemnifying party shall not relieve it from any liability that it may have under this Section 6 except to the extent that it has been materially prejudiced (through the

forfeiture of substantive rights or defenses) by such failure; and *provided, further*, that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under this Section 6. If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel reasonably satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under this Section 6 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than the reasonable costs of investigation; *provided, however*, that an indemnified party shall have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel for the indemnified party will be at the expense of such indemnified party unless (1) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (2) the indemnified party has reasonably concluded (based upon advice of counsel to the indemnified party) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (3) a conflict or potential conflict exists (based upon advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party) or (4) the indemnifying party has not in fact employed counsel reasonably satisfactory to the indemnified party to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, in each of which cases the reasonable fees, disbursements and other charges of counsel will be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm of attorneys (in addition to any local counsel) at any one time for all such indemnified party or parties. Each indemnified party, as a condition of the indemnity agreements contained in Sections 6(a) and 6(b), shall use its reasonable efforts to cooperate with the indemnifying party in the defense of any such action or claim. No indemnifying party shall be liable for any settlement of any such action effected without its written consent (which consent shall not be unreasonably withheld), but if settled with its written consent or if there be a final judgment for the plaintiff in any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses or counsel as contemplated by this section, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of a request in writing setting forth proposed settlement terms from the indemnified party and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with the aforesaid request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party (which consent shall not be unreasonably withheld), effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement (i) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and (ii) does not include a statement or admission of fault, culpability or a failure to act, by or on behalf of the indemnified party.

(d) The provisions of this Section 6 and Section 7 shall remain in full force and effect, regardless of any investigation made by or on behalf of any Notice Holder, the Company, or any of the indemnified Persons referred to in this Section 6 and Section 7, and shall survive the sale by a Notice Holder of Registrable Securities covered by the Shelf Registration Statement.

7. *Contribution.*

If the indemnification provided for in Section 6 is unavailable or insufficient to hold harmless an indemnified party under Section 6(a) or 6(b), then each indemnifying party shall, in lieu of indemnifying such indemnified party, contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability, or action in respect thereof, (i) in such proportion as shall be appropriate to reflect the relative benefits received by the Company from the offering and sale of the Notes, on the one hand, and a Holder with respect to the sale by such Holder of Registrable Securities, on the other, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and such Holder on the other with respect to the statements or omissions that resulted in such loss, claim, damage or liability, or action in respect thereof, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and a Holder on the other with respect to such offering and such sale shall be deemed to be in the same proportion as the total net proceeds from the offering of the Notes (before deducting expenses) received by or on behalf of the Company, on the one hand, and the total net proceeds (before deducting expenses) received by such Holder upon a resale of the Registrable Securities, on the other, bear to the total gross proceeds from the sale of all Registrable Securities pursuant to the Shelf Registration Statement in the offering of the Registrable Securities from which the contribution claim arises. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to the Company or information supplied by the Company on the one hand or to any information contained in the relevant Notice and Questionnaire supplied by such Holder on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Notice Holders' respective obligations to contribute pursuant to this Section 7 are several in proportion to the respective number of Registrable Securities they have sold pursuant to the Shelf Registration Statement and not joint.

The parties hereto agree that it would not be just and equitable if contributions pursuant to this Section 7 were to be determined by *pro rata* allocation or by any other method of allocation that does not take into account the equitable considerations referred to herein. The amount paid or payable by an indemnified party as a result of the loss, claim, damage or liability, or action in respect thereof, referred to above in this Section 7 shall be deemed to include, for purposes of this Section 7, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending or preparing to defend any such action or claim. Notwithstanding the provisions of this Section 7, an indemnifying party that is a Holder shall not be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities sold by such indemnifying party to any purchaser exceeds the amount of any damages which such indemnifying party has otherwise paid or become liable to pay by reason of any untrue or alleged untrue statement or omission or alleged omission. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

8. *Information Requirements.*

The Company covenants that, if at any time before the end of the Effective Period the Company is not subject to the reporting requirements of the Exchange Act, it will cooperate with any Holder and take such further customary action as any Holder may reasonably request in writing (including, without limitation, making such representations as any such Holder may reasonably request), all to the extent required from time to time to enable such Holder to sell Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 and Rule 144A under the Securities Act and customarily taken in connection with sales pursuant to such exemptions. Upon the written request of any Holder, the Company shall deliver to such Holder a written statement as to whether it has complied with such filing requirements, unless such a statement has been included in the Company's most recent report filed pursuant to Section 13 or Section 15(d) of Exchange Act. Notwithstanding the foregoing, nothing in this Section 8 shall be deemed to require the Company to register any of its securities under any section of the Exchange Act.

9. *Miscellaneous.*

(a) Amendments and Waivers. The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of the Majority Holders. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders whose Registrable Securities are being sold pursuant to the Shelf Registration Statement and that does not directly or indirectly affect the rights of other Holders may be given by Holders of a majority in aggregate amount of the Registrable Securities being sold by such Holders pursuant to the Shelf Registration Statement. Notwithstanding the foregoing sentence, (i) this Agreement may be amended by written agreement signed by the Company and the Initial Purchasers, without the consent of the Holders, to cure any ambiguity or to correct or supplement any provision

contained herein that may be defective or inconsistent with any other provision contained herein, or to make such other provisions in regard to matters or questions arising under this Agreement that shall not adversely affect the interests of the Holders. Each Holder at the time of any such amendment, modification, supplement, waiver or consent or thereafter shall be bound by any such amendment, modification, supplement, waiver or consent effected pursuant to this Section 9(a), whether or not any notice, writing or marking indicating such amendment, modification, supplement, waiver or consent appears on the Registrable Securities or is delivered to such Holder.

(b) Notices. All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, first-class mail, telecopier or air courier guaranteeing next-day delivery:

- (1) If to the Company, initially at the address set forth in the Purchase Agreement;
- (2) If to the Representative, initially at the address set forth in the Purchase Agreement; and
- (3) If to a Holder, to the address of such Holder set forth in the security register, the Notice and Questionnaire or other records of the Company.

All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; one (1) Business Day after being delivered to a next-day air courier; five (5) Business Days after being deposited in the mail, if being delivered by first-class mail; and when receipt is acknowledged by the recipient's telecopier machine, if sent by telecopier.

Notwithstanding the foregoing, the notice required pursuant to Section 3(a)(i) shall be given in the same manner that notices are required to be delivered to holders of Notes pursuant to the Indenture.

(c) Successors and Assigns. This Agreement shall be binding upon the Company and each of its successors and assigns. Any Person who purchases any Securities from any Initial Purchaser shall be deemed, for purposes of this Agreement, to be an assignee of such Initial Purchaser. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties and shall inure to the benefit of and be binding upon each Holder, *provided that* nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms of the Indenture. If any transferee of any Holder shall acquire Registrable Securities, in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to all of the terms of this Agreement, and by taking and holding such Registrable Securities, such Person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement and such Person shall be entitled to receive the benefits hereof.



(d) Counterparts. This Agreement may be executed in any number of counterparts (which may be delivered in original form or by telecopier) and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(e) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(g) Remedies. In the event of a breach by the Company or by any Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law, including recovery of damages (other than the recovery of damages for a breach by the Company of its obligations under Section 3 hereof for which Additional Interest has been paid pursuant to Section 2 hereof), will be entitled to specific performance of its rights under this Agreement. The Company and each Holder agree that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agree that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

(h) No Inconsistent Agreements. The Company represents, warrants and agrees that (i) it has not entered into and shall not on or after the date of this Agreement enter into any agreement that is inconsistent with the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof, (ii) it has not previously entered into any agreement which remains in effect and does not currently contemplate entering into any agreement granting any registration rights with respect to any of its debt securities to any Person other than (a) this Agreement, (b) the registration rights agreement which will govern the registration of the Company's Common Stock acquired by Borse Dubai and the Trust (the "Dubai Registration Rights Agreement") and (c) the registration rights agreement dated April 21, 2005 between the Company and investors defined therein (the "SLP Registration Rights Agreement") and (iii) without limiting the generality of the foregoing, without the written consent of the Majority Holders, it shall not grant to any Person the right to request the Company to register any securities of the Company under the Securities Act unless the rights so granted are not in conflict or inconsistent with the provisions of this Agreement.

(i) No Piggyback on Registrations. Other than pursuant to the Dubai Registration Rights Agreement and the SLP Registration Rights Agreement, neither the Company nor any of its securityholders (other than the Holders of restricted securities in such capacity) shall have the right to include any securities of the Company in any Shelf Registration Statement other than Registrable Securities unless the Shelf Registration Statement is an Automatic Shelf Registration Statement.

(j) Severability. The remedies provided herein are cumulative and not exclusive of any remedies provided by law. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any term, provision, covenant or restriction that may be hereafter declared invalid, illegal, void or unenforceable.

(k) Survival. The respective indemnities, agreements, representations, warranties and each other provision set forth in this Agreement or made pursuant hereto shall remain in full force and effect regardless of any investigation (or statement as to the results thereof) made by or on behalf of any Holder, any director, officer or partner of such Holder, any agent or underwriter or any director, officer or partner thereof, or any controlling Person of any of the foregoing, and shall survive delivery of and payment for the Registrable Securities pursuant to the Purchase Agreement and the transfer and registration of Registrable Securities by such Holder.

(l) Securities Held by the Company, etc. Whenever the consent or approval of Holders of a specified percentage of Securities is required hereunder, Securities held by the Company or its Affiliates (other than subsequent Holders if such subsequent Holders are deemed to be Affiliates solely by reason of their holdings of such Securities) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to us a counterpart hereof, whereupon this instrument will become a binding agreement between the Company and the Initial Purchasers in accordance with its terms.

Very truly yours,

**THE COMPANY**

THE NASDAQ STOCK MARKET, INC.

By: /s/ David P. Warren

Name: David P. Warren

Title: Executive Vice President and Chief Financial Officer

Accepted: February 26, 2008

By: J.P. MORGAN SECURITIES INC.

By: /s/ Santosh Sreenivasan

Name: Santosh Sreenivasan

Title: Executive Director

By: BANC OF AMERICA SECURITIES LLC

By: /s/ Derek Dillon

Name: Derek Dillon

Title: Co-head of Equity Capital Markets, Managing Director

## AMENDMENT TO THE OMX TRANSACTION AGREEMENT

THIS AMENDMENT TO THE OMX TRANSACTION AGREEMENT (this "Amendment"), dated as of February 27, 2008 is entered into by and between The Nasdaq Stock Market, Inc., a Delaware corporation (together with any successor entity thereto, "Nasdaq"), Borse Dubai Limited, a company registered in the Dubai International Financial Centre in Dubai with company number CL0447 (together with any successor entity thereto, "Borse Dubai"), and BD Stockholm AB, a corporation organized under the laws of Sweden (the "Bidder"). Nasdaq, Borse Dubai and the Bidder are sometimes referred to herein as a "Party" and collectively as the "Parties".

WHEREAS, Nasdaq, Borse Dubai and the Bidder have entered into that certain OMX Transaction Agreement, dated as of November 15, 2007 (the "OMX Transaction Agreement"); and

WHEREAS, the parties hereto desire to amend the OMX Transaction Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, and the covenants, representations and warranties set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and accepted; the parties hereto hereby agree as follows:

1. **Section 1.01(a)**. The definition of "Trust Agreement" in Section 1.01(a) is hereby deleted in its entirety and replaced with the following sentence:

""Trust Agreement" means the trust agreement attached as Exhibit E hereto, entered into and dated as of February 21, 2008."

2. **Exhibit E**. Exhibit E is hereby amended and restated in its entirety by the attached Exhibit E.

3. **Section 2.01(a)(ii)**. Section 2.01(a)(ii) is hereby amended and restated in its entirety as follows:

"Nasdaq shall cause Bank of America, National Association to (x) pay to HSBC Bank plc, for the account of Borse Dubai, by wire transfer of immediately available funds to a bank account or accounts designated in writing by Borse Dubai to Nasdaq at least two Business Days prior to the Closing Date, an amount in cash equal to SEK 12,582,952,392, as may be reduced pursuant to Section 2.01(c) (the "Cash Purchase Price"), (y) deliver or cause to be delivered to Borse Dubai 42,901,148 of the Nasdaq Shares, that shall constitute no more than 19.99% of the issued and outstanding Common Stock on a fully-diluted basis as of the close of business on the day immediately before Closing, calculated in accordance with the methodology and assumptions set forth on Schedule 2.01(a), and taking into account the issuance of all of the Nasdaq Shares, and (z) deposit or cause to be deposited in the Trust 17,660,367 of the Nasdaq Shares, that constitute the remaining Nasdaq Shares. If so directed by Borse Dubai upon

written notice given at least 2 days prior to the Closing Date: (A) Nasdaq shall deliver all or part of the Cash Purchase Price and the Nasdaq Shares referred to in clause (y) of the preceding sentence to Subsidiaries of Borse Dubai and/or (B) the Nasdaq Shares to be deposited in the Trust pursuant to clause (z) of the preceding sentence shall instead be delivered to Borse Dubai or its Subsidiaries, which shall immediately thereafter deposit such Nasdaq Shares in the Trust. ”

4. **Schedule 2.01(a)**. Schedule 2.01(a) is hereby amended and restated in its entirety with the attached Schedule 2.01(a).

5. **Section 2.02(b)**. Section 2.02(b) is hereby amended and restated in its entirety as follows:

“Nasdaq shall cause Bank of America, National Association to pay to HSBC Bank plc, for the account of Borse Dubai, by wire transfer of immediately available funds, an amount in cash equal to (x) SEK 265 multiplied by (y) the number of OMX Shares delivered or caused to be delivered by Borse Dubai to Nasdaq at such Secondary Closing. If so directed by Borse Dubai upon written notice given at least 2 days prior to any Secondary Closing, Nasdaq shall deliver all or part of the cash referred to in the preceding sentence to Subsidiaries of Borse Dubai.”

6. **Closing Date**. The “Closing”, as described in Section 2.03, shall occur on February 27, 2008.

7. **Section 3.19**. A new Section 3.19 shall be added immediately after Section 3.18 as follows:

“Section 3.19 Nasdaq Shares. The 42,901,148 shares of the Nasdaq Shares, delivered by Nasdaq pursuant to Section 2.01(a)(ii), constitute no more than 19.99% of the issued and outstanding Common Stock on a fully-diluted basis as of the close of business on the day immediately before Closing, calculated in accordance with the methodology and assumptions set forth on Schedule 2.01(a), and taking into account the issuance of all of the Nasdaq Shares; provided, however, that for purposes of this Section 3.19 only, the “Measuring Date” in Schedule 2.01(a) shall be February 26, 2008 instead of January 31, 2008.”

8. **Section 6.02(b)(iii)**. Section 6.02(b)(iii) is hereby amended and restated in its entirety as follows:

“a certificate executed by the chief executive officer or chief financial officer of Nasdaq to the effect that (A) the representations and warranties of Nasdaq contained in this Agreement and any Ancillary Agreement (but with respect to any Ancillary Agreement, only at Closing) shall be true and correct in all material respects as of the date of this Agreement and the Closing Date, other than those that are qualified by “materiality” or by Nasdaq Material Adverse Effect, which shall be true and correct in all respects, or in the case of representations and warranties that are made as of a specified date, as of such specified date, (B) Nasdaq has performed all obligations and agreements and complied with all

covenants and conditions required by this Agreement or any Ancillary Agreement to be performed or complied with by it prior to or at the Closing, except where the non-performance in relation to the transactions contemplated by this Agreement is not material to Borse Dubai and (C) setting forth the number of issued and outstanding shares of Common Stock on a fully-diluted basis as of close of business on the day immediately before Closing (calculated in accordance with the methodology set forth on Schedule 2.01(a)).”

9. **Section 6.02(c)(ii).** Section 6.03(c)(ii) is hereby amended and restated in its entirety as follows:

“a certificate executed by the chief executive officer, chairman, vice-chairman or chief financial officer of Borse Dubai to the effect that (A) the representations and warranties of Borse Dubai and the Bidder contained in this Agreement and any Ancillary Agreement (but with respect to any Ancillary Agreement, only at Closing) shall be true and correct in all material respects as of the date of this Agreement and the Closing Date, other than those that are qualified by “materiality”, which shall be true and correct in all respects, or in the case of representations and warranties that are made as of a specified date, as of such specified date and (B) Borse Dubai and the Bidder have performed all obligations and agreements and complied with all covenants and conditions required by this Agreement or any Ancillary Agreement to be performed or complied with by them prior to or at the Closing, except where the nonperformance in relation to the transactions contemplated by this Agreement is not material to Nasdaq.”

10. **Effectiveness; Effect on OMX Transaction Agreement.**

(a) This Amendment shall become effective upon execution and delivery hereof of all parties hereto.

(b) On and after the date hereof, each reference in the OMX Transaction Agreement to “this Agreement”, “herein”, “hereof” or words of similar import shall mean and be a reference to the OMX Transaction Agreement as amended hereby.

(c) Except as specifically amended by this Amendment, the OMX Transaction Agreement shall remain in full force and effect and the OMX Transaction Agreement, as amended by this Amendment, is hereby ratified and confirmed in all respects.

11. **New York Law.** The enforceability and validity of this Amendment, the construction of its terms and the interpretation of the rights and duties of the Parties shall be governed by the laws of the State of New York, without regard to conflict of law principles thereof that would mandate the application of laws of another jurisdiction.

12. **Counterparts.** This Amendment may be executed in any number of counterparts (including by facsimile), each of which will be an original with the same effect as if the signatures thereto and hereto were upon the same instrument. This Amendment shall become effective when each Party shall have received counterparts hereof signed by all of the other Parties.

13. **Headings.** The descriptive headings contained in this Amendment are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Amendment.

*[Execution page follows.]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized signatories as of the date first above written.

**THE NASDAQ STOCK MARKET, INC.**

By: /s/ Edward S. Knight  
Name: Edward S. Knight  
Title: EVP & General Counsel

**BORSE DUBAI LIMITED**

By: /s/ Soud Ba'Alawi  
Name: Soud Ba'Alawi  
Title: Vice Chairman

By: /s/ Essa Kazim  
Name: Essa Kazim  
Title: Chairman

**BD STOCKHOLM AB**

By: /s/ Per Larsson  
Name: Per Larsson  
Title: Chairman



**NASDAQ STOCKHOLDERS' AGREEMENT**

dated as of

**FEBRUARY 27, 2008**

among

**THE NASDAQ STOCK MARKET, INC.**

and

**BORSE DUBAI, LIMITED**

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## NASDAQ STOCKHOLDERS' AGREEMENT

This NASDAQ STOCKHOLDERS' AGREEMENT, dated as of February 27, 2008 (this "Nasdaq Stockholders' Agreement"), among The Nasdaq Stock Market, Inc., a Delaware corporation (together with any successor entity thereto, "Nasdaq") and Borse Dubai Limited, a company registered in the Dubai International Financial Centre in Dubai with company number CL0447 (together with any successor entity thereto, "Borse Dubai"). Nasdaq and Borse Dubai are sometimes referred to herein as a "Party" and collectively as the "Parties".

WHEREAS, pursuant to the OMX Transaction Agreement, dated as of November 15, 2007 (as amended and supplemented, the "OMX Transaction Agreement") between Nasdaq, Borse Dubai and BD Stockholm AB, a corporation organized under the laws of Sweden, Borse Dubai and the Trust (defined below) will receive shares of common stock, par value \$0.01 per share, of Nasdaq (the "Common Stock"); and

WHEREAS, it is a condition precedent to the closing of the transactions contemplated by the OMX Transaction Agreement (the "Closing") that the Parties hereto execute and deliver this Nasdaq Stockholders' Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants set forth herein, the Parties hereto agree as follows:

### ARTICLE I DEFINITIONS

#### Section 1.1 Definitions.

(a) The following terms, as used herein, have the following meanings:

"2005 Registration Rights Agreement" means that certain Registration Rights Agreement, dated as of April 22, 2005, among Nasdaq, Hellman & Friedman Capital Partners IV, L.P., H&F Executive Fund IV, L.P., H&F International Partners IV-A, L.P., and H&F International Partners IV-B, L.P., Silver Lake Partners TSA, L.P., Silver Lake Investors, L.P., VAB Investors, LLC and Integral Capital Partners VI, L.P.

"2008 Registration Rights Agreement" means that certain Registration Rights Agreement, dated as of February 27, 2008, among Nasdaq, Borse Dubai and the Trust.

"Affiliate" of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person. For the purposes of this definition, "control" when used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing. Notwithstanding the foregoing Nasdaq and its Affiliates, on the one hand, will not be deemed to be Affiliates of any of Borse Dubai and its Affiliates or Dubai International Financial Exchange Limited, a company registered in the Dubai International Financial Centre in Dubai with company number 0009 and a

Subsidiary of Borse Dubai (together with any successor entity thereto, “DIFX”) and its Affiliates, on the other hand, and vice versa. For the avoidance of doubt, Affiliates of DIFX refer only to Persons directly or indirectly controlled by Investment Corporation of Dubai, a Dubai company.

“Authority” means any domestic (including federal, state or local) or foreign court, arbitrator, administrative, regulatory or other governmental department, agency, official, commission, tribunal, authority or instrumentality, non-government authority or Self-Regulatory Organization.

“beneficial owner” or “beneficially own” and words of similar import have the meaning given such term in Rule 13d-3 under the Exchange Act; provided, however, that for purposes of determining beneficial ownership, (i) a Person shall be deemed to be the beneficial owner of any security that may be acquired by such Person, whether within 60 days or thereafter, upon the conversion, exchange or exercise of any warrants, options, rights or other securities and (ii) no Person shall be deemed to beneficially own any security solely as a result of such Person’s execution of this Nasdaq Stockholders’ Agreement.

“Board of Directors” means the board of directors of Nasdaq.

“Borse Dubai Threshold” means, at any time of determination, 19.99% of the issued and outstanding Common Stock calculated on a fully diluted basis, which shall be calculated in accordance with the methodology set forth on Schedule A.

“Business Day” means any day that is not a Friday, Saturday or Sunday or a day on which banks are required or permitted to be closed in the State of New York, Stockholm, Sweden or in Dubai, United Arab Emirates.

“Cause” means any Borse Dubai Board Designee’s or Borse Dubai Nominating Committee Designee’s: (i) conviction of, or guilty plea, to a felony charge (other than felonies related solely to automobile infractions, unless such designee is incarcerated as a result thereof) or (ii) fraudulent conduct or an intentional act or acts of dishonesty in the performance of his or her service as a director that is materially injurious to the financial condition, results of operations or business regulation of Nasdaq.

“Change of Control” means the occurrence of any of the following events: (i) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, is or becomes the beneficial owner, directly or indirectly, of more than 50% of the total voting power of the outstanding capital stock of Nasdaq or 50% of the total number of outstanding shares of capital stock of Nasdaq, (ii) Nasdaq merges with or into, or consolidates with, or consummates any reorganization or similar transaction with, another Person and, immediately after giving effect to such transaction, less than 50% of the total voting power of the outstanding capital stock of the surviving or resulting person is beneficially owned in the aggregate by the stockholders of Nasdaq immediately prior to such transaction, (iii) in one transaction or a series of related transactions, Nasdaq, directly or indirectly (including through one or more of its subsidiaries) sells, assigns, conveys, transfers, leases or otherwise disposes of, all or substantially all of the assets or properties (including capital stock of subsidiaries) of Nasdaq, but excluding

sales, assignments, conveyances, transfers, leases or other dispositions of assets or properties (including capital stock of subsidiaries) by Nasdaq or any of its subsidiaries to any direct or indirect wholly-owned subsidiary of Nasdaq, (iv) individuals who, immediately following the consummation of the transactions contemplated by the OMX Transaction Agreement, constitute the Board of Directors (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board of Directors (other than in connection with a transaction described in (i), (ii) or (iii) above); provided, however, that any individual becoming a director subsequent to the consummation of the transactions contemplated by the OMX Transaction Agreement whose election, or nomination for election, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board or (v) the liquidation or dissolution of Nasdaq.

"Commission" means the Securities and Exchange Commission.

"Commission Approval" has the meaning assigned thereto in the OMX Transaction Agreement.

"Competitor" means any Person (other than an Affiliate of Borse Dubai) that, during the 12 calendar months preceding the date of transfer derived more than 20% of its gross revenues from (i) the provision by such Person of listing, order execution or matching services for securities, (ii) the conduct by such Person of an international or national securities market or exchange, (iii) acting as a Self-Regulatory Organization, (iv) operating an "electronic communications network," as defined under the Exchange Act or (v) operating an "alternative trading system" as defined in Regulation ATS under the Exchange Act.

"Derivative Securities" means options, warrants, rights to purchase capital stock of Nasdaq, or any securities that are exercisable, convertible or exchangeable for capital stock of Nasdaq.

"DIFX Stockholders' Agreement" means that certain agreement, dated as of the date hereof, by and among Nasdaq, Borse Dubai and the Dubai International Financial Exchange.

"Excess Shares" has the meaning assigned thereto in Nasdaq's Amended and Restated Certificate of Incorporation.

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

"Facilities Agreement" means that certain Facilities Agreement, dated August 17, 2007, as amended and restated on September 20, 2007 and as amended on September 24, 2007, among, *inter alia*, Borse Dubai, as borrower, the lenders party thereto and HSBC.

"Fair Market Value" means the following:

(a) In the case of securities quoted on any exchange, the "Fair Market Value" of such securities will be equal to the 5-day volume weighted average price of such securities on the primary exchange on which they are listed on the five trading days immediately preceding the date such distribution is declared by the Board of Directors.

(b) In the case of any other property, the “Fair Market Value” means the value of such property, assuming an arm’s-length transaction between a willing buyer and seller, capable of being sold free of restriction in a liquid market without giving effect to any discounts (for minority interests), taking into account any other factors that the Persons making such determination reasonably believe should be taken into account, and, if such property includes Common Stock, assuming carrying on of Nasdaq as a going concern. Absent agreement by the applicable parties as to the “Fair Market Value” within 20 days after the date such distribution is declared by the Board of Directors, the applicable parties shall each designate, within 10 days after such 20-day period, an Investment Bank to determine the Fair Market Value. Within 30 days after the Investment Banks are chosen, each Investment Bank shall determine its final view as to the Fair Market Value and shall deliver such final view to the applicable parties. If the difference between the higher and the lower of the respective final views of the two Investment Banks is less than 10% of the higher of the respective final views, then the Fair Market Value determined shall be the average of those two views. If the difference between the higher and the lower of the respective final views of the two Investment Banks is equal to or greater than 10% of the higher of the respective final views, the applicable parties shall instruct the Investment Banks jointly to designate a third Investment Bank who shall be an Independent Investment Bank (the “Mutually Designated Appraiser”). The Mutually Designated Appraiser shall be designated within 15 days following the determination of the final views of the two Investment Banks as described above and shall, within 30 days of such designation, determine its final view as to the Fair Market Value and shall deliver such final view to DIFX and Nasdaq. The Fair Market Value, if a Mutually Designated Appraiser is used, shall be equal to the average of the two closest Fair Market Value determinations of the three appraisers, or, if the difference between the highest and middle determination is equal to the difference between the middle and lowest determination, then the Fair Market Value will be equal to the middle determination. The Fair Market Value as designated by the Mutually Designated Appraiser, shall be final and binding on the parties, and may be entered and enforced in any court having jurisdiction. Each party shall bear the fees and expenses of its Investment Bank. Fees and expenses of the Mutually Designated Appraiser shall be borne equally by the applicable parties. Notwithstanding the foregoing, in the event that one of the applicable parties does not appoint an Investment Bank within the time periods specified above, such party shall have waived its rights to appoint an Investment Bank and the determination of the Fair Market Value shall be made solely by the Investment Banks of the party who did appoint an Investment Bank. Each of the parties (on its own behalf and on behalf of its respective Affiliates) shall cooperate with each of the Investment Banks and the Mutually Designated Appraiser to provide such information as may reasonably be requested. In addition, if the property being valued includes DIFX Shares, Borse Dubai shall use commercially reasonable efforts to cause DIFX to provide to each of the Investment Banks and the Mutually Designated Appraiser reasonable access to management of DIFX and to the books and records of DIFX so as to allow each of them to conduct due diligence examinations in scope and duration as are customary in valuations of this kind.

“FINRA” means the Financial Industry Regulatory Authority, Inc. and its successors.

“H&F and SLP” means 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: (1) under common management and control, (2) comprised of members or partners with the same ultimate ownership and (3) subject to terms and conditions substantially identical in all material respects.

“HSBC” means HSBC Bank plc, as Security Trustee for the benefit of the Secured Parties (as such term is defined in the Facilities Agreement) under the Nasdaq Share Charge.

“Independent Investment Bank” means, as of any date of determination, an Investment Bank that (i) is not a Party or an Affiliate of a Party and (ii) has not performed work more than *de minimis* in amount or significance for a Party or an Affiliate of any Party or a DIFX Affiliate (as defined in the DIFX Stockholders’ Agreement) within the prior two years from the date of determination.

“Initial Interest” means 42,901,148 Shares (i) as adjusted for any stock dividend, stock split, recapitalization or similar event in respect of such Shares and (ii) as decreased by the number of Shares transferred to the Trust or repurchased in accordance with the provisions of Section 2.1(c).

“Investment Bank” means any investment banking firm of international standing.

“Nasdaq Board Exemption” has the meaning assigned thereto in the OMX Transaction Agreement.

“Nasdaq Share Charge” means the pledge agreement to be entered into between Borse Dubai and HSBC in connection with the Closing, whereby Borse Dubai has pledged all of its right, title and interest in and to the Shares of Nasdaq that it owns to secure its obligations under the Facilities Agreement.

“Nominating Committee” means the Nominating Committee of the Board of Directors.

“Person” means an individual or a corporation, partnership, association, trust, or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Proceeding” means any claim, suit, action or legal, administrative, arbitration or other alternative dispute resolution proceeding or investigation.

“Representatives” means, with respect to any Party, the directors, officers, employees, agents, attorneys, accountants, consultants, current or potential lenders, financial and other advisors of such Party.

“Securities Act” means the Securities Act of 1933, as amended.

“Self-Regulatory Organization” means FINRA, any United States or non-United States securities exchange, commodities exchange, registered securities association, the Municipal Securities Rulemaking Board, National Futures Association, and any other board or body, whether United States or non-United States, that regulates brokers, dealers, commodity pool operators, commodity trading advisors or future commission merchants.



“Shares” means shares of Common Stock.

“Subsidiary” means, with respect to any Person, any corporation or other entity of which a majority of the capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

“Third Party Tender Offer” means a bona fide public offer subject to the provisions of Regulation 14D or 14E under the Exchange Act, by a Person (that is not made by and does not include Nasdaq or any of its Affiliates, Borse Dubai or any of its Affiliates or any group that includes as a member Borse Dubai or any of its Affiliates) to purchase or exchange for cash or other consideration all of the outstanding capital stock of Nasdaq.

“Trust Agreement” means that certain Trust Agreement, dated as of February 21, 2008, among Nasdaq, Borse Dubai and the Trustee.

“Trust” means the trust established pursuant to the Trust Agreement.

“Trustee” has the meaning assigned thereto in the Trust Agreement.

“Voting Limit Exemption” means an exemption for any other Person from the limitations of Article Fourth, Section C.6(b) of Nasdaq’s Amended and Restated Certificate of Incorporation (other than an exemption granted in connection with the establishment of a strategic alliance with another exchange or similar market, such that the rights of H&F and SLP thereunder are not triggered).

“Voting Percentage” means the percentage of all such Person’s Voting Securities entitled to vote after taking into account the Voting Limit Exemption.

Section 1.2 Table of Definitions. The following terms have the meanings set forth in the Sections set forth below:

<u>Term</u>	<u>Defined in</u>
Borse Dubai	Preamble
Borse Dubai Board Designee	Section 3.1(a)
Borse Dubai Exemption	Section 4.2
Borse Dubai Nominating Committee Designee	Section 3.1(b)
Closing	Recitals
Common Stock	Recitals
DIFX	Section 1.1(a)
Exercise Notice	Section 5.5(a)
Incumbent Board	Section 1.1(a)
Indemnified Liabilities	Section 6.1
Indemnified Parties	Section 6.1
LSE	Section 3.1(f)
Mutually Designated Appraiser	Section 1.1(a)
Nasdaq	Preamble

Nasdaq Stockholders' Agreement  
Notice Date  
Notice of Issuance  
Offered Shares  
OMX  
OMX Transaction Agreement  
Parties  
Party  
Proportional Share Amount  
Proposed Issuance  
Revised Notice Date  
Revised Notice of Issuance  
Standstill Termination Date  
Transfer

Preamble  
Section 5.5(a)  
Section 5.5(a)  
Section 5.5(a)  
Section 3.1(b)  
Recitals  
Preamble  
Preamble  
Section 5.5(a)  
Section 5.5(a)  
Section 5.5(a)  
Section 5.5(a)  
Section 5.3(a)  
Section 2.1(a)

ARTICLE II  
TRANSFER RESTRICTIONS

Section 2.1 Transfer by Borse Dubai.

(a) For one year following the date of this Nasdaq Stockholders' Agreement, Borse Dubai shall not transfer, sell, assign, or otherwise dispose of ("Transfer") any of the Shares beneficially owned by it, except (A) in compliance with all applicable federal securities laws and (B):

(i) to one or more Affiliates, so long as such Affiliates agree in writing to be bound by and Borse Dubai continues to be bound by the terms of this Nasdaq Stockholders' Agreement (for the avoidance of doubt, upon such Transfer, Borse Dubai and such Affiliates will be treated as one "party" for all purposes under this Nasdaq Stockholders' Agreement); provided, however, that if any such transferee ceases to be an Affiliate of Borse Dubai, then such transferee shall transfer its Shares to Borse Dubai or one of its Affiliates then a Party to this Nasdaq Stockholders' Agreement;

(ii) to Nasdaq or any of its Subsidiaries, including pursuant to a share buyback (for the avoidance of doubt, to the extent that Borse Dubai's participation in such buyback is limited to its pro rata interest, such interest shall be based on its beneficial ownership, provided, however, that in no event shall Borse Dubai's and the Trusts's participation in any buyback for which participation is so limited exceed the pro rata interest based on Borse Dubai's beneficial ownership);

(iii) pursuant to a merger, consolidation, share exchange, tender offer or other similar transaction involving Nasdaq; provided, however, that notwithstanding the foregoing, a Transfer pursuant to a voluntary tender of Shares may only be undertaken in reliance on this clause (iii) if, within 10 Business Days of the date on which notice of such transaction is first sent or given to the Board of Directors, the Board of Directors does not recommend rejection of such transaction;

(iv) to the Trust, to the extent necessary to reduce Borse Dubai's ownership of Common Stock to the Borse Dubai Threshold in order to comply with the requirements of Section 2.1(c), below;

(v) by way of a grant of a security interest to HSBC under the Nasdaq Share Charge;

(vi) to any Person in connection with the exercise by HSBC of any of its rights and remedies as Security Trust under the Nasdaq Share Charge, provided that upon any such Transfer, HSBC or any transferee in connection with the exercise by HSBC of any such rights and remedies shall be bound by Section 2.1(b)(i) of this Nasdaq Stockholders' Agreement; or

(vii) with the prior written consent of Nasdaq.

(b) Notwithstanding anything in the foregoing to the contrary, Borse Dubai shall not Transfer any Shares:

(i) to any Competitor except (A) pursuant to a merger, consolidation, share exchange, tender offer or other similar transaction involving Nasdaq, (B) in any such Transfer pursuant to a public offering or a sale pursuant to Rule 144 under the Securities Act, *provided* that Borse Dubai does not have actual knowledge that a purchaser pursuant thereto is a Competitor, or (C) to any investment bank or its Affiliate (1) in the capacity of an underwriter, placement agent, broker, dealer or similar function or (2) in a transaction (or series of related transactions) involving the transfer of Shares representing less than 5.0% of the outstanding Common Stock, provided, that, for the avoidance of doubt, the provisions of this Section 2.1(b)(i) shall not operate so as to prevent the grant by Borse Dubai of a security interest in the Shares of Nasdaq that it owns in favor of HSBC pursuant to the Nasdaq Share Charge or any Transfer to HSBC in connection with the exercise by HSBC of its rights under the Nasdaq Share Charge, provided, further, that upon any such Transfer, HSBC or any transferee in connection with the exercise by HSBC of its rights under the Nasdaq Share Charge shall be bound by this Section 2.1(b); and

(ii) to the Trust, except to the extent necessary to reduce Borse Dubai's ownership of Common Stock to the Borse Dubai Threshold in order to comply with the requirements of Section 2.1(c), below.

(c) If, during the eighteen month period from the date of this Nasdaq Stockholders' Agreement, Nasdaq repurchases any Common Stock, then Borse Dubai shall, at its option, either (a) participate in such repurchase (on a pro rata basis based on the number of shares acquired by Nasdaq in such repurchase) or (b) contribute Shares to the Trust, in either case as necessary in order to reduce its ownership of Common Stock to the Borse Dubai Threshold.

(d) To the extent any securities have been registered in accordance with Section 2.1(c) or Section 2.1(d) of the 2005 Registration Rights Agreement, and for so long as Borse Dubai or the Trust continue to own any Registrable Securities (as defined in the 2008 Registration Rights Agreement, but without giving effect to the second sentence of such definition), Borse Dubai shall not, and shall direct the Trust not to, effect any sale or distributions of Shares, including a sale pursuant to Rule 144 (except as part of any such registration, if permitted), during such period as the lead underwriter of such registration may reasonably request, no greater than ninety (90) days, beginning on the effective date of any registration statement relating to an offering under Section 2.1(c) of the 2005 Registration Rights Agreement or the pricing of an offering under Section 2.1(d) of the 2005 Registration Rights Agreement.

Section 2.2 Hedging Transactions. For one year following the date of this Nasdaq Stockholders' Agreement, Borse Dubai will not enter into any swap or any other agreement that transfers, in whole or in part, any of the economic consequences of ownership of shares of Common Stock, whether such transaction is to be settled by delivery of shares of Common Stock, other securities, cash or otherwise. Thereafter, Borse Dubai will maintain a "net long position" (as such term is defined in Rule 14e-4 of the Exchange Act) with respect to the Shares it beneficially owns.

### Section 2.3 Trust Matters.

(a) If, at any time after the date hereof, Borse Dubai and its Subsidiaries, taken as a whole, own less than 19.99% of the outstanding Shares calculated on a fully diluted basis (in accordance with the methodology set forth on Schedule A, but not including any Shares owned by the Trust) and Borse Dubai desires for the Trustee to transfer a number of Shares from the Trust to Borse Dubai in order to increase Borse Dubai's ownership to such 19.99% level, then, upon the request of Borse Dubai, Nasdaq shall within five (5) Business Days of such request execute a certificate signed by an executive officer of Nasdaq in a form reasonably acceptable to Borse Dubai, confirming that the Trustee may transfer such number of Shares from the Trust to Borse Dubai.

(b) As of the date hereof, because Borse Dubai beneficially owns the Shares held by the Trust, the Shares held by Borse Dubai and the Trust collectively are subject to the voting limitation imposed by Article Fourth, Section C.2 of Nasdaq's Amended and Restated Certificate of Incorporation. As a result, until such voting limitation is no longer applicable to the Shares beneficially owned by Borse Dubai (whether as the result of its decreased percentage interest in the Shares, pursuant to Section 4.2 hereof, a combination or either or otherwise), Borse Dubai shall vote all Shares beneficially owned by Borse Dubai, and the Trust shall have no separate voting rights. However, if, at any time after the date hereof such voting limitation is no longer applicable to the Shares beneficially owned by Borse Dubai, Trustee shall have the right to vote the Shares held by the Trust on any matters submitted to the stockholders of Nasdaq, and Borse Dubai shall use its reasonable best efforts to cause the Trustee to execute a proxy with respect to the Shares held by the Trust in favor of the Corporate Secretary or other designee of Nasdaq to vote on respect to such matters. The Corporate Secretary or other designee of Nasdaq shall vote such Shares pro rata with the other shareholders of Nasdaq (excluding Borse Dubai) at the time of any such vote.

(c) For as long as the Trust continues to hold any Shares, Borse Dubai shall use its reasonable best efforts to cause the Trustee to dispose of any Shares owned by the Trust (including, pursuant to the 2008 Registration Rights Agreement); provided, however, that Borse Dubai shall have no obligation to cause the Trust to dispose of such Shares if the net amount that the Trustee would receive on the sale of any Share is less than the sum of: (i) \$51.52; plus (ii) the reasonable, documented out of pocket expenses and fees of the Trustee not recovered pursuant to any prior dispositions (whether or not previously paid by Borse Dubai), payable by Borse Dubai under the Fee Agreement (as defined in the Trust Agreement) divided by the total number of Shares then owned by the Trust; plus (iii) a cost of capital of 6% annually (pro rata for the period such Shares are held by the Trust); minus (iv) any cash distributions or the Fair Market Value of distributions of property made by Nasdaq to the Trust divided by the total number of Shares owned by the Trust as of the date of such distribution; and provided further, however, that Borse Dubai shall not cause the Trustee to dispose of any Shares to any Competitor except (A) pursuant to a merger, consolidation, share exchange, tender offer or other similar transaction involving Nasdaq, (B) in any such Transfer pursuant to a public offering or a sale pursuant to Rule 144 under the Securities Act, *provided* that Borse Dubai does not have actual knowledge that a purchaser pursuant thereto is a Competitor, and (C) to any investment bank or its Affiliate (1) in the capacity of an underwriter, placement agent, broker, dealer or similar function or (2) in a transaction (or series of related transactions) involving the transfer of Shares representing less

than 5.0% of the outstanding Common Stock. If Borse Dubai intends to cause the Trustee to dispose of any Shares, Borse Dubai shall consult with Nasdaq prior to completing any such transaction.

ARTICLE III  
BOARD OF DIRECTORS

Section 3.1 Board Appointment Obligation.

(a) For so long as Borse Dubai continues to beneficially own at least one-half of the Initial Interest, Borse Dubai shall have the right to nominate two persons reasonably acceptable to the Nominating Committee (or an successor committee serving such function) (the "Borse Dubai Board Designees") as directors to the Board of Directors. Nasdaq hereby agrees to (i) include the Borse Dubai Board Designees as nominees to the Board of Directors on each slate of nominees for election to the Board of Directors proposed by management of Nasdaq, (ii) recommend the election of the Borse Dubai Board Designees to the shareholders of Nasdaq and (iii) without limiting the foregoing, otherwise use its reasonable best efforts to cause the Borse Dubai Board Designees to be elected to the Board of Directors. The initial two Borse Dubai Board Designees, Essa Kazim and Soud Ba'Alawy, shall be appointed to the Board of Directors on March 1, 2008.

(b) For so long as Borse Dubai beneficially owns at least one-half of the Initial Interest, Nasdaq hereby agrees to use its reasonable best efforts to: (1) cause the appointment of one of the Borse Dubai Board Designees (but only if such Borse Dubai Board Designee meets the requirements to sit on any such committee) to the following committees of the Board of Directors: Audit, Executive, Finance and Management Compensation (or any future committees serving any of the functions currently served by such committees) and (2) cause the appointment of one person designated by Borse Dubai who shall not be a Borse Dubai Board Designee and who shall be reasonably acceptable to the Nominating Committee (or an successor committee serving such function) (the "Borse Dubai Nominating Committee Designee") to the Nominating Committee, in each of the foregoing subject to applicable law, regulation, stock exchange listing standard or committee composition standards. The initial Borse Dubai Nominating Committee Designee shall be designated by Borse Dubai as soon as reasonably practicable after the date hereof. Nasdaq (A) shall promptly thereafter cause the appointment of such designee to the Nominating Committee and (B) covenants that the Nominating Committee shall take no action until such designee has been appointed to the Nominating Committee. The initial Borse Dubai Nominating Committee Designee shall be designated by Borse Dubai as soon as reasonably practicable after the date hereof. Nasdaq (A) shall promptly thereafter cause the appointment of such designee to the Nominating Committee and (B) covenants that the Nominating Committee shall take no significant or material action until such designee has been appointed to the Nominating Committee. To the extent that OMX AB (publ), a public corporation organized under the laws of Sweden ("OMX"), remains a public listed company, Nasdaq and Borse Dubai agree to negotiate in good faith and take all reasonable actions to arrange for and cause Borse Dubai's representation on the OMX board of directors.

(c) For so long as Borse Dubai beneficially owns at least one-fourth of the Initial Interest, Borse Dubai shall have the right to nominate one Borse Dubai Board Designee in accordance with the terms set forth in Section 3.1(a), but shall have no right under Section 3.1(b) in respect of any committee of the Board of Directors or the OMX board of directors.

(d) In the event that any Borse Dubai Board Designee or Borse Dubai Nominating Committee Designee for any reason ceases to serve as such during his or her term of office, to the extent Borse Dubai is entitled to designate a Borse Dubai Board Designee or Borse Dubai Nominating Committee Designee pursuant to this Section 3.1, the resulting vacancy on the Board of Directors, any committees of the Board of Directors or the Nominating Committee shall be filled by a person designated by Borse Dubai and reasonably acceptable to the Nominating Committee (or an successor committee serving such function).

(e) Any Borse Dubai Board Designee and Borse Dubai Nominating Committee Designee may be removed for Cause at any time by a majority of the Board of Directors.

(f) Notwithstanding any other provisions of this Nasdaq Stockholders' Agreement, the Parties agree that (i) Nasdaq shall use reasonable best efforts not to provide Borse Dubai or the Borse Dubai Board Designee with any non-public information relating to any proposed transaction between Nasdaq or any of its Affiliates and London Stock Exchange Group plc ("LSE") or any acquisition or divestiture (directly or indirectly) by Nasdaq of any of the shares of capital stock of LSE (or related derivative securities) and (ii) that the Borse Dubai Board Designee shall not be entitled to participate in any discussions or vote on any matters related to LSE.

Section 3.2 No Interference with Board Rights. Nasdaq will use its reasonable best efforts not to, directly or indirectly, propose or take any action to encourage any modification to the composition of the Board of Directors or the OMX board of directors that, in Nasdaq's reasonable judgment, would likely result in the elimination or significant diminishment of the rights of Borse Dubai specified in Section 3.1; *provided* that the foregoing shall in no way limit Nasdaq's right to increase the number of directors on the Board of Directors.

#### ARTICLE IV INFORMATION RIGHTS; VOTING RIGHTS

Section 4.1 Information Rights. Subject to appropriate confidentiality arrangements, to the extent not otherwise filed with the Commission, Nasdaq will provide to Borse Dubai:

(a) as soon as available and in any event within 90 days after the end of each fiscal year of Nasdaq, a balance sheet of Nasdaq as of the end of such fiscal year and the related statements of profit and loss and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, and accompanied by a report thereon of Ernst & Young LLP or other independent registered public accounting firm; and

(b) as soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of Nasdaq, a balance sheet of Nasdaq as of the end of such quarter and the related statements of profit and loss and cash flows for such quarter and for the portion of Nasdaq's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding quarter and the corresponding portion of Nasdaq's previous fiscal year, all certified (subject to normal year-end adjustments) as to fairness of presentation, consistency and, except for the absence of footnotes, generally accepted accounting principles by the Chief Financial Officer or the chief accounting officer of Nasdaq.

Section 4.2 Voting Rights. If, after the date hereof, either (a) the Board of Directors approves a Voting Limit Exemption and seeks approval for such exemption from the Commission in accordance with Section 12.5 of Nasdaq's By-Laws (or any successor provision) or (b) the Board of Directors, in its sole discretion, determines it is in Nasdaq's interests to seek Commission approval for the exemption from Article Fourth, Section C.2 of Nasdaq's Amended and Restated Certificate of Incorporation for Excess Shares held by Borse Dubai (the "Borse Dubai Exemption"), then, with respect to clause (a), Nasdaq shall use its reasonable best efforts to obtain the approval of the Commission with respect to the Nasdaq Board Exemption (provided, however, that if a Voting Limit Exemption covering fewer than all of such other Person's Excess Shares has become effective, then to the extent permissible by Nasdaq's Amended and Restated Certificate of Incorporation, the Voting Percentage of the Voting Securities beneficially owned by Borse Dubai may be voted (upon receipt of the Commission Approval); provided further, however, if the Voting Limit Exemption does not so limit H&F and SLP voting rights, then, upon receipt of the Commission Approval, neither shall Borse Dubai's voting rights be so limited), and, with respect to (b), Nasdaq shall use its reasonable best efforts to obtain the approval of the Commission with respect to the Borse Dubai Exemption.

ARTICLE V  
STANDSTILL; PREEMPTIVE RIGHTS

Section 5.1 Standstill. Borse Dubai (on behalf of itself and its Affiliates) hereby agrees that, from the date hereof until the Standstill Termination Date (as defined in Section 5.3), neither Borse Dubai nor any of its Affiliates will:

(a) purchase or otherwise acquire, offer or propose to acquire, or solicit an offer to sell or agree to acquire, directly or indirectly, alone or in concert with others, beneficial or record ownership of any shares of the capital stock of Nasdaq or any Derivative Securities (excluding shares and securities received by way of stock dividend, stock reclassification or other distributions or offerings made available on a pro rata basis to Nasdaq's stockholders) if, after giving effect thereto, Borse Dubai, its Affiliates and all groups of which Borse Dubai or any of its Affiliates is a member would beneficially own an amount of shares of capital stock of Nasdaq, including any Derivative Securities on an as-exercised, converted or exchanged basis, as applicable, in excess of the Borse Dubai Threshold; provided, however, that, if as a result of a reduction in the number of shares of Common Stock outstanding due to the repurchase of shares of Common Stock by Nasdaq, Borse Dubai beneficially owns an amount of shares of capital stock of Nasdaq, including any Derivative Securities on an as-exercised, converted or exchanged basis, as applicable, in excess of the Borse Dubai Threshold, Borse Dubai shall not be in violation of this Section 5.1(a) so long as Borse Dubai does not take any of the actions referred to in the first clause of this Section 5.1(a) and Borse Dubai complies with Section 2.1(c) hereof;

(b) make, or in any way participate in, directly or indirectly, alone or in concert with others (including by or through any group of which Borse Dubai or any of its Affiliates is a member), any "solicitation" of "proxies" (as such terms are defined or used in Regulation 14A under the Exchange Act) to vote securities of Nasdaq or to provide or withhold consents with



respect to securities of Nasdaq, whether subject to or exempt from the proxy rules, or seek to advise or influence any person or entity with respect to, the voting of, or the providing or withholding consent with respect to, any securities of Nasdaq;

(c) either directly or indirectly in concert with others (including by or through any group of which Borse Dubai or any of its Affiliates is a member) make any offer with respect to, or make or submit a proposal with respect to, or ask or request any other person to make an offer or proposal with respect to, or in any other way support, any transaction that would, if consummated, be reasonably likely to result in a Change of Control, including a merger, business combination, restructuring, reorganization, recapitalization, tender or exchange offer or asset disposition involving Nasdaq or any of its Affiliates;

(d) except as provided in Article III hereof, either directly or indirectly in concert with others (including by or through any group of which Borse Dubai or any of its Affiliates is a member) seek representation on the Board of Directors or the board of directors or equivalent of any of Nasdaq's controlled Affiliates, seek to remove any members of the Board of Directors or expand or reduce the size of the Board of Directors or otherwise act alone or in concert with others (including by or through any group of which Borse Dubai or any of its Affiliates is a member) to make public statements or otherwise seek to control or influence the management or Board of Directors of Nasdaq or any of its controlled Affiliates;

(e) form, join or any way participate in a "group" within the meaning of Section 13(d)(3) of the Exchange Act with respect to any securities of Nasdaq; or

(f) either directly or indirectly in concert with others (including by or through any group of which Borse Dubai or any of its Affiliates is a member) publicly announce or disclose any intention, or enter into or disclose any plan or arrangement inconsistent with the foregoing (including publicly making a request that Nasdaq or the Board of Directors waive, amend or terminate any provisions of this Nasdaq Stockholders' Agreement or making such a request if such request would reasonably be likely to require public disclosure by any Person or otherwise result in public disclosure).

Section 5.2 Permitted Action. Notwithstanding the provisions of Section 5.1, nothing herein shall prohibit or restrict Borse Dubai or its Affiliates from making any disclosure pursuant to Section 13(d) of the Exchange Act that Borse Dubai or such Affiliate reasonably believes, based on the advice of independent legal counsel, is required in connection with any action taken by Borse Dubai or such Affiliate that is not inconsistent with this Nasdaq Stockholders' Agreement.

#### Section 5.3 Suspension and Termination.

(a) The restrictions contained in Section 5.1 shall terminate and shall cease to apply upon the earliest to occur of the following (the "Standstill Termination Date"): (i) the 10<sup>th</sup> anniversary of the date of this Nasdaq Stockholders' Agreement, (ii) Borse Dubai beneficially owning less than 10% of the outstanding Shares, (iii) Nasdaq entering into a definitive agreement which, if consummated, would result in a Change of Control, (iv) the consummation of a Change of Control, (v) no Borse Dubai Board Designee being elected to the Board of Directors by

shareholders at two consecutive meetings of shareholders of Nasdaq held for purposes of the election of directors and for which a Borse Dubai Board Designee has been nominated or (vi) Nasdaq (or its Affiliates) holding less than 1,250,000 shares (as adjusted for any stock dividend, stock split, recapitalization or similar event in respect of such shares) in DIFX; provided, however, that for purposes of determining the number of shares in DIFX held by Nasdaq or its Affiliates, shares in DIFX disposed of pursuant to Sections 2.1(a)(ii)(C), 2.1(a)(ii)(D) and 2.4 of the DIFX Stockholders' Agreement shall be considered to be held by Nasdaq (or its Affiliates).

(b) On the Standstill Termination Date, (x) if any Borse Dubai Board Designees are members of the Board of Directors or a Borse Dubai Nominating Committee Designee is a member of the Nominating Committee, then at the Board of Directors' request such Borse Dubai Board Designees shall immediately resign from the Board of Directors and all committees thereof and the Borse Dubai Nominating Committee Designee shall immediately resign from the Nominating Committee and (y) any rights of Borse Dubai under Section 3.1 of this Nasdaq Stockholders' Agreement shall immediately and permanently terminate.

Section 5.4 Certain Tender Offers. Notwithstanding the provisions of Section 5.1, if a Third Party Tender Offer is made and, within 10 Business Days of the date on which the Third Party Tender Offer is first published or sent or given, the Board of Directors does not recommend rejection of the Third Party Tender Offer in accordance with Rule 14e-2 under the Exchange Act, then Borse Dubai may tender into such Third Party Tender Offer, but in all other respects the provisions of Section 5.1 shall continue to apply.

#### Section 5.5 Preemptive Rights.

(a) At any time prior to the Standstill Termination Date, prior to any sale or issuance by Nasdaq of any Shares or any securities exchangeable for, or convertible into, Shares (the "Offered Shares") in any capital raising transaction (other than a sale or issuance described in Section 5.5(f) which would cause Borse Dubai to own less than 19.99% of the Shares calculated on a fully diluted basis, which shall be calculated in accordance with the methodology set forth on Schedule A (a "Proposed Issuance"), Nasdaq shall give Borse Dubai advance written notice (the "Notice of Issuance") of the Proposed Issuance, setting forth the proposed price (which, in the case of an underwritten offering, may be the price to be established by Nasdaq and the underwriters at the time of the pricing of the offering), number of Shares (which may be a fixed number of Shares to be offered to third parties, subject to increase to make allowance for issuance to Borse Dubai) and other material terms and conditions under which Nasdaq proposes to make such sale, to the extent available (the date such notice is received by Borse Dubai, the "Notice Date"). Borse Dubai shall have the right, exercisable as hereinafter provided, to purchase the Proportional Share Amount (as defined below) with respect to such Offered Shares on terms which are at least as favorable to Borse Dubai as to any other prospective investor. To exercise such right, Borse Dubai shall provide within ten (10) Business Days after the Notice Date to Nasdaq an irrevocable notice of exercise (an "Exercise Notice"), providing that it elects to purchase up to the Proportional Share Amount and the number of Offered Shares it elects to purchase and stating, if applicable, whether such amount would automatically increase in connection with the exercise of an over-allotment option granted to underwriters in the Proposed Issuance, if any. If any material term of the Proposed Issuance is changed from that set forth in the Notice of Issuance, Nasdaq shall give Borse Dubai prompt written notice (the "Revised

Notice of Issuance”) of the revised terms of the Proposed Issuance, and setting forth such revised terms (the date such Revised Notice of Issuance is received by Borse Dubai is hereinafter referred to as the “Revised Notice Date”). Borse Dubai may, until the later of (x) five (5) Business Days from the Revised Notice Date (or such shorter time, if Nasdaq determines is required under the circumstances related to the Proposed Issuance) or (y) ten (10) Business Days from the original Notice Date, provide Nasdaq with an amended Exercise Notice. The number of Offered Shares (the “Proportional Share Amount”) which Borse Dubai may acquire in a Proposed Issuance shall be equal to the number of Offered Shares proposed to be sold or issued by Nasdaq in the Proposed Issuance multiplied by a fraction, the numerator of which is the number of Shares owned by Borse Dubai as of the Notice Date, and the denominator of which is the total number of Shares issued and outstanding as of the Notice Date (each as calculated in accordance with the methodology set forth on Schedule A). Nasdaq’s obligation hereunder shall be subject to any regulatory approvals as may be required in connection with the exercise by Borse Dubai of the right to purchase Offered Shares as set forth in this Section 5.5 provided, however, that Nasdaq shall use its reasonable best efforts to obtain any such approvals.

(b) If, within the time required in paragraph (a) above, Borse Dubai does not notify Nasdaq that it intends to purchase any Offered Shares, then Nasdaq may, during a period of sixty (60) days following the end of such period sell and issue such securities not otherwise purchased by Borse Dubai to third parties at the same price and upon the same terms and conditions as set forth in the Notice of Issuance or Revised Notice of Issuance given to Borse Dubai pursuant to paragraph (a) above.

(c) If Borse Dubai elects to purchase Offered Shares from Nasdaq pursuant to this Section 5.5, Borse Dubai and Nasdaq shall consummate the purchase and sale of such Offered Shares in the manner and on the terms and date of the closing of the Proposed Issuance as set forth in the Notice of Issuance or Revised Notice of Issuance, as the case may be or, if applicable, the second business day after all shareholder and regulatory filings and approvals required for the consummation of such purchase have been obtained. Payment for such Offered Shares shall be by wire transfer of immediately available funds to a bank account or accounts designated in writing by Nasdaq at least two Business Days prior to scheduled closing therefore, against delivery of such Offered Shares at the executive offices of Nasdaq at the time of the scheduled closing thereof.

(d) Notwithstanding the provisions of this Section 5.5, Nasdaq is not subject to any obligation to undertake a Proposed Issuance and may, at any time, withdraw or abandon, without the consent of Borse Dubai, any Proposed Issuance contemplated by this Section 5.5.

(e) The rights of Borse Dubai hereunder shall be subject to all reasonable terms and conditions as the managing underwriters (if any) of the Proposed Issuance may require of Borse Dubai, including (but not limited to) any limitations on the right of Borse Dubai to sell any of the Offered Shares following the consummation of the Proposed Issuance.

(f) The rights of Borse Dubai under this Section 5.5 shall not apply to:

(i) the issuance of any securities upon conversion or exchange of (A) any outstanding Derivative Securities in accordance with the terms thereof in effect on the date

hereof or (B) any Derivative Securities issued after the date hereof in accordance with the terms thereof on the date of issuance, provided that such Derivative Securities were offered in compliance with Section 5.5(a) hereof;

(ii) the issuance of any shares of capital stock of Nasdaq, in connection with a split or subdivision or similar transaction with respect to shares of capital stock of Nasdaq;

(iii) the issuance of any Offered Shares with respect to which the participation of Borse Dubai pursuant to this Section 5.5 would require approval of Nasdaq's shareholders, regardless of the number of Offer Shares included in such Offer (which shareholder approval Nasdaq shall use its reasonable best efforts to obtain prior to the issuance of such Offered Shares to any third party), unless and until such shareholder approval is obtained; provided, however, if approval of Nasdaq's shareholders with respect to the issuance of such Offered Shares is required for any other reason, this exception to Borse Dubai's rights shall not apply;

(iv) the issuance of any Offered Shares with respect to which Borse Dubai's participation would require regulatory approvals, which Nasdaq shall use its commercially reasonable efforts to obtain, unless and until such regulatory approvals are obtained;

(v) any shares of Common Stock or related Derivative Securities issued to employees, officers and directors of, and consultants, customers and vendors to, Nasdaq, pursuant to any arrangement approved by the Board of Directors;

(vi) Common Stock issued pursuant to or upon exercise or conversion of securities issued in connection with a merger, consolidation, share exchange or other reorganization or business combination involving Nasdaq; and

(vii) Common Stock issued upon exercise of securities issued pursuant to rights distributed to holders of Common Stock generally.

(g) The rights contained in this Section 5.5 shall terminate upon the earliest to occur of (i) the consummation of a Change of Control, (ii) the termination of this Nasdaq Stockholders' Agreement pursuant to Section 7.4 hereof, (iv) the Standstill Termination Date, or (v) Borse Dubai ceasing to beneficially own at least 19.99% of the Shares calculated on a fully diluted basis (in accordance with the methodology set forth on Schedule A), as the result of any Transfers by Borse Dubai.

## ARTICLE VI INDEMNIFICATION

Section 6.1 Indemnification. Nasdaq will indemnify, exonerate and hold Borse Dubai and each of its partners, stockholders, members, directors, officers, fiduciaries, managers, controlling Persons, employees and agents of each of the partners, stockholders, members, directors, officers, fiduciaries, managers, controlling Persons, employees and agents of each of the foregoing (collectively, the "Indemnified Parties") free and harmless from and against any and all actions, causes of action, suits, claims, liabilities, losses, damages and costs and out-of-pocket expenses in connection therewith (including reasonable attorneys' fees and expenses)

incurred by the Indemnified Parties or any of them before or after the date hereof (collectively, the “Indemnified Liabilities”), arising out of any actual or threatened action, cause of action, suit, or claim arising directly or indirectly out of Borse Dubai’s actual, alleged or deemed control or ability to influence Nasdaq or any of its Subsidiaries (other than any such Indemnified Liabilities that arise out of any breach of this Nasdaq Stockholders’ Agreement by such Indemnified Party or other related Persons); *provided* that if and to the extent that the foregoing undertaking may be unavailable or unenforceable for any reason, Nasdaq hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities that is permissible under applicable law. The rights of any Indemnified Party to indemnification hereunder will be in addition to any other rights any such Person may have under any other agreement or instrument to which such Indemnified Party is or becomes a party or is or otherwise becomes a beneficiary or under law or regulation or under the certificate of incorporation, bylaws or other organizational documents of Nasdaq or any of its Subsidiaries and shall extend to such Indemnified Party’s successors and assigns.

ARTICLE VII  
MISCELLANEOUS

Section 7.1 Notices.

(a) All notices, requests and other communications to any Party hereunder shall be in writing (including facsimile or similar writing) and shall be given to:

(b) Nasdaq at:

The Nasdaq Stock Market, Inc.  
One Liberty Plaza  
New York, NY 10006  
Attn: Edward S. Knight, Esq.  
Fax: (301) 978-8471

with a copy to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, NY 10036  
Attn: Eric J. Friedman, Esq.  
Fax: (917) 777-2204

(c) If to Borse Dubai, to:

Borse Dubai Limited  
P.O. Box 506690  
Level 7, Precinct Building 5, Gate District  
Dubai International Financial Centre  
Dubai, UAE  
Attn: Essa Kazim  
Fax: +971 (4) 331 4924

with a copy to (which shall not constitute notice):

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166  
Attn: David M. Wilf, Esq.  
Fax: (212) 351-6277

or such other address or facsimile number as such Party may hereinafter specify for the purpose of giving such notice to the Party. Each such notice, request or other communication shall be deemed to have been received (i) if given by facsimile, when such facsimile is transmitted to the Fax number specified pursuant to this Section 7.1 and confirmation of receipt is received or (ii) if given by any other means, when delivered at the address specified in this Section 7.1.

Section 7.2 No Waivers; Amendments.

(a) No failure or delay on the part of any Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(b) Neither this Nasdaq Stockholders' Agreement nor any term or provision hereof may be amended or waived in any manner other than by instrument in writing signed, in the case of an amendment, by each of Borse Dubai and Nasdaq, or in the case of a waiver, by the Party against whom the enforcement of such waiver is sought.

Section 7.3 Non-Disparagement. Until the termination of this Nasdaq Stockholders' Agreement, each of the Parties agrees that none of it or its respective Subsidiaries, Affiliates, successors or assigns shall, and each Party shall instruct its Representatives not to, in any way intentionally disparage, attempt to discredit, or otherwise call into disrepute, any other Party or such other Party's Subsidiaries, Affiliates, successors, assigns, stockholders or Representatives, or any of such Party's products or services, in any manner that could reasonably be expected to (i) damage the business or reputation of such other Party, its products or services or its Subsidiaries, Affiliates, successors, assigns or Representatives or (ii), subject to the terms of this Nasdaq Stockholders' Agreement, disrupt, impede, hinder or delay such other Party's attempts to consummate the transactions contemplated by this Nasdaq Stockholders' Agreement. Without limiting the foregoing, neither Party shall make any comments or statements to any non-party (including the press, employees or former employees of the other Party, any client or prospective or former client of the other Party, any individual or entity with whom the other Party has a business relationship or any other Person), if such comment or statement reasonably could be expected to adversely affect the conduct of the business of the other Party, or any of its plans or prospects or the business reputation of such other Party or any of such other Party's products or services or that of any of its Subsidiaries, Affiliates, successors, assigns or Representatives, except as may be required by applicable law, Authority, judicial order or subpoena; provided, however, that any party making such comments or statements to comply with applicable law, Authority, judicial order or subpoena shall, to the extent that such grant would not conflict with applicable law, first grant each other party reasonable opportunity to review such comments or statements.

Section 7.4 Termination. Subject to Article VI, this Nasdaq Stockholders' Agreement shall terminate and be of no further force or effect with respect to Borse Dubai upon such date that Borse Dubai no longer holds any Shares; provided, however, that each Party shall retain all rights and claims following such termination with respect to breaches of the covenants and agreements set forth herein occurring prior to such termination. The provisions of Section 7.5 shall survive any termination of this Nasdaq Stockholders' Agreement.

Section 7.5 Confidentiality. Each of the Parties shall, and shall cause its Affiliates to, keep confidential, disclose only to its Affiliates or Representatives and use only in connection with the transactions contemplated by this Nasdaq Stockholders' Agreement all information and data obtained by them from the other Party or its Affiliates or Representatives relating to such other Party or the transactions contemplated hereby (other than information or data that (i) is or becomes available to the public other than as a result of a breach of this Section 7.5, (ii) was available on a non-confidential basis prior to its disclosure to or by one Party to another, or (iii) becomes available to one Party on a non-confidential basis from a source other than the other Party, provided that such source is not known by the receiving Party, after reasonable inquiry, to be bound by a confidentiality agreement with either of the non-receiving Parties or their Representatives and is not otherwise prohibited from transmitting the information to the receiving Party by a contractual, legal or fiduciary obligation), unless disclosure of such information or data is required by applicable law.

Section 7.6 Successors and Assigns. All the terms and provisions of this Nasdaq Stockholders' Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties and the successors and assigns of each Party, whether so expressed or not. None of the Parties may assign any of its rights or obligations hereunder, in whole or in part, by operation of law or otherwise, without the prior written consent of the other Parties, and any such assignment without such prior written consent shall be null and void; provided, however, that Borse Dubai may assign this Nasdaq Stockholders' Agreement, in whole or in part, to any Subsidiary of Borse Dubai without the prior consent of Nasdaq; provided further, however, that such assignment shall only be valid for so long as such Subsidiary remains a Subsidiary of Borse Dubai, provided still further, however, that no assignment shall limit the assignor's obligations hereunder. Except as expressly set forth herein, this Nasdaq Stockholders' Agreement shall not inure to the benefit of or be enforceable by any other Person.

Section 7.7 Headings. The headings in this Nasdaq Stockholders' Agreement are for convenience of reference only and will not control or affect the meaning or construction of any provisions hereof.

Section 7.8 No Inconsistent Agreements. Nasdaq will not hereafter enter into any agreement with respect to its securities that is inconsistent with the rights granted to Borse Dubai in this Nasdaq Stockholders' Agreement. Nasdaq represents and warrants to Borse Dubai that it has not previously entered into any agreement with respect to any of its debt or equity securities granting any registration rights to any Person which is currently in effect, except for the 2005 Registration Rights Agreement

Section 7.9 Severability. The invalidity or unenforceability of any provision of this Nasdaq Stockholders' Agreement in any jurisdiction will not affect the validity, legality or enforceability of the remainder of this Nasdaq Stockholders' Agreement in such jurisdiction or the validity, legality or enforceability of this Nasdaq Stockholders' Agreement, including any such provision, in any other jurisdiction, it being intended that all rights and obligations of the Parties hereunder will be enforceable to the fullest extent permitted by applicable law.

Section 7.10 Recapitalization, Etc. In case of any consolidation, merger, reorganization, reclassification, sale, conveyance, consolidation, spin-off, partial or complete liquidation, stock dividend, transfer or lease in which Nasdaq is not the surviving person, then (a) all rights and obligations of Nasdaq under this Nasdaq Stockholders' Agreement shall be assumed by and transferred to any such successor person, with the same effect as if it had been named herein as the party of this first part and (b) all references in this Nasdaq Stockholders' Agreement to "Nasdaq" shall be deemed to refer to such person; *provided, however*, in any case, Nasdaq will not effect any such transaction unless the successor delivers to Borse Dubai an agreement in writing in a form reasonably satisfactory to Borse Dubai agreeing to be bound by the terms of this Nasdaq Stockholders' Agreement. The intent of the Parties is to fairly and equitably preserve the original rights and obligations of the Parties hereto under this Nasdaq Stockholders' Agreement.

Section 7.11 No Affiliation. Nothing in this Nasdaq Stockholders' Agreement shall be deemed to constitute the parties as partners, co-venturers or agents of each other.

Section 7.12 Specific Performance. The Parties hereby acknowledge and agree that the failure of any Party to perform its agreements and covenants hereunder, including its failure to take all actions as are necessary on its part to the consummation of the transactions contemplated hereby, will cause irreparable injury to the other Parties, for which damages, even if available, will not be an adequate remedy. Accordingly, each Party hereby consents to the issuance of injunctive relief by any court of competent jurisdiction to compel performance of such Party's obligations, to prevent breaches of this Nasdaq Stockholders' Agreement by such Party and to the granting by any court of the remedy of specific performance of such Party's obligations hereunder, without bond or other security being required, in addition to any other remedy to which any Party is entitled at law or in equity. Each Party irrevocably waives any defenses based on adequacy of any other remedy, whether at law or in equity, that might be asserted as a bar to the remedy of specific performance of any of the terms or provisions hereof or injunctive relief in any action brought therefor by any Party.

The Parties hereto agree that if any of the provisions of this Nasdaq Stockholders' Agreement were not performed in accordance with their specific terms or were otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and damages would be difficult to determine, and that the Parties shall be entitled to specific performance of the terms hereof and immediate injunctive relief, without the necessity of proving the inadequacy of money damages as a remedy, in addition to any other remedy at law or equity.



Section 7.13 Other Agreements.

(a) Nothing contained in this Nasdaq Stockholders' Agreement shall be deemed to be a waiver of, or release from, any obligations any Party hereto may have under, or any restrictions on the Transfer of Shares or other securities of Nasdaq or any direct or indirect Subsidiary of Nasdaq imposed by, any other agreement.

(b) Nasdaq shall cooperate with Borse Dubai to allow Borse Dubai to recognize its investment in Nasdaq under equity accounting rules pursuant to International Financial Reporting Standards as promulgated by the International Accounting Standards Board, as in effect from time to time.

Section 7.14 New York Law. The enforceability and validity of this Nasdaq Stockholders' Agreement, the construction of its terms and the interpretation of the rights and duties of the Parties shall be governed by the laws of the State of New York, without regard to conflict of law principles thereof that would mandate the application of the laws of another jurisdiction.

Section 7.15 Jurisdiction; Service of Process; Waiver of Jury Trial

(a) Each of the Parties unconditionally and irrevocably agrees to submit to the exclusive jurisdiction of the state and federal courts located in New York, New York for any suit, action or Proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Nasdaq Stockholders' Agreement or the transactions contemplated hereby and hereby irrevocably waives, to the fullest extent permitted by applicable law, and agrees not to assert any objection, whether as a defense or otherwise, which such Party may now or hereafter have to the laying of the venue of any such suit, action or Proceeding in any such court or that any such suit, action or Proceeding which is brought in any such court has been brought in an inconvenient forum or that such suit, action or Proceeding may not be brought or is not maintainable in such courts or that the venue thereof may not be appropriate or that this Nasdaq Stockholders' Agreement may not be enforced in or by such courts. Each Party agrees that a final judgment in any such suit, action or Proceeding shall be conclusive and may be enforced in any other jurisdiction in which a Party may be found or may have assets by suit on the judgment or in any other manner provided by applicable law, and agrees to the fullest extent permitted by law to consent to the enforcement of any such judgment and not to oppose such enforcement or to seek review on the merits of any such judgment in any such jurisdiction.

(b) Each of the Parties hereby irrevocably consents to the service of process outside the territorial jurisdiction of such courts in any suit, Proceeding or action by giving copies thereof by hand-delivery of air courier to the address of such Party specified in Section 7.1 and such service of process shall be deemed effective service of process on such Party. However, the foregoing shall not limit the right of any Party to effect service of process on the other Parties by any other legally available method.

(c) To the extent that any Party hereto (including assignees of any Party's rights or obligations under this Nasdaq Stockholders' Agreement) may be entitled, in any jurisdiction, to claim for itself or its revenues, assets or properties, sovereign immunity from service of process, from suit, from the jurisdiction of any court or arbitral tribunal, from attachment prior to judgment, from attachment in aid of execution or enforcement of a judgment (interlocutory or

final), or from any other legal process, and to the extent that, in any such jurisdiction there may be attributed such a sovereign immunity (whether claimed or not), each Party hereto hereby irrevocably agrees not to claim, and hereby irrevocably waives to the fullest extent permitted by law, such sovereign immunity.

(d) EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 7.15 Counterparts; Effectiveness. This Nasdaq Stockholders' Agreement may be executed in any number of counterparts (including by facsimile), each of which will be an original with the same effect as if the signatures thereto and hereto were upon the same instrument. This Nasdaq Stockholders' Agreement shall become effective when each Party shall have received counterparts hereof signed by all of the other Parties.

Section 7.16 Entire Agreement. This Nasdaq Stockholders' Agreement, together with the OMX Transaction Agreement and the DIFX Agreement (as defined in the OMX Transaction Agreement), constitute the entire agreement and understanding among the Parties and supersede any and all prior agreements and understandings, written or oral, relating to the subject matter hereof, including the Binding Term Sheet (as defined in the OMX Transaction Agreement).

Section 7.17 Interpretation.

(a) The words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Nasdaq Stockholders' Agreement as a whole and not to any particular provision of this Nasdaq Stockholders' Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Nasdaq Stockholders' Agreement unless otherwise specified. Whenever the words "include," "includes" or "including" are used in this Nasdaq Stockholders' Agreement, they shall be deemed to be followed by the words "without limitation." All terms defined in this Nasdaq Stockholders' Agreement shall have the defined meanings contained herein when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Nasdaq Stockholders' Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. In this Nasdaq Stockholders' Agreement, all references to "\$" are to United States dollars and all references to "SEK" are to Swedish kronor. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time, amended, qualified or supplemented, including (in the case of agreements and instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

(b) The Parties have participated jointly in the negotiation and drafting of this Nasdaq Stockholders' Agreement. In the event an ambiguity or question of intent or interpretation arises, this Nasdaq Stockholders' Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Nasdaq Stockholders' Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, each of the parties has caused this Nasdaq Stockholders' Agreement to be duly executed, all as of the date first above written.

THE NASDAQ STOCK MARKET, INC.

By: /s/ Edward S. Knight

Name: Edward S. Knight

Title: EVP & General Counsel

BORSE DUBAI LIMITED

By: /s/ Soud Ba'Alawi

Name: Soud Ba'Alawi

Title: Vice Chairman

By: /s/ Essa Kazim

Name: Essa Kazim

Title: Chairman

**REGISTRATION RIGHTS AGREEMENT**

**dated as of**

**FEBRUARY 27, 2008**

**among**

**THE NASDAQ STOCK MARKET, INC.,**

**BORSE DUBAI NASDAQ SHARE TRUST**

**and**

**BORSE DUBAI LIMITED**

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## REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT, dated as of February 27, 2008 (this "Registration Rights Agreement"), among The Nasdaq Stock Market, Inc., a Delaware corporation (together with any successor entity thereto, "Nasdaq"), Borse Dubai Limited, a company registered in the Dubai International Financial Centre in Dubai with company number CL0447 (together with any successor entity thereto, "Borse Dubai"), and Borse Dubai Nasdaq Share Trust, a Delaware statutory trust, (the "Trust" and, together with Borse Dubai, the "Initial Holders"). Nasdaq, Borse Dubai and the Trust are sometimes referred to herein as a "Party" and collectively as the "Parties".

### RECITALS

WHEREAS, Pursuant to the OMX Transaction Agreement, dated November 15, 2007 (as amended and supplemented from time to time, the "OMX Transaction Agreement"), between Nasdaq, BD Stockholm AB, a corporation organized under the laws of Sweden, and Borse Dubai, Borse Dubai and the Trust will receive shares of Common Stock (as defined below) (the "Purchased Shares"); and

WHEREAS, it is a condition precedent to the closing of the transactions contemplated by the OMX Transaction Agreement (the "Closing") that the parties hereto execute and deliver this Registration Rights Agreement.

For good and valuable consideration, the receipt of which is hereby acknowledged, Nasdaq desires to provide to each Holder (as defined below) the rights to register the Registrable Securities (as defined below) held by them under the Securities Act (as defined below) on the terms and subject to the conditions set forth herein.

### ARTICLE I DEFINITIONS

**1.1 Definitions.** As used in this Registration Rights Agreement, the following capitalized terms shall have the following respective meanings:

"2005 Registration Rights Agreement": The Registration Rights Agreement, dated as of April 21, 2005, among (i) Nasdaq (ii) the H&F Entities, (iii) the SLP Entities, (iv) Integral Capital Partners VI, L.P. and (v) VAB Investors, LLC.

"Action": Any action, suit, arbitration, inquiry, proceeding or investigation by or before any governmental entity.

"Affiliate": With respect to any Person, means any other Person directly or indirectly controlling, controlled by or under common control with such Person. For the purposes of this definition, "control" when used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

Notwithstanding the foregoing, Nasdaq and its Affiliates, on the one hand, will not be deemed to be Affiliates of any of Borse Dubai and its Affiliates or DIFX and its Affiliates, on the other hand, and vice versa. For the avoidance of doubt, Affiliates of Borse Dubai refer only to Persons directly or indirectly controlled by Investment Corporation of Dubai, a Dubai company.

“Authority”: Any domestic (including federal, state or local) or foreign court, arbitrator, administrative, regulatory or other governmental department, agency, official, commission, tribunal, authority or instrumentality, non-government authority or Self-Regulatory Organization.

“Automatic Shelf Registration Statement”: An automatic shelf registration statement within the meaning of Rule 405 under the Securities Act.

“Common Stock”: Nasdaq’s common stock, \$0.01 par value per share, and any securities issued in or upon exchange, conversion or replacement of such Common Stock.

“Borse Dubai Holder”: Borse Dubai and any other Holder to whom a Borse Dubai Holder has in accordance with Section 7.2 assigned the right to request the filing of a registration statement pursuant to Section 2.1.

“Exchange Act”: The Securities Exchange Act of 1934, as amended.

“Facilities Agreement” means that certain Facilities Agreement, dated August 17, 2007, as amended and restated on September 20, 2007 and as amended on September 24, 2007, among, *inter alia*, Borse Dubai, as borrower, the lenders party thereto and HSBC.

“H&F Entities”: Collectively, Hellman & Friedman Capital Partners IV, L.P., H&F Executive Fund IV, L.P., H&F International Partners IV-A, L.P., H&F International Partners IV-B, L.P. and any affiliates to whom they transfer Registrable Securities.

“H&F Holders”: Each of the H&F Entities and any other Holder to whom an H&F Holder has in accordance with Section 7.2 of the 2005 Registration Rights Agreement assigned the right to request the filing of a registration statement pursuant to Section 2.1 of the 2005 Registration Rights Agreement.

“Holder”: Any holder of Registrable Securities (including any direct or indirect transferee of the Initial Holders) who agrees in writing to be bound by the provisions of this Registration Rights Agreement and, in the case of Holders other than the Initial Holders, specifies in such writing the address and facsimile number at which notices may be given pursuant to this Registration Rights Agreement and delivers a copy of such writing to Nasdaq.

“HSBC” means HSBC Bank plc, as Security Trustee for the benefit of the Secured Parties (as such term is defined in the Facilities Agreement) under the Nasdaq Share Charge.

“Nasdaq Share Charge” means the pledge agreement to be entered into between Borse Dubai and HSBC in connection with the Closing, whereby Borse Dubai has pledged all of its right, title and interest in and to the Shares of Nasdaq that it owns to secure its obligations under the Facilities Agreement.



“OMX Transaction Agreement Closing Date”: The “Closing Date” as defined in the OMX Transaction Agreement.

“Person”: Any individual or a corporation, partnership, association, trust, or any other entity or organization, including a government or political subdivision or an agency thereof.

“Proceeding”: Any claim, suit, action or legal, administrative, arbitration or other alternative dispute resolution proceeding or investigation.

“Registrable Securities”: Each of (a) the Purchased Shares, (b) any additional securities that may be issued to or purchased by Borse Dubai or any of its subsidiaries after the date hereof, pursuant to the terms of the OMX Transaction Agreement or the Nasdaq Stockholders’ Agreement (as defined in the OMX Transaction Agreement) and (c) any securities issued as dividend or other distribution with respect to, or in or upon exchange, conversion or replacement of, any Registrable Securities. Any particular Registrable Securities that are issued shall cease to be Registrable Securities when (i) a registration statement with respect to the sale by the Holder of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such registration statement, (ii) such securities shall have been distributed to the public pursuant to Rule 144 (or any successor provision) under the Securities Act, (iii) such securities are held by a Holder that together with its affiliates beneficially owns less than 2% of such class or series of securities and such securities may be sold or transferred by such Holder without restriction pursuant to 144(k) (or successor provision) under the Securities Act or (iv) such securities shall have ceased to be outstanding.

“Registration Date”: The date which is twelve months following the OMX Transaction Agreement Closing Date.

“Registration Expenses”: Any and all expenses incident to performance of or compliance with this Registration Rights Agreement, including, without limitation, (i) all SEC and stock exchange or Financial Industry Regulatory Authority (“FINRA”) registration and filing fees (including, if applicable, the fees and expenses of any “qualified independent underwriter,” as such term is defined in Rule 2720 of the NASD Manual, and of its counsel), (ii) all fees and expenses of complying with securities or blue sky laws (including fees and disbursements of counsel for the underwriters in connection with blue sky qualifications of the Registrable Securities), (iii) all printing, messenger and delivery expenses, (iv) all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities market or exchange and all rating agency fees, (v) the fees and disbursements of counsel for Nasdaq and of its independent public accountants, including the expenses of any special audits and/or comfort letters required by or incident to such performance and compliance, (vi) the reasonable fees and disbursements of one counsel selected pursuant to Section 6.1 hereof by the Holders of the Registrable Securities being registered to represent such Holders in connection with each such registration, (vii) any fees and disbursements of underwriters customarily paid by the issuers or sellers of securities, but excluding underwriting discounts and commissions and transfer taxes, if any, and (viii) fees and expenses incurred by Nasdaq or the Holders participating in such registration in connection with any “road show” including travel and accommodations.

“**Representatives**”: means, with respect to any Party, the directors, officers, employees, agents, attorneys, accountants, consultants, financial and other advisors of such Party.

“**Securities Act**”: The Securities Act of 1933, as amended.

“**SEC**”: The Securities and Exchange Commission or any other federal agency at the time administering the Securities Act or the Exchange Act and other federal securities laws.

“**Self-Regulatory Organization**”: FINRA, the Dubai Financial Services Authority, any United States or non-United States securities exchange, commodities exchange, registered securities association, the Municipal Securities Rulemaking Board, National Futures Association, and any other board or body, whether United States or non-United States, that regulates brokers, dealers, commodity pool operators, commodity trading advisors or future commission merchants.

“**SLP Entities**”: Collectively, Silver Lake Partners II TSA, L.P., Silver Lake Technology Investors II, L.L.C., Silver Lake Partners TSA, L.P., Silver Lake Investors, L.P. and any affiliates to whom they transfer Registrable Securities.

“**SLP Holders**”: Each of the SLP Entities and any other Holder to whom an SLP Holder has in accordance with Section 7.2 of the 2005 Registration Rights Agreement assigned the right to request the filing of a registration statement pursuant to Section 2.1 of the 2005 Registration Rights Agreement.

“**Trust Holder**”: The Trust and any other Holder to whom a Trust Holder has in accordance with Section 7.2 assigned the right to request the filing of a registration statement pursuant to Section 2.1.

“**WKSI**”: A well-known seasoned issuer that is not an “ineligible issuer” as such terms are defined in Rule 405 under the Securities Act.

**1.2 Table of Definitions.** The following terms have the meanings set forth in the Sections set forth below:

<u>Term</u>	<u>Defined in</u>
Borse Dubai	Preamble
Closing	Recitals
FINRA	Definition of Registration Expenses
Indemnified Parties	Section 4.1
Initial Holders	Preamble
Initiating Holders	Section 2.1(a)
Initiating Shelf Holders	Section 2.1(d)
Marketed Take-down	Section 2.1(d)
Nasdaq	Preamble
OMX Transaction Agreement	Recitals
Parties	Preamble
Party	Preamble
Purchased Shares	Recitals
Shelf Registration Statement	Section 2.1(b)
Trust	Preamble
Trustee	Section 7.12

**ARTICLE II**  
**REGISTRATION RIGHTS**

**2.1 Demand Registration Rights.**

(a) Right to Demand Registration of Registrable Securities. Subject to the conditions of this Section 2.1, if Nasdaq shall receive a written request from one or more Borse Dubai Holders and/or Trust Holders (the "Initiating Holders"), that Nasdaq file a registration statement under the Securities Act covering the registration of Registrable Securities having a value (based on the average closing sale price per share of Common Stock for 10 trading days preceding the registration request) of not less than \$50,000,000 (or, if less, all of the Registrable Securities then held by such requesting Holders), then Nasdaq shall, within five (5) days of the receipt thereof, give written notice of such request to all Holders, who must respond in writing within fifteen (15) days requesting inclusion in such registration of such Holders' Registrable Securities of the same type or types that are being registered by the Initiating Holders. Each request must specify the amount and intended manner of disposition of such Registrable Securities. Nasdaq, subject to the limitations of this Section 2.1, must use its reasonable best efforts to effect, as soon as reasonably practicable, the registration under the Securities Act of all Registrable Securities that the Holders request to be registered in accordance with this Section 2.1 together with any other securities of Nasdaq entitled to inclusion in such registration; provided, however, that Nasdaq shall not be required to file a registration statement in connection with a written request pursuant to this paragraph (a) prior to the date which is sixty (60) days before the Registration Date. To the extent that Nasdaq has registered Registrable Securities on a Shelf Registration Statement pursuant to Section 2.1(b) on behalf of any Initiating Holders, and any such Registrable Securities remain unsold at the time the Initiating Holders make a demand pursuant to this Section 2.1(a), the Initiating Holders shall be responsible to fund any registration fee pursuant to such demand in respect of the number of such unsold Registrable Securities under such Shelf Registration Statement.

(b) Shelf Registration Statement. If a written request made by the Initiating Holders under Section 2.1(a) hereof specifies that the intended manner of disposition of Registrable Securities is to be made by means of a shelf registration providing for resales of such Registrable Securities, Nasdaq shall use its reasonable best efforts to effect, as soon as reasonably practicable, the registration under the Securities Act of all Registrable Securities that the Holders request to be so registered in accordance with Section 2.1(a) pursuant to a registration statement for an offering to be made on a continuous basis pursuant to Rule 415 (or successor provision) under the Securities Act (together with any amendments thereto, and including any documents incorporated by reference therein, the "Shelf Registration Statement"), which Shelf Registration Statement shall provide for resales of such Registrable Securities (which shall be an Automatic Shelf Registration Statement if Nasdaq is a WKSI at the time of such filing).

(c) Underwritten Offerings. If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise Nasdaq as a part of their request made pursuant to Section 2.1(a) hereof and Nasdaq shall include such information in the written notice referred to in such Section 2.1(a). In such event, the right of any Holder to include its Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by a majority in interest of the Initiating Holders (which underwriter or underwriters shall be reasonably acceptable to Nasdaq) and complete and execute all questionnaires, powers of attorney and other documents reasonably required under the terms of such underwriting agreement and these registration rights. Notwithstanding any other provision of this Section 2.1, if the managing underwriter advises Nasdaq in writing that, in its opinion, marketing factors require a limitation of the amount of securities to be underwritten (including Registrable Securities) because the amount of securities to be underwritten is likely to have an adverse effect on the price, timing or the distribution of the securities to be offered, then Nasdaq shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the amount of Registrable Securities that may be included in the underwriting shall be allocated as follows (i) first, to the extent any securities are requested to be included in such registration pursuant to Section 2.3 of the 2005 Registration Rights Agreement by the H&F Holders or the SLP Holders, the amount of such securities requested by the H&F Holders or the SLP Holders, allocated in accordance with the 2005 Registration Rights Agreement, that can, in the opinion of such managing underwriter, be sold without having the adverse effect referred to above, (ii) second, among the Initiating Holders as nearly as possible on a pro rata basis based on the total amount of Registrable Securities (on an as converted basis) held by such Initiating Holders requested to be included in such underwriting that can, in the opinion of such managing underwriter, be sold without having the adverse effect referred to above and (iii) third, to the extent all Registrable Securities requested to be included in such underwriting by the Initiating Holders have been included, among the Holders (other than the Initiating Holders) requesting inclusion of Registrable Securities in such underwritten offering, as nearly as possible on a pro rata basis based on the total amount of Registrable Securities (on an as converted basis) held by such Holders requested to be included in such underwriting. Any Registrable Securities excluded or withdrawn from such underwriting shall be withdrawn from the registration.

(d) Underwritten Shelf Take-Downs. Notwithstanding the provisions of Section 2.1(c) hereof, if a Shelf Registration Statement has become effective in accordance with Section 2.1(b) hereof and any Borse Dubai Holder or Trust Holder (the "Initiating Shelf Holders") of Registrable Securities covered by such Shelf Registration Statement advises Nasdaq in writing that it intends to sell its Registrable Securities pursuant to an underwritten "take-down" under such Shelf Registration Statement which could involve a customary "road show" (a "Marketed Take-down"), then Nasdaq shall, within five (5) days of the receipt thereof, give written notice of such intention to all Holders of Registrable Securities under such Shelf Registration Statement, who must respond in writing within fifteen (15) days requesting

inclusion of such Holders' Registrable Securities in such Marketed Take-down. In such event, the right of any Holder to include its Registrable Securities in such Marketed Take-down shall be conditioned upon such Holder's participation in such Marketed Take-down and inclusion of such Holder's Registrable Securities in the Marketed Take-down to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by a majority in interest of the Initiating Holders (which underwriter or underwriters shall be reasonably acceptable to Nasdaq). Notwithstanding any other provision of this Section 2.1, if the managing underwriter advises Nasdaq in writing that, in its opinion, marketing factors require a limitation of the amount of securities to be underwritten (including Registrable Securities) because the amount of securities to be underwritten is likely to have an adverse effect on the price, timing or the distribution of the securities to be offered, then Nasdaq shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the amount of Registrable Securities that may be included in the underwriting shall be allocated as follows (i) first, to the extent any securities are requested to be included in such registration pursuant to Section 2.3 of the 2005 Registration Rights Agreement by the H&F Holders or the SLP Holders, the amount of such securities requested by the H&F Holders or the SLP Holders, allocated in accordance with the 2005 Registration Rights Agreement, that can, in the opinion of such managing underwriter, be sold without having the adverse effect referred to above, (ii) second, among the Initiating Shelf Holders as nearly as possible on a pro rata basis based on the total amount of Registrable Securities (on an as converted basis) held by such Initiating Shelf Holders requested to be included in such underwriting that can, in the opinion of such managing underwriter, be sold without having the adverse effect referred to above and (iii) third, to the extent all Registrable Securities requested to be included in such underwriting by the Initiating Shelf Holders have been included, among the Holders (other than the Initiating Holders) requesting inclusion of Registrable Securities in such underwritten offering, as nearly as possible on a pro rata basis based on the total amount of Registrable Securities (on an as converted basis) held by such Holders requested to be included in such underwriting. For avoidance of doubt, if any Holder desires to sell its Registrable Securities pursuant to an underwritten "take-down" under the Shelf Registration Statement which does not involve a customary "road show", then the other Holders will not have the right to participate in such underwritten "take-down".

(e) Registration Limits. Notwithstanding the foregoing, Nasdaq shall not be required to effect a registration pursuant to this Section 2.1:

(i) that will become effective prior to the Registration Date;

(ii) in the case of (A) a registration requested by the Borse Dubai Holders pursuant to Section 2.1(a) hereof, after Nasdaq has effected a total of six (6) registrations requested by any of the Borse Dubai Holders pursuant to such Section and (B) a registration requested by the Trust Holders pursuant to Section 2.1(a) hereof, after Nasdaq has effected a total of three (3) registrations requested by any of the Trust Holders pursuant to such Section; provided, however, that a registration request involving an underwritten offering will not count as a requested registration under this clause (ii) unless the Holder making such request is able, after giving effect to any underwriting cutbacks contemplated by Section 2.1(c) or (d) hereof, to register at least 75% of the amount of Registrable Securities originally requested by

such Holder to be included in such registration; provided further, however, that if the Borse Dubai Holders and the Trust Holders jointly request a registration pursuant to Section 2.1(a) hereof, then, for purposes of this clause (ii), whichever of either the Borse Dubai Holders (as a group) or the Trust Holders (as a group) is able to register and sell more Registrable Securities pursuant to such request shall be deemed solely to have made such request; and provided still further, however that any Marketed Take-down other than the first such Marketed Take-down requested by a Borse Dubai Holder or Trust Holder under any Shelf Registration Statement which has been effected pursuant to the request of such Holder shall be deemed to be a requested registration by such Holder for purposes of this clause (ii);

(iii) within 90 days of the effective date of any other registration statement filed by Nasdaq pursuant to the Securities Act in connection with Nasdaq making a primary offering of its securities, excluding registration statements filed on Form S-4 or S-8 (or any substitute form that may be adopted by the SEC);

(iv) if Nasdaq shall furnish to Holders requesting a registration statement pursuant to this Section 2.1, a certificate signed by the Chairman, President or a Vice President of Nasdaq stating that in the good faith judgment of Nasdaq's Board of Directors the filing or effectiveness of such registration statement would materially interfere with any proposed acquisition, disposition, financing or other material transaction involving Nasdaq or its subsidiaries, in which event Nasdaq shall have the right to defer such filing for a period of not more than sixty (60) days in any 90-day period after receipt of the request of the Initiating Holders; provided that Nasdaq shall not defer filings pursuant to this clause (iv) more than an aggregate of one hundred and twenty (120) days in any twelve (12) month period; or

(v) requested by either the Borse Dubai Holders or the Trust Holders if in the prior six (6) months Nasdaq has effected a registration pursuant to this Section 2.1 at the request of either the Borse Dubai Holders or the Trust Holders.

**2.2 Piggyback Rights.** If Nasdaq at any time after the Registration Date hereof proposes to register its Common Stock (or any security which is convertible into or exchangeable or exercisable for Common Stock) under the Securities Act (other than a registration on Form S-4 or S-8, or any successor or other forms promulgated for similar purposes), whether or not for sale for its own account, it will, at each such time, give prompt written notice to all Holders of Registrable Securities of its intention to do so and of such Holders' rights under this Article II. Upon the written request of any such Holder made within twenty (20) days after the receipt of any such notice (which request shall specify the Registrable Securities intended to be disposed of by such Holder), Nasdaq will, as expeditiously as reasonably practicable, use its reasonable best efforts to effect the registration under the Securities Act of all Registrable Securities (in the form of Common Stock) which Nasdaq has been so requested to register by the Holders thereof, to the extent requisite to permit the disposition of the Registrable Securities so to be registered; provided that (i) if, at any time after giving written notice of its intention to register any securities and prior to the effective date of the registration statement filed in connection with such registration, Nasdaq shall determine for any reason not to proceed with the proposed registration of the securities to be sold by it, Nasdaq may, at its election, give written notice of such determination to each Holder of Registrable Securities and, thereupon, shall be relieved of its obligation to register any Registrable Securities in connection with such registration (but not

from its obligation to pay the Registration Expenses in connection therewith), and (ii) if such registration involves an underwritten offering, all Holders of Registrable Securities requesting to be included in Nasdaq's registration must sell their Registrable Securities to the underwriters selected by Nasdaq on the same terms and conditions as apply to Nasdaq, with such differences, including any with respect to indemnification, as may be customary or appropriate in combined primary and secondary offerings. If a registration requested pursuant to this Section 2.2 involves an underwritten public offering, any Holder of Registrable Securities requesting to be included in such registration may elect, in writing prior to the effective date of the registration statement filed in connection with such registration, not to register such securities in connection with such registration.

**2.3 Priority in Piggyback Registrations.** If a registration pursuant to Section 2.2 hereof involves an underwritten offering and the managing underwriter advises Nasdaq in writing that, in its opinion, marketing factors require a limitation of the amount of securities to be underwritten (including Registrable Securities) because the amount of securities to be underwritten is likely to have an adverse effect on the price, timing or distribution of the securities to be offered, in such offering as contemplated by Nasdaq (other than the Registrable Securities), then, (i) in the case such registration is being made pursuant to the registration demand rights under Section 2.1 of the 2005 Registration Rights Agreement as in effect on the date of this Registration Rights Agreement (but without giving effect to any amendment, supplement or other modification of such agreement after the date hereof), Nasdaq will include in such registration (A) first, 100% of the securities the H&F Holders or SLP Holders propose to sell and (B) second, to the extent that the amount of securities requested to be involved in such registration pursuant to Section 2.2 hereof can, in the opinion of such managing underwriter, be sold without having the materially adverse effect referred to above, the amount of Registrable Securities (on an as converted basis) which the Holders have requested to be included in such registration and the securities to be offered by Nasdaq, if any, such amount to be allocated pro rata among all requesting Holders and Nasdaq on the basis of the amount of securities requested by such Holders and Nasdaq in such registration, and (ii) otherwise (A) first, 100% of the securities Nasdaq proposes to sell, (B) second, to the extent that the amount of securities requested to be included in such registration pursuant to Section 2.3 of the 2005 Registration Rights Agreement by the H&F Holders or the SLP Holders can, in the opinion of such managing underwriter, be sold without having the materially adverse effect referred to above, the amount of such securities requested by the H&F Holders or the SLP Holders, allocated in accordance with the 2005 Registration Rights Agreement, (C) third, to the extent that the amount of Registrable Securities requested to be included in such registration pursuant to Section 2.2 hereof can, in the opinion of such managing underwriter, be sold without having the materially adverse effect referred to above, the amount of Registrable Securities which the Holders have requested to be included in such registration, such amount to be allocated pro rata among all requesting Holders on the basis of the amount of Registrable Securities then held by each such requesting Holder (provided that any amount thereby allocated to any such Holder that exceed such Holder's request will be reallocated among the remaining requesting holders in like manner) and (D) fourth, to the extent that the amount of securities requested to be included in such registration can, in the opinion of such managing underwriter, be sold without having the materially adverse effect referred to above, the amount of securities held by any other Person which have the right to be included in such registration.

**2.4 Expenses.** Nasdaq will pay all Registration Expenses in connection with each registration of Registrable Securities requested pursuant to this Article II.

**2.5 Registration Form.** Nasdaq shall select the registration statement form for any registration pursuant to Section 2.1, but shall cooperate with the requests of the Initiating Holders or managing underwriters selected by them as to the inclusion therein of information not specifically required by such form.

**2.6 Additional Rights.** If Nasdaq at any time after the date hereof grants to any other holders of Common Stock or securities of Nasdaq convertible into Common Stock any rights to request Nasdaq to effect the registration under the Securities Act of any such shares of Common Stock on terms more favorable to such holders than the terms set forth in this Article II, the terms of this Article II shall be deemed amended or supplemented to the extent necessary to provide the Holders such more favorable rights and benefits.

**2.7 Rights of Transferee Under NASDAQ Stock Charge.** If, subsequent to the filing of any registration statement by Nasdaq pursuant to the terms of this Article II, any Person or Persons shall become a Holder (directly by way of a transfer by Borse Dubai or HSBC) in connection with the exercise by HSBC of its rights and remedies under the Nasdaq Share Charge, Nasdaq agrees that it shall take all measures necessary either to amend the registration statement (including, if such registration statement has been declared effective and if necessary, by way of a post-effective amendment to such registration statement) or if necessary and applicable, a prospectus supplement, in either case to name any such Holder as a selling shareholder under such registration statement, and any such Holder shall benefit from the rights afforded by Section 2.4 in connection with any such amendment. The undertakings by Nasdaq under this Section 2.7 shall be enforceable and exercisable irrespective of any limitation imposed by Sections 2.1(e)(ii) through (v).

### **ARTICLE III REGISTRATION PROCEDURES**

**3.1 Registration Procedures.** If and whenever Nasdaq is required to use its reasonable best efforts to effect or cause the registration of any Registrable Securities under the Securities Act as provided in this Registration Rights Agreement, Nasdaq will, as expeditiously as reasonably practicable:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its reasonable best efforts to cause such registration statement to become effective, provided, however, that Nasdaq may discontinue any registration of its securities which is being effected pursuant to Section 2.2 at any time prior to the effective date of the registration statement relating thereto;

(b) prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period (A) in the case such registration statement is a Shelf Registration Statement, ending on the date that the securities registered under such Shelf Registration Statement cease being Registrable Securities, and (B) in the case of all other



registration statements, not in excess of 180 days, and, in each case, to comply with the provisions of the Securities Act, the Exchange Act and the rules and regulations of the SEC thereunder with respect to the disposition of all securities covered by such registration statement during such period in accordance with the intended methods of disposition by the seller or sellers thereof set forth in such registration statement; provided that before filing a registration statement or prospectus, or any amendments or supplements thereto, Nasdaq will furnish to each counsel selected pursuant to Section 6.1 hereof by the Holders of the Registrable Securities covered by such registration statement to represent such Holders and use all reasonable efforts to take into account and, if appropriate, reflect in such registration statement or amendment thereto such comments as the Holders and their counsel may reasonably request; and provided, further, that notwithstanding the foregoing, Nasdaq may suspend the effectiveness of a Shelf Registration Statement by written notice to the Holders of Registrable Securities subject to such Shelf Registration Statement for a period not to exceed an aggregate of sixty (60) days in any 90-day period and not to exceed an aggregate of one hundred and twenty (120) days in any twelve (12) month period if:

(i) an event occurs and is continuing as a result of which the Shelf Registration Statement would, in Nasdaq's reasonable judgment, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and

(ii) Nasdaq reasonably determines that the disclosure of such event at such time would materially interfere with any proposed acquisition, disposition, financing or other material transaction involving Nasdaq or its subsidiaries;

(c) furnish to each seller of such Registrable Securities such number of copies of such registration statement and of each amendment and supplement thereto, such number of copies of the prospectus included in such registration statement (including each preliminary and final prospectus and supplement thereto), in conformity with the requirements of the Securities Act, and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities by such seller;

(d) use its reasonable best efforts to (A) register or qualify such Registrable Securities covered by such registration in such jurisdictions as each seller shall reasonably request and to keep such registration or qualification in effect for so long as such registration statement remains in effect, and do any and all other acts and things which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller, and (B) use its reasonable best efforts to cause such Registrable Securities covered by such registration statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the seller or sellers thereof to consummate the disposition of such Registrable Securities; provided, however, that Nasdaq shall not for any such purpose be required to (I) qualify generally to do business as a foreign corporation in any jurisdiction where, but for the requirements of this Section 3.1(d), it would not be obligated to be so qualified, (II) subject itself to taxation in any such jurisdiction other than with respect to the registration of securities or (III) consent to general service of process in any such jurisdiction;

(e) notify each seller of any such Registrable Securities covered by such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act within the appropriate period mentioned in Section 3.1(b) hereof, of Nasdaq's becoming aware that the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing, and at the request of any such seller, prepare as promptly as reasonably practical a post-effective amendment to such registration statement and furnish to such seller a reasonable number of copies of an amended or supplemental prospectus as may be necessary so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(f) use its reasonable best efforts to comply with all applicable rules and regulations of the SEC, and make available to its security holders, as soon as reasonably practicable after the effective date of the registration statement, an earnings statement which shall satisfy the provisions of Section 11(a) of the Securities Act and the rules and regulations promulgated thereunder;

(g) enter into and perform such customary agreements (including an underwriting agreement in customary form), which may include indemnification provisions in favor of underwriters and other persons in addition to, or in substitution for the provisions of Article IV hereof, and take such other actions as sellers of a majority of shares of such Registrable Securities or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of such Registrable Securities;

(h) obtain a "cold comfort" letter or letters from Nasdaq's independent public accounts in customary form and covering matters of the type customarily covered by "cold comfort" letters as the seller or sellers of a majority of shares of such Registrable Securities (on an as converted basis) or managing underwriter or agent shall reasonably request;

(i) make available for inspection by any seller of such Registrable Securities covered by such registration statement, by any underwriter participating in any disposition to be effected pursuant to such registration statement and by any attorney, accountant or other agent retained by any such seller or any such underwriter, all pertinent financial and other records, pertinent corporate documents and properties of Nasdaq, and cause all of Nasdaq's officers, directors and employees to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement;

(j) notify counsel (selected pursuant to Section 6.1 hereof) for the Holders of Registrable Securities included in such registration statement and the managing underwriter or agent, as promptly as possible, and confirm the notice in writing (A) when the registration statement, or any post-effective amendment to the registration statement, shall have become effective, or any supplement to the prospectus or any amendment prospectus shall have been filed, (B) of the receipt of any comments from the SEC, (C) of any request of the SEC to amend the registration statement or amend or supplement the prospectus or for additional information

and (D) of the issuance by the SEC of any stop order suspending the effectiveness of the registration statement or of any order preventing or suspending the use of any preliminary prospectus, or of the suspension of the qualification of the registration statement for offering or sale in any jurisdiction, or of the institution or threatening of any proceedings for any of such purposes;

(k) make every reasonable effort to prevent the issuance of any stop order suspending the effectiveness of the registration statement or of any order preventing or suspending the use of any preliminary prospectus and, if any such order is issued, to obtain the withdrawal of any such order at the earliest possible moment;

(l) if requested by the managing underwriter or agent or any Holder of Registrable Securities covered by the registration statement, promptly incorporate in a prospectus supplement or post-effective amendment such information as the managing underwriter or agent or such Holder reasonably requests to be included therein and to which Nasdaq does not reasonably object, including, without limitation, with respect to the number of Registrable Securities being sold by such Holder to such underwriter or agent, the purchase price being paid therefor by such underwriter or agent and with respect to any other terms of the underwritten offering of the Registrable Securities to be sold in such offering; and make all required filings of such prospectus supplement or post-effective amendment as soon as practicable after being notified of the matters incorporated in such prospectus supplement or post-effective amendment;

(m) cooperate with the Holders of Registrable Securities covered by the registration statement and the managing underwriter or agent, if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing securities to be sold under the registration statement, and enable such securities to be in such denominations and registered in such names as the managing underwriter or agent, if any, or such Holders may request;

(n) obtain for delivery to the Holders of Registrable Securities being registered and to the underwriters or agents an opinion or opinions from counsel for Nasdaq in customary form and in form, substance and scope reasonably satisfactory to such Holders, underwriters or agents and their counsel;

(o) cooperate with each seller of Registrable Securities and each underwriter or agent participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the FINRA; and

(p) if requested by the underwriters, prepare and present to potential investors customary "road show" or marketing materials in a manner consistent with other new issuances of other securities similar to the Registrable Securities.

Each Holder of Registrable Securities agrees as a condition to the registration of such Holder's Registrable Securities as provided herein to furnish Nasdaq with such information regarding such seller and pertinent to the disclosure requirements relating to the registration and the distribution of such securities as Nasdaq may from time to time reasonably request in writing.

Each Holder of Registrable Securities agrees that, upon receipt of any notice from Nasdaq of the happening of any event of the kind described in Section 3.1(e) hereof, such Holder will forthwith discontinue disposition of Registrable Securities pursuant to the registration statement covering such Registrable Securities until such Holder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 3.1(e) hereof, and, if so directed by Nasdaq, such Holder will deliver to Nasdaq (at Nasdaq's expense) all copies, other than permanent file copies then in such Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice. In the event Nasdaq shall give any such notice, the period mentioned in Section 3.1(b) hereof shall be extended by the number of days during the period from and including the date of the giving of such notice pursuant to Section 3.1(e) hereof and including the date when each seller of Registrable Securities covered by such registration statement shall have received the copies of the supplemented or amended prospectus contemplated by Section 3.1(e) hereof.

**3.2 Restrictions on Public Sale by Nasdaq.** Nasdaq agrees (i) not to effect any public sale or distribution of any securities similar to those being registered in accordance with Section 2.1(c) or Section 2.1(d), or any securities convertible into or exchangeable or exercisable for such securities, during such period as the lead underwriter may reasonably request, no greater than ninety (90) days, beginning on, the effective date of any registration statement relating to an offering under Section 2.1(c) or the pricing of an offering under Section 2.1(d) (except as part of such registration statement and except pursuant to registrations on Form S-4 or S-8 or any successor or similar form thereto), and (ii) that any agreement entered into after the date of this Registration Rights Agreement pursuant to which Nasdaq issues or agrees to issue any privately placed securities shall contain a provision under which holders of such securities agree not to effect any sale or distribution of such securities and not to effect any sale or distribution of such securities during the periods described in (i) above, in each case including a sale pursuant to Rule 144 (except as part of any such registration, if permitted).

#### **ARTICLE IV INDEMNIFICATION**

**4.1 Indemnification by Nasdaq.** In the event of any registration of any securities of Nasdaq under the Securities Act pursuant to Article II hereof, Nasdaq will, and it hereby does, indemnify and hold harmless, to the extent permitted by law, the seller of any Registrable Securities covered by such registration statement, each affiliate of such seller and their respective trustees, directors and officers or general and limited partners (including any director, officer, affiliate, employee, representative, agent and controlling Person of any of the foregoing), each other Person who participates as an underwriter in the offering or sale of such securities and each other Person, if any, who controls such seller or any such underwriter within the meaning of the Securities Act (collectively, the "Indemnified Parties"), against any and all Actions (whether or not an Indemnified Party is a party thereto), losses, claims, damages or liabilities, joint or several, and expenses (including, without limitation, reasonable attorney's fees and reasonable expenses of investigation) to which such Indemnified Party may become subject under the Securities Act, common law or otherwise, insofar as such losses, claims, damages, liabilities or expenses (or actions or proceedings in respect thereof, whether or not such Indemnified Party is a party thereto) arise out of, relate to or are based upon (a) any untrue statement or alleged untrue statement of any material fact contained in any registration statement under which such securities

were registered under the Securities Act, any preliminary, final or supplemental prospectus contained therein, or any amendment or supplement thereto, or (b) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, in light of the circumstances under which they were made) not misleading, and Nasdaq will reimburse such Indemnified Party for any legal or any other expenses reasonably incurred by it in connection with investigating or defending against any such loss, claim, liability, action or proceeding; provided that Nasdaq shall not be liable to any Indemnified Party in any such case to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon any untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement or amendment or supplement thereto or in any such preliminary, final or supplemental prospectus in reliance upon and in conformity with written information furnished to Nasdaq through an instrument duly executed by such seller specifically stating that it is for use in the preparation thereof. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such seller or any Indemnified Party and shall survive the transfer of such securities by such seller.

**4.2 Indemnification by the Seller.** Nasdaq may require, as a condition to including any Registrable Securities in any registration statement filed in accordance with Article II hereof, that Nasdaq shall have received an undertaking reasonably satisfactory to it from the prospective seller of such Registrable Securities or any underwriter to indemnify and hold harmless (in the same manner and to the same extent as set forth in Section 4.1) Nasdaq, its officers, directors and agents and all other prospective sellers with respect to any untrue statement or alleged untrue statement in or omission or alleged omission from such registration statement, any preliminary, final or supplemental prospectus contained therein, or any amendment or supplement, if such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to Nasdaq through an instrument duly executed by such seller or underwriter specifically stating that it is for use in the preparation of such registration statement, preliminary, final or supplemental prospectus or amendment or supplement, or a document incorporated by reference into any of the foregoing. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of Nasdaq or any of the prospective sellers, or any of their respective affiliates, directors, officers or controlling Persons and shall survive the transfer of such securities by such seller. In no event shall the liability of any selling Holder of Registrable Securities hereunder be greater in amount than the dollar amount of the gross proceeds after underwriting discounts and commissions, but before expenses, received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

**4.3 Notices of Claims, Etc.** Promptly after receipt by an Indemnified Party hereunder of written notice of the commencement of any Action with respect to which a claim for indemnification may be made pursuant to this Article IV, such Indemnified Party will, if a claim in respect thereof is to be made against an indemnifying party, give written notice to the latter of the commencement of such Action; provided that the failure of the Indemnified Party to give notice as provided herein (i) shall not relieve the indemnifying party of its obligations under this Article IV, except to the extent that the indemnifying party is materially prejudiced by such failure to give notice, and (ii) shall not, in any event, relieve the indemnifying party from any obligations which it may have to any Indemnified Party other than the indemnification obligation

provided in Sections 4.1 and 4.2. In case any such Action is brought against an Indemnified Party, unless in such Indemnified Party's reasonable judgment a conflict of interest between such Indemnified Party and indemnifying parties may exist in respect of such Action, the indemnifying party will be entitled to participate in and to assume the defense thereof (at its expense), jointly with any other indemnifying party similarly notified to the extent that it may wish, with counsel reasonably satisfactory to such Indemnified Party, and after notice from the indemnifying party to such Indemnified Party of its election so to assume the defense thereof, the indemnifying party will not be liable to such Indemnified Party for any legal or other expenses subsequently incurred by the latter in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party will consent to entry of any judgment or settle any Action which (i) does not include, as an unconditional term thereof, the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect of such Action and (ii) does not involve the imposition of equitable remedies or of any obligations on such Indemnified Party and does not otherwise adversely affect such Indemnified Party, other than as a result of the imposition of financial obligations for such Indemnified Party will be indemnified hereunder.

#### **4.4 Contribution.**

(a) If the indemnification provided for in this Article IV from the indemnifying party is unavailable to or insufficient to fully hold harmless an Indemnified Party hereunder in respect of any Action, losses, damages, liabilities or expenses referred to herein, then the indemnifying party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Action, losses, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party and such Indemnified Party in connection with the actions which resulted in such Action losses, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative fault of such indemnifying party and such Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made by, or relates to information supplied by, such indemnifying party or Indemnified Parties, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action. The amount paid or payable by a party under this Section 4.4 as a result of the Action, losses, damages, liabilities and expenses referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with any investigation or proceeding.

(b) The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 4.4 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in Section 4.4(a) hereof. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

**4.5 Other Indemnification.** Indemnification similar to that specified in the preceding provisions of this Article IV (with appropriate modifications) shall be given by Nasdaq and each seller of Registrable Securities with respect to any required registration or other qualification of securities under any federal or state law or regulation or governmental authority other than the Securities Act.

**4.6 Non-Exclusivity.** The obligations of the Parties under this Article IV shall be in addition to any liability which any Party may otherwise have to any other Party.

**ARTICLE V  
RULE 144**

**5.1 Rule 144.** Nasdaq covenants that it will file the reports required to be filed by it under the Securities Act and the Exchange Act (or, if Nasdaq is not required to file such reports, it will, upon the request of any Holder, make publicly available such information), and it will take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 under the Securities Act, as such Rule may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Upon the request of any Holder of Registrable Securities, Nasdaq will deliver to such Holder a written statement as to whether it has complied with such requirements.

**ARTICLE VI  
SELECTION OF COUNSEL**

**6.1 Selection of Counsel.** In connection with any registration of Registrable Securities pursuant to Article II hereof, the Holders of a majority of the Registrable Securities (on as an converted basis) covered by any such registration may select one counsel to represent all Holders of Registrable Securities covered by such registration; provided, however, that in the event that the counsel selected as provided above is also acting as counsel to Nasdaq in connection with such registration, the remaining Holders shall be entitled to select one additional counsel to represent all such remaining Holders.

**ARTICLE VII  
MISCELLANEOUS**

**7.1 Amendments; Waivers.**

(a) No failure or delay on the part of any Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(b) Any provision of this Registration Rights Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and signed by all Parties.

**7.2 Successors and Assigns.**

(a) All the terms and provisions of this Registration Rights Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties and the successors

and assigns of each Party, whether so expressed or not. None of the Parties may assign any of its rights or obligations hereunder, in whole or in part, by operation of law or otherwise, without the prior written consent of the other Parties, and any such assignment without such prior written consent shall be null and void; provided, however, that all or any portion of the rights of each Holder under this Registration Rights Agreement are transferable to each transferee of such Holder to whom the transferor transfers Registrable Securities and each transferee of such Holder agrees to be bound by and to perform all of the terms and provisions required by this Registration Rights Agreement.

**7.3 Confidentiality of Records.** Each of the Parties shall, and shall cause its Affiliates to, keep confidential, disclose only to its Affiliates or Representatives and use only in connection with the transactions contemplated by this Registration Rights Agreement all information and data obtained by them from the other Party or its Affiliates or Representatives relating to such other Party or the transactions contemplated hereby (other than information or data that (i) is or becomes available to the public other than as a result of a breach of this Section, (ii) was available on a non-confidential basis prior to its disclosure to or by one Party to another, or (iii) becomes available to one Party on a non-confidential basis from a source other than the other Party, provided that such source is not known by the receiving Party, after reasonable inquiry, to be bound by a confidentiality agreement with either of the non-receiving Parties or their Representatives and is not otherwise prohibited from transmitting the information to the receiving Party by a contractual, legal or fiduciary obligation), unless disclosure of such information or data is required by applicable law, regulation or stock exchange listing standard or is requested by an Authority.

**7.4 Notices.** All notices, requests and other communications to any Party hereunder shall be in writing (including facsimile or similar writing) and shall be given to:

- (a) if to Nasdaq, to:  
The Nasdaq Stock Market, Inc.  
One Liberty Plaza  
New York, NY 10006  
Attn: Edward S. Knight, Esq.  
Fax: (301) 978-8471

with a copy to (which shall not constitute notice):

Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, NY 10036  
Attn: Eric J. Friedman, Esq.  
Fax: (917) 777-2204



(b) if to Borse Dubai, to:  
Borse Dubai Limited  
P.O. Box 506690  
Level 7, Precinct Building 5, Gate District  
Dubai International Financial Centre  
Dubai, UAE  
Attn: Essa Kazim  
Fax: +971 (4) 331 4924

with a copy to (which shall not constitute notice):

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166  
Attn: David M. Wilf, Esq.  
Fax: (212) 351-6277

(c) if to Trust, to:  
Borse Dubai Nasdaq Share Trust  
c/o Wells Fargo Delaware Trust Company  
919 North Market Street  
Suite 1600  
Wilmington, DE 19801  
Attn: Corporate Trust Services / Borse Dubai Nasdaq Share Trust  
Fax: (302) 575-2006

with a copy to (which shall not constitute notice)

Richards, Layton & Finger, P.A.  
One Rodney Square  
920 King Street  
Wilmington, DE 19801  
Attn: Tara J. Hoffner  
Fax: (302) 498-7708

or such other address or facsimile number as such Party may hereinafter specify for the purpose of giving such notice to the Party. Each such notice, request or other communication shall be deemed to have been received (i) if given by facsimile, when such facsimile is transmitted to the Fax number specified pursuant to this Section 7.4 and confirmation of receipt is received, (ii) if given by mail, 72 hours after such communication is sent by reliable international overnight delivery service (with proof of service) or hand delivery or, (iii) if given by any other means, when delivered at the address specified in this Section 7.4.

**7.5 Headings.** The headings in this Registration Rights Agreement are for convenience of reference only and will not control or affect the meaning or construction of any provisions hereof.

**7.6 Severability.** The invalidity or unenforceability of any provision of this Registration Rights Agreement in any jurisdiction will not affect the validity, legality or enforceability of the remainder of this Registration Rights Agreement in such jurisdiction or the validity, legality or enforceability of this Registration Rights Agreement, including any such provision, in any other jurisdiction, it being intended that all rights and obligations of the Parties hereunder will be enforceable to the fullest extent permitted by applicable law.

**7.7 Counterparts; Effectiveness.** This Registration Rights Agreement may be executed in any number of counterparts (including by facsimile), each of which will be an original with the same effect as if the signatures thereto and hereto were upon the same instrument. This Registration Rights Agreement shall become effective when each Party shall have received counterparts hereof signed by all of the other Parties.

**7.8 New York Law.** The enforceability and validity of this Registration Rights Agreement, the construction of its terms and the interpretation of the rights and duties of the Parties shall be governed by the laws of the State of New York, without regard to conflict of law principles thereof that would mandate the application of laws of another jurisdiction.

**7.9 Jurisdiction; Service of Process; Waiver of Jury Trial.**

(a) Each of the Parties unconditionally and irrevocably agrees to submit to the exclusive jurisdiction of the state and federal courts located in New York, New York for any suit, action or Proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Registration Rights Agreement or the transactions contemplated hereby and hereby irrevocably waives, to the fullest extent permitted by applicable law, and agrees not to assert any objection, whether as a defense or otherwise, which such Party may now or hereafter have to the laying of the venue of any such suit, action or Proceeding in any such court or that any such suit, action or Proceeding which is brought in any such court has been brought in an inconvenient forum or that such suit, action or Proceeding may not be brought or is not maintainable in such courts or that the venue thereof may not be appropriate or that this Registration Rights Agreement may not be enforced by in or by such courts. Each Party agrees that a final judgment in any such suit, action or Proceeding shall be conclusive and may be enforced in any other jurisdiction in which a Party may be found or may have assets by suit on the judgment or in any other manner provided by applicable law, and agrees to the fullest extent permitted by law to consent to the enforcement of any such judgment and not to oppose such enforcement or to seek review on the merits of any such judgment in any such jurisdiction.

(b) Each of the Parties hereby irrevocably consent to the service of process outside the territorial jurisdiction of such courts in any suit, Proceeding or action by giving copies thereof by hand-delivery of air courier to the address of such Party specified in Section 7.4 and such service of process shall be deemed effective service of process on such Party. However, the foregoing shall not limit the right of any Party to effect service of process on the other Parties by any other legally available method.

(c) To the extent that any Party hereto (including assignees of any Party's rights or obligations under this Registration Rights Agreement) may be entitled, in any jurisdiction, to claim for itself or its revenues, assets or properties, sovereign immunity from service of process, from suit, from the jurisdiction of any court or arbitral tribunal, from attachment prior to judgment, from attachment in aid of execution or enforcement of a judgment (interlocutory or final), or from any other legal process, and to the extent that, in any such jurisdiction there may be attributed such a sovereign immunity (whether claimed or not), each Party hereto hereby irrevocably agrees not to claim, and hereby irrevocably waives to the fullest extent permitted by law, such sovereign immunity.

(d) EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS REGISTRATION RIGHTS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**7.10 Specific Performance.** The parties hereby acknowledge and agree that the failure of any Party to perform its agreements and covenants hereunder, including its failure to take all actions as are necessary on its part to the consummation of the transactions contemplated hereby, will cause irreparable injury to the other Parties, for which damages, even if available, will not be an adequate remedy. Accordingly, each Party hereby consents to the issuance of injunctive relief by any court of competent jurisdiction to compel performance of such Party's obligations, to prevent breaches of this Registration Rights Agreement by such Party and to the granting by any court of the remedy of specific performance of such Party's obligations hereunder, without bond or other security being required, in addition to any other remedy to which any Party is entitled at law or in equity. Each Party irrevocably waives any defenses based on adequacy of any other remedy, whether at law or in equity, that might be asserted as a bar to the remedy of specific performance of any of the terms or provisions hereof or injunctive relief in any action brought therefor by any Party.

#### **7.11 Interpretation.**

(a) The words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Registration Rights Agreement as a whole and not to any particular provision of this Registration Rights Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Registration Rights Agreement unless otherwise specified. Whenever the words "include," "includes" or "including" are used in this Registration Rights Agreement, they shall be deemed to be followed by the words "without limitation." All terms defined in this Registration Rights Agreement shall have the defined meanings contained herein when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Registration Rights Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. In this Registration Rights Agreement, all references to "\$" are to United States dollars and all references to "SEK" are to Swedish kronor. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time, amended, qualified or supplemented, including (in the case of agreements and instruments)

by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

(b) The Parties have participated jointly in the negotiation and drafting of this Registration Rights Agreement. In the event an ambiguity or question of intent or interpretation arises, this Registration Rights Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Registration Rights Agreement.

**7.12 Limitation of Trustee Liability.** It is expressly understood and agreed by the parties that (a) this document is executed and delivered by Wells Fargo Delaware Trust Company, not individually or personally, but solely as trustee (the "Trustee"), in the exercise of the powers and authority conferred and vested in it, pursuant to the Trust Agreement, dated as February 21, 2008, among the Trustee, Nasdaq and Borse Dubai, (b) each of the representations, undertakings and agreements herein made on the part of the Trust is made and intended not as personal representations, undertakings and agreements by Wells Fargo Delaware Trust Company but is made and intended for the purpose for binding only the Trust, (c) nothing herein contained shall be construed as creating any liability on Wells Fargo Delaware Trust Company, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto and by any person claiming by, through or under the parties hereto, and (d) under no circumstances shall Wells Fargo Delaware Trust Company be personally liable for the payment of any indebtedness or expenses of the Trust or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Trust under this Agreement or any other related documents.

IN WITNESS WHEREOF, each of the undersigned has executed this Registration Rights Agreement or caused this Registration Rights Agreement to be duly executed on its behalf as of the date first written above.

THE NASDAQ STOCK MARKET, INC.

By: /s/ Edward S. Knight  
Name: Edward S. Knight  
Title: EVP & General Counsel

BORSE DUBAI LIMITED

By: /s/ Soud Ba'Alawi  
Name: Soud Ba'Alawi  
Title: Vice Chairman

By: /s/ Essa Kazim  
Name: Essa Kazim  
Title: Chairman

BORSE DUBAI NASDAQ SHARE TRUST

By: Wells Fargo Delaware Trust Company,  
not in its individual capacity but solely as Trustee

By: /s/ Tracy M. McLamb  
Name: Tracy M. McLamb  
Title: Vice President

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CREDIT AGREEMENT

dated as of February 27, 2008

among

THE NASDAQ STOCK MARKET, INC.  
(to be renamed as THE NASDAQ OMX GROUP, INC.),  
as Borrower,

The Lenders Party Hereto

and

BANK OF AMERICA, N.A.,  
as Administrative Agent, Collateral Agent,  
Swingline Lender and Issuing Bank

---

JPMORGAN CHASE BANK, N.A.,  
as Syndication Agent,

and

BANC OF AMERICA SECURITIES LLC  
and  
J.P. MORGAN SECURITIES INC.,  
as Joint Lead Arrangers and Joint Bookrunners

WACHOVIA BANK, NATIONAL ASSOCIATION,  
as Documentation Agent

Cahill Gordon & Reindel LLP  
80 Pine Street  
New York, New York 10005

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Exhibit G	–	Form of United States Tax Compliance Certificate

CREDIT AGREEMENT dated as of February 27, 2008 (this “Credit Agreement” or this “Agreement”), among THE NASDAQ STOCK MARKET, INC. (to be renamed as THE NASDAQ OMX GROUP, INC.), a Delaware corporation (the “Borrower”), the LENDERS party hereto, BANK OF AMERICA, N.A., as Administrative Agent, Collateral Agent, Swingline Lender and Issuing Bank, and JPMORGAN CHASE BANK, N.A., as Syndication Agent.

The Borrower has requested that (a) the Tranche A Lenders extend credit in the form of (i) Tranche A Term Loans on the Closing Date in an aggregate principal amount not in excess of \$625,000,000, (ii) Tranche A Term Loans from time to time during the OMX Delayed Draw Availability Period in an aggregate principal amount not in excess of \$425,000,000, (iii) Tranche A Term Loans from time to time during the PHLX Delayed Draw Availability Period in an aggregate principal amount not in excess of \$650,000,000 and (iv) Tranche A Term Loans from time to time during the Nord Pool Delayed Draw Availability Period in an aggregate principal amount not in excess of \$300,000,000 and (b) the Revolving Lenders extend credit in the form of Revolving Loans, the Swingline Lender extend credit in the form of Swingline Loans and the Issuing Bank issue Letters of Credit, in each case at any time and from time to time during the Revolving Availability Period such that the aggregate Revolving Exposures will not exceed \$75,000,000 at any time. In addition, the Borrower may request that prospective Additional Lenders agree to make available Incremental Term Loans and Incremental Revolving Commitments pursuant to Section 2.20 from time to time after the Closing Date in an aggregate amount not to exceed \$200,000,000. In connection with the OMX Acquisition, the Borrower may issue up to \$425,000,000 (or up to \$475,000,000 if the initial purchasers’ over-allotment option is exercised) of New Convertible Notes.

The Lenders are willing to extend such credit to the Borrower, and the Issuing Bank is willing to issue Letters of Credit for the account of the Borrower, on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

SECTION 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“ABR,” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Base Rate.

“ABR Gross-Up Amount” means, with respect to any Non-ABR Lender’s ABR Term Loan for any day on which such ABR Term Loan is outstanding, the lesser of:

(a) the actual amount (as determined in good faith by the applicable Lender and set forth in a reasonably detailed certificate delivered to the Borrower) by which (i) the Lender’s cost of funding such Lender’s ABR Term Loan for such day exceeded (ii) the Base Rate for such day minus 1.00% per annum; and

(b) the amount by which (i) the Eurocurrency Rate for an interest period of one day commencing on such date (or, if such day is not a Business Day, the preceding Business Day) exceeded (ii) the Base Rate for such day minus 1.00% per annum.

“Acceptable Bank” means (i) a bank or financial institution which has a rating for its long-term unsecured and non-credit-enhanced debt obligations of A2 or higher by S&P, F2 or higher by Fitch Ratings Ltd or P2 or higher by Moody’s or a comparable rating from an internationally recognized credit rating agency or (ii) any other bank or financial institution approved by the Administrative Agent.

“Act” has the meaning set forth in Section 9.14.

“Additional Lenders” has the meaning assigned to such term in Section 2.20(d).

“Administrative Agent” means Bank of America, in its capacity as administrative agent for the Lenders hereunder, and its successors in such capacity as provided in Article VIII.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 9.01, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, however, that for purposes of Section 6.09, the term “Affiliate” shall also include any person that directly, or indirectly through one or more intermediaries, owns 5% or more of any class of Equity Interests of the Person specified or that is an officer or director of the Person specified.

“Agent Parties” has the meaning set forth in Section 9.01.

“Agents,” when used alone, shall mean the Administrative Agent and the Collateral Agent.

“Agreement” has the meaning assigned to such term in the preamble hereto.

“Agreement Currency” has the meaning assigned to such term by Section 9.16.

“Alternative Currency” means each of Euro, Sterling, Norwegian Kroner, Swedish Kronor and each other currency (other than Dollars) that is approved in accordance with Section 1.07.

“Alternative Currency Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Administrative Agent or the Issuing Bank, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

“Alternative Currency Sublimit” means \$30.0 million.

“Applicable Leverage Ratio” means for any period ending (a) prior to June 30, 2008, 3.25:1.0 and (b) on or after June 30, 2008 a Leverage Ratio that is 50 basis points less than the maximum permitted Leverage Ratio for the most recently ended test date at such time that is set forth in the table in Section 6.13.

“Applicable Percentage” means, at any time with respect to any Revolving Lender, the percentage, rounded to the ninth decimal place, of the aggregate Revolving Commitments represented by such Lender’s Revolving Commitment at such time. If the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Revolving Commitments most recently in effect, giving effect to any assignments of Revolving Loans, LC Exposures and Swingline Exposures that occur after such termination or expiration.

“Applicable Rate” means (a) from the Closing Date until the date of delivery of financial statements pursuant to Section 5.01(a) or (b) for the first full fiscal quarter ending after the Closing Date, (i) 1.00% per annum for ABR Tranche A Term Loans, (ii) 2.00% per annum for Eurocurrency Tranche A Term Loans, (iii) 0.50% per annum for ABR Revolving Loans, (iv) 1.50% per annum for Eurocurrency Revolving Loans and (v) 1.00% per annum for Swingline Loans and (b) thereafter, the applicable percentage per annum set forth below determined by reference to the Leverage Ratio as of the last day of the most recently completed fiscal quarter for which financial statements have been delivered pursuant to paragraph (a) or (b) of Section 5.01 as set forth in the most recent compliance certificate received by the Administrative Agent pursuant to Section 5.01(c):

Pricing Level	Leverage Ratio	Applicable Rate				
		Eurocurrency Rate Revolving Loans	ABR Revolving Loans	Swingline Loans	Eurocurrency Tranche A Term Loans	ABR Tranche A Term Loans
1	>2.0:1	1.50%	0.50%	1.00%	2.00%	1.00%
2	≤2.0 but >1.25:1	1.25%	0.25%	0.75%	1.75%	0.75%
3	≤1.25:1	1.00%	0.0%	0.50%	1.50%	0.50%

Any increase or decrease in the Applicable Rate resulting from a change in the Leverage Ratio shall become effective as of the first Business Day immediately following the date a compliance certificate is delivered pursuant to Section 5.01(c); provided that at the option of the Required Lenders, the pricing level which is one level higher (i.e., resulting in the next higher Applicable Rate), if applicable, shall apply as of the first Business Day after the date on which a compliance certificate was required to have been delivered pursuant to Section 5.01(c) but was not delivered, and shall continue to so apply to and including the date on which such compliance certificate is so delivered (and thereafter the pricing level otherwise determined in accordance with this definition shall apply).

Notwithstanding anything to the contrary contained above in this definition or elsewhere in this Agreement, if it is subsequently determined that the Leverage Ratio set forth in

any compliance certificate delivered to the Administrative Agent pursuant to Section 5.01(c) is inaccurate for any reason and the result thereof is that Lender received interest or fees for any period based on an Applicable Rate that is less than that which would have been applicable had the Leverage Ratio been accurately determined, then, for all purposes of this Agreement, the “Applicable Rate” for any day occurring within the period covered by such compliance certificate shall retroactively be deemed to be the relevant percentage as based upon the accurately determined Leverage Ratio for such period, and any shortfall in the interest or fees theretofore paid by the Borrower for the relevant period pursuant to Sections 2.12 and 2.13 as a result of the miscalculation of the Leverage Ratio shall be deemed to be (and shall be) due and payable under the relevant provisions of Section 2.12 or 2.13, as applicable, at the time the interest or fees for such period were required to be paid pursuant to said Section (and shall remain due and payable until paid in full, together with all amounts owing under Section 2.13, in accordance with the terms of this Agreement).

“Applicable Requirements” means any Requirement of Law or any request by any Governmental Authority or any minimum capital requirements imposed by any Governmental Authority applicable to any Regulated Subsidiary.

“Approved Fund” has the meaning assigned to such term in Section 9.04(b).

“Arrangers” means Banc of America Securities LLC and J.P. Morgan Securities Inc., in their capacities as joint lead arrangers and joint bookrunners.

“Asset Sale” has the meaning assigned to such term in Section 6.05.

“Assignee Group” means one or more Approved Funds that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

“Auto-Renewal Letter of Credit” has the meaning set forth in Section 2.05(a)(viii).

“Available Amount” means, at any time, the sum of:

(i) the cumulative amount of Excess Cash Flow of the Borrower and its Subsidiaries for each fiscal year commencing with the fiscal year ending December 31, 2008 minus the portion of such Excess Cash Flow that has been (or is required to be) applied to the prepayment of Tranche A Term Loans in accordance with Section 2.11(d); plus

(ii) 100% of the net cash proceeds received by the Borrower following the Closing Date from the issuance of Qualified Equity Interests (except to the extent such proceeds have been applied pursuant to Section 6.08(a)(vii)); minus

(iii) the aggregate amount of any investments outstanding at such time pursuant to Section 6.04(xxii), any Restricted Payments made prior to such time pursuant to Section 6.08(a)(v) or any payment made prior to such time pursuant to Section 6.08(b)(iii).

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means, for any day, a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 1/2 of 1% and (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate.” The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” has the meaning assigned to such term in the preamble to this Agreement.

“Borrower Materials” has the meaning set forth in Section 5.01.

“Borrowing” means (a) Loans of the same Class and Type, made, converted or continued on the same date and, in the case of Eurocurrency Loans, as to which a single Interest Period is in effect, or (b) a Swingline Loan.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.03 which, if in writing, shall be in the form of Exhibit B-1.

“Borse Dubai” shall mean Borse Dubai Limited, a Dubai company.

“Broker Dealer Subsidiary” means any Subsidiary that is registered as a broker dealer pursuant to Section 15 of the Exchange Act (as in effect from time to time) or that is regulated as a broker dealer or underwriter under any foreign securities law.

“BSX” means Boston Stock Exchange, Incorporated.

“BSX Acquisition” means the acquisition of BSX pursuant to the Agreement and Plan of Merger dated October 1, 2007 by and between The Nasdaq Stock Market, Inc., Yellow Merger Corporation and BSX and the BSX Purchase Agreement (as defined therein).

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws, rules, regulations, ordinances, codes or administrative or judicial authorities of, or in fact are closed in, New York City or the state where the Administrative Agent’s Office with respect to Obligations denominated in Dollars is located and:

(a) if such day relates to any interest rate settings as to a Eurocurrency Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market;

(b) if such day relates to any interest rate settings as to a Eurocurrency Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Loan, means a TARGET Day;

(c) if such day relates to any interest rate settings as to a Eurocurrency Loan denominated in a currency other than Dollars or Euro, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency; and

(d) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars or Euro in respect of a Eurocurrency Loan denominated in a currency other than Dollars or Euro, or any other dealings in any currency other than Dollars or Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

“Capital Expenditures” means, for any period, the additions to property, plant and equipment and other capital expenditures of the Borrower and the Subsidiaries that are (or should be) set forth in a consolidated statement of cash flows of the Borrower for such period prepared in accordance with GAAP, but excluding any such expenditure (i) made to restore, replace or rebuild property to the condition of such property immediately prior to any damage, loss, destruction or condemnation of such property, to the extent such expenditure is made with, or subsequently reimbursed out of, actually received insurance proceeds, indemnity payments, condemnation awards (or payments in lieu thereof) or damage recovery proceeds relating to any such damage, loss, destruction or condemnation, (ii) constituting reinvestment of the Net Proceeds of any event described in clause (a) or (b) of the definition of the term “Prepayment Event,” to the extent permitted by Section 2.11(c) and (iii) made by the Borrower or any Subsidiary to effect leasehold improvements to any property leased by the Borrower or such Subsidiary as lessee, to the extent that such expenses have been reimbursed by the landlord.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.



“Cash Collateral” has the meaning set forth in Section 2.05(e).

“Cash Collateralize” has the meaning set forth in Section 2.05(e).

“Change in Control” means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Exchange Act, and the rules of the SEC thereunder as in effect on the date hereof), of Equity Interests representing more than 35% of either the aggregate ordinary voting power or the aggregate equity value represented by the issued and outstanding Equity Interests in the Borrower, (b) the occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who are not Continuing Directors or (c) the occurrence of a “Change in Control” (or similar event, however denominated), as defined in any Specified Debt Documents, any indenture or agreement in respect of Material Indebtedness of the Borrower or any Subsidiary.

“Change in Law” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender’s or the Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

“Charges” has the meaning set forth in Section 9.13.

“Class,” (a) when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Tranche A Term Loans, Incremental Term Loans or Swingline Loans and, when used in reference to any Commitment, refers to whether such Commitment is a Revolving Commitment, Initial Tranche A Term Commitment, OMX Delayed Draw Tranche A Commitment, PHLX Delayed Draw Tranche A Commitment, Nord Pool Delayed Draw Tranche A Commitment or a commitment in respect of any Incremental Term Loans and (b) when used in reference to any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class. Incremental Term Loans that have different terms and conditions (together with the Commitments in respect thereof) shall be construed to be in different Classes.

“Clean-up Default” means a Default existing during the Clean-up Period to the extent that it (or any representation or undertaking which causes such Default) occurs at the OMX Group (or any obligation to procure or ensure in relation to the OMX Group).

“Clean-up Period” means the period from the Closing Date through and including the date which is 180 days thereafter.

“CLO” has the meaning assigned to such term in Section 9.04(b).

“Closing Date” means the first Business Day on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02) and Loans are made hereunder.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means any and all “Collateral,” as defined in any applicable Security Document, and shall also include the Mortgaged Properties.

“Collateral Agent” means Bank of America, in its capacity as collateral agent under the Loan Documents, and its successors.

“Collateral Agreement” means the Guarantee and Collateral Agreement among the Borrower, the Subsidiary Loan Parties and the Collateral Agent, substantially in the form of Exhibit C, as the same may be amended, supplemented, restated or otherwise modified from time to time.

“Collateral and Guarantee Requirement” means, at any time, the requirement that:

(a) the Collateral Agent shall have received from each Loan Party (i) either (x) a counterpart of the Collateral Agreement duly executed and delivered on behalf of each such Loan Party or (y) in the case of any Person that becomes a Loan Party after the Closing Date, a supplement to the Collateral Agreement, in the form specified therein, duly executed and delivered on behalf of such Loan Party and (ii) with respect to any Loan Party that directly owns Equity Interests of a Material Subsidiary which is a Foreign Subsidiary, a counterpart of each Foreign Pledge Agreement that the Collateral Agent determines, based on the advice of counsel, to be necessary or advisable in connection with the pledge of, or the granting of security interests in, Equity Interests of (but no more than 65% of the voting power of such Equity Interests of) such Foreign Subsidiary, in each case duly executed and delivered on behalf of such Loan Party;

(b) all outstanding Equity Interests in each Material Subsidiary directly owned by any Loan Party (other than TRF, The Independent Research Network, LLC, The Nasdaq Stock Market Educational Foundation, Inc., The NASDAQ Stock Market LLC, Pipeline Financial Group, Inc., Carpenter Moore Insurance Services, Inc., The NASDAQ Options Market LLC, Boston Stock Exchange, Incorporated, BSX Group LLC, Boston Options Exchange Regulation LLC, Philadelphia Stock Exchange, Inc., Philadelphia Board of Trade, Inc. BSE Clearing Corporation, NASD/BSE Trade Reporting Facility LLC, Stock Clearing Corporation of Philadelphia, Inc., The Philadelphia Stock Exchange Foundation and Philadelphia Stock Exchange Political Action Committee, Inc.) shall have been pledged pursuant to the Collateral Agreement or a Foreign Pledge Agreement (except that the Loan Parties shall not be required to pledge more than 65% of the outstanding voting Equity Interests of any Foreign Subsidiary and, except to the extent not required by any Foreign Pledge Agreement entered into with respect to any Equity Interests of any Foreign Subsidiary, the Collateral Agent shall have received certificates (or in the case of entities with uncertificated Equity Interests, issuer acknowledgments) or other instruments representing all such certificated Equity Interests, together with undated stock powers or other instruments of transfer with respect thereto endorsed in blank; *provided*, that the pledge of OMX Shares shall be required only to the extent set forth in Section 5.13;

(c) all Indebtedness in excess of \$1,000,000 of the Borrower and each Subsidiary that is owing to any Loan Party and having a term in excess of ten days shall be evidenced by a promissory note and shall have been pledged pursuant to the Collateral Agreement and the Collateral Agent shall have received all such promissory notes, together with undated instruments of transfer with respect thereto endorsed in blank;

(d) all documents, instruments, including Uniform Commercial Code financing statements, and other actions required by law or reasonably requested by the Collateral Agent to be filed, registered, recorded or taken to create the Liens intended to be created by the Collateral Agreement and the Foreign Pledge Agreements and perfect such Liens to the extent required by, and with the priority required by, the Collateral Agreement and the Foreign Pledge Agreements, shall have been filed, registered, recorded or taken or delivered to the Administrative Agent for filing, registration or recording;

(e) the Collateral Agent shall have received (i) counterparts of a Mortgage with respect to each Mortgaged Property duly executed and delivered by the record owner of such Mortgaged Property, (ii) a policy or policies of title insurance issued by a nationally recognized title insurance company insuring the Lien of each such Mortgage as a valid first Lien on the Mortgaged Property described therein, free of any other Liens except as expressly permitted by Section 6.02, together with such endorsements, coinsurance and reinsurance as the Collateral Agent may reasonably request, and (iii) such surveys, abstracts, appraisals, legal opinions and other documents as the Collateral Agent or the Required Lenders may reasonably request with respect to any such Mortgage or Mortgaged Property; and

(f) except as set forth on Schedule 1.02, each Loan Party shall have obtained all consents and approvals required to be obtained by it in connection with the execution and delivery of all Security Documents to which it is a party, the performance of its obligations thereunder and the granting by it of the Liens thereunder.

“Commitment” means (a) with respect to any Lender, such Lender’s Revolving Commitment (including any Incremental Revolving Commitment), Initial Tranche A Commitment, OMX Delayed Draw Tranche A Commitment, PHLX Delayed Draw Tranche A Commitment, Nord Pool Delayed Draw Tranche A Commitment or commitment in respect of any Incremental Term Loans or any combination thereof (as the context requires) and (b) with respect to the Swingline Lender, its Swingline Commitment.

“Consolidated Cash Interest Expense” means, for any period, the excess of (a) the sum of (i) the interest expense (including imputed interest expense in respect of Capital Lease Obligations) of the Borrower and the Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP, (ii) any interest accrued during such period in respect of Indebtedness of the Borrower or any Subsidiary that is required to be capitalized rather than included in consolidated interest expense for such period in accordance with GAAP and (iii) any cash payments made during such period in respect of obligations referred to in clause (b)(ii) below that were amortized or accrued in a previous period, minus (b) the sum of (i) to the extent included in such consolidated interest expense for such period, non-cash amounts attributable to amortization of financing costs paid in a previous period, (ii) to the extent included in such consolidated interest

expense for such period, non-cash amounts attributable to amortization of debt discounts or accrued interest payable in kind for such period, and (iii) any break funding payment made pursuant to Section 2.16. Notwithstanding the foregoing, subject to adjustment as provided in Section 1.05 with respect to events occurring after the Closing Date, Consolidated Cash Interest Expense shall be deemed to be (a) for the fiscal quarter during which the Closing Date occurs (such fiscal quarter, "Initial Quarter"), an amount equal to the Consolidated Cash Interest Expense for such Initial Quarter calculated on a Pro Forma Basis after giving effect to the Transactions occurred in such quarter as if such had occurred at the beginning of such quarter (such amount, the "Initial Quarter Consolidated Cash Interest Expense"), (b) for the four fiscal quarter period ending with the end of the Initial Quarter, the Initial Quarter Consolidated Cash Interest Expense, multiplied by four, (c) for the four fiscal quarter period ending with the end of the first fiscal quarter ending after the end of the Initial Quarter (such first full fiscal quarter, the "First Full Fiscal Quarter"), the product of (x) the sum of the actual Consolidated Cash Interest Expense for the First Full Fiscal Quarter plus the Initial Quarter Consolidated Cash Interest Expense, multiplied by (y) two, and (c) for the four fiscal quarter period ending with the end of the second fiscal quarter ending after the Initial Quarter (such two full fiscal quarters after the end of the Initial Quarter, the "First Two Full Fiscal Quarters"), the product of (x) the sum of the actual Consolidated Cash Interest Expense for the First Two Full Fiscal Quarters plus the Initial Quarter Consolidated Interest Expense, multiplied by (y) <sup>4</sup>/<sub>3</sub>.

"Consolidated EBITDA" means, for any period, Consolidated Net Income for such period plus (a) without duplication and to the extent deducted in determining such Consolidated Net Income, the sum of (i) consolidated interest expense for such period, (ii) consolidated income tax expense for such period, (iii) all amounts attributable to depreciation and amortization for such period (excluding amortization expense attributable to a prepaid cash item that was paid in a prior period), (iv) any non-recurring non-cash charges for such period, (v) non-recurring charges incurred during such period in respect of restructurings, headcount reductions or other similar actions, including severance charges in respect of employee terminations, in an amount not to exceed \$45.0 million during the term of this Agreement and \$15.0 million during any one fiscal year of the Borrower, (vi) non-cash expenses resulting from the grant of stock options or other equity-related incentives to any director, officer or employee of the Borrower or any Subsidiary pursuant to a written plan or agreement approved by the board of directors of the Borrower, (vii) non-cash charges attributable to impairment of goodwill or other intangible assets or impairment of long-lived assets, (viii) the aggregate amount of all deferred financing fees and expenses incurred during such period in connection with the Transactions, all non-recurring fees and expenses (excluding interest charges) paid during such period in connection with the Transactions (including, without limitation, fees and expenses incurred in connection with the issuance or extinguishment of debt incurred in connection with the Transaction) and related fees and expenses paid to advisors (but excluding integration and restructuring charges incurred or paid in connection with the Transactions), (ix) all non-cash expenses or charges (to the extent not included in (viii) above) incurred during such period in connection with the Transactions, (x) integration and restructuring expenses and charges incurred during such period in connection with the Transactions in an aggregate amount since the Closing Date not to exceed \$150.0 million and (xi) any costs, fees and expenses incurred in connection with any actual or proposed Permitted Acquisition, merger, any acquisition, joint venture, issuance of Equity Interests, issuance or prepayments of Indebtedness, disposition or investment permitted herein, in each case whether or not consummated, and minus (b) without duplication and (except in the case of clause

(i) to the extent included in determining such Consolidated Net Income), the sum of (i) any cash disbursements during such period that relate to non-cash charges or losses added to Consolidated Net Income pursuant to clause (a)(iv) or (a)(vi) of this definition in any prior period, (ii) any extraordinary gains for such period, (iii) any non-cash gains for such period that represent the reversal of any accrual in a prior period for, or the reversal of any cash reserves established in a prior period for, anticipated cash charges, (iv) any income relating to defined benefits pension or post-retirement benefit plans and (v) all gains during such period resulting from the sale or disposition of any asset of the Borrower or any Subsidiary outside the ordinary course of business, all determined on a consolidated basis in accordance with GAAP.

“Consolidated Net Income” means, for any period, the net income or loss of the Borrower and the Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, provided that there shall be excluded (a) the income of any Subsidiary (other than any Regulated Subsidiary) to the extent that the declaration or payment of dividends or other distributions by such Subsidiary of that income is not at the time permitted by any of its Organizational Documents, a Requirement of Law or any agreement or instrument applicable to such Subsidiary, except to the extent of the amount of cash dividends or other cash distributions actually paid to the Borrower or any Subsidiary (unless the income of such Subsidiary in receipt of such cash dividend or other cash distribution would be excluded from Consolidated Net Income pursuant to this definition) during such period, (b) the income of any Regulated Subsidiary (i) to the extent that the declaration or payment of dividends or other distributions by such Regulated Subsidiary of that income is not at the time permitted by any of its Organizational Documents or any agreement or instrument applicable to such Regulated Subsidiary (other than any agreement or instrument with such Regulated Subsidiary’s applicable Governmental Authorities) and (ii) other than to the extent that such Regulated Subsidiary reasonably believes, in good faith, that such income could be distributed, declared and paid as a dividend or similar distribution without causing such Regulated Subsidiary’s capital, share capital or equity, as applicable, to be at or below the highest level at which dividends by such Regulated Subsidiary may be restricted, other activities undertaken by such Regulated Subsidiary may be limited or other regulatory actions with respect to such Regulated Subsidiary may be taken, in each case by applicable Governmental Authorities based upon such capital, share capital or equity, as applicable (but for the avoidance of doubt, cash dividends or other cash distributions actually paid to the Borrower or any Subsidiary (unless the income of such Subsidiary in receipt of such cash dividend or other cash distribution would be excluded from Consolidated Net Income pursuant to this definition) by such Regulated Subsidiary during such period shall be included in Consolidated Net Income for such period), (c) the income of any Person (other than the Borrower or any Subsidiary) in which the Borrower or any Subsidiary owns an Equity Interest, except to the extent of the amount of cash dividends or other cash distributions actually paid to the Borrower or any Subsidiary (unless the income of such Subsidiary would be excluded from Consolidated Net Income pursuant to this proviso) during such period and (d) the income of any non-Wholly-Owned Subsidiary (whether or not consolidated for financial reporting purposes with the Borrower) attributable to minority equity interests in such Subsidiary held by Persons other than the Borrower and its Wholly-Owned Subsidiaries. For purposes of calculating a Regulated Subsidiary’s capital, share capital and/or equity at any time pursuant to clause (b)(ii) of this definition, as applicable, receivables that are less than 30 days old at such time and are reasonably expected to be collected shall be deemed to be cash in an amount equal to 80% of the balance sheet value of such receivables.

“Consolidated Net Tangible Assets” means, as of any date of determination, the total assets less the sum of goodwill and other intangible assets, net, in each case reflected on the consolidated balance sheet of the Borrower as of the end of the most recently ended fiscal quarter of the Borrower for which such a balance sheet is available, determined on a consolidated basis in accordance with GAAP.

“Continuing Director” means (a) any member of the Board of Directors of the Borrower who was a member of the Board of Directors of the Borrower on the date of this Agreement and (b) any individual who becomes a member of the Board of Directors of the Borrower after the date of this Agreement if such individual was appointed, elected or nominated for election to the Board of Directors of the Borrower with the affirmative vote of at least a majority of the directors then still in office.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies, or the dismissal or appointment of the management, of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Convertible Notes” means the Series A Convertible Notes and the Series B Convertible Notes outstanding on the Closing Date.

“Convertible Notes Documents” means the Convertible Notes Indenture and all side letters, instruments, agreements and other documents evidencing or governing the Convertible Notes, providing for any right in respect thereof, affecting the terms thereof or entered into in connection therewith and all schedules, exhibits and annexes to each of the foregoing.

“Convertible Notes Indenture” means the Indenture dated as of April 22, 2005, between the Borrower and Law Debenture Trust Company of New York, as trustee, in respect of the Convertible Notes, as amended by the First Supplemental Indenture dated as of December 8, 2005, and the Second Supplemental Indenture dated as of November 9, 2006 (by which The Nasdaq Stock Market, LLC assumed the obligations of the Borrower as issuer under the Convertible Notes Indenture).

“Default” means any event or condition that constitutes an Event of Default or that upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Deferred Enforcement Action” means each of the following actions by or required by a Lender, the Administrative Agent, the Swingline Lender, the Issuing Bank or the Collateral Agent:

- (a) cancellation of any of its Commitments under the Loan Documents;
- (b) exercise of any of its rights under Article VII, including making of any demand for repayment, acceleration or cancellation or calling for cash collateral for any outstanding Letter of Credit;

- (c) enforcement of any Security Document or other guarantee or Lien given in connection with the Loan Documents;
- (d) rescission, termination or cancellation of the Loan Documents or any of the Facilities or the exercise of any similar right or remedy to make or enforce any claim under the Loan Documents; and
- (e) refusal to participate in the making of any Loan or the issuance of any Letter of Credit.

“Delayed Draw Tranche A Commitment” means, collectively, the OMX Delayed Draw Tranche A Commitment, the PHLX Delayed Draw Tranche A Commitment and the Nord Pool Delayed Draw Tranche A Commitment.

“DIFX Transaction Documents” means (i) the DIFX Transaction Agreement (the “DIFX Transaction Agreement” dated as of November 15, 2007 among the Borrower, Borse Dubai and Dubai International, (ii) and the stockholders’ agreement, technology license and marketing agreement and trademark license contemplated by, and substantially in the form attached as exhibits to, the DIFX Transaction Agreement.

“Disclosed Matters” means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06.

“Disqualified Equity Interests” means Equity Interests that (a) require the payment of any dividends (other than dividends payable solely in shares of Qualified Equity Interests), (b) mature or are mandatorily redeemable or subject to mandatory repurchase or redemption or repurchase at the option of the holders thereof, in whole or in part and whether upon the occurrence of any event, pursuant to a sinking fund obligation, on a fixed date or otherwise, prior to the date that is 180 days after the Tranche A Maturity Date or, if such Equity Interests are issued after the Borrower has obtained any Incremental Loans or while any Commitments from Additional Lenders to make Incremental Loans remain in effect, 180 days after the maturity date for such Incremental Loans, unless all such Incremental Loans have been repaid in full and all Commitments in respect thereof have been terminated (other than (i) upon payment in full of the Loan Document Obligations, reduction of the LC Exposure to zero and termination of the Commitments or (ii) upon a “change in control,” provided that any payment required pursuant to this clause (ii) is contractually subordinated in right of payment to the Loan Document Obligations on terms reasonably satisfactory to the Administrative Agent and such requirement is not applicable in more circumstances than pursuant to the change of control provisions in the Convertible Notes Documents or the New Convertible Notes Documents), (c) require the maintenance or achievement of any financial performance standards other than as a condition to the taking of specific actions or provide remedies to holders thereof (other than voting and management rights and increases in pay-in-kind dividends) or (d) are convertible or exchangeable, automatically or at the option of any holder thereof, into any Indebtedness, Equity Interests or other assets other than Qualified Equity Interests.

“Documentation Agent” means Wachovia Bank, National Association, in its capacity as documentation agent for the Facilities.

“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the Issuing Bank, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

“Dollars” or “\$” refers to lawful money of the United States of America.

“Dubai International” means Dubai International Financial Exchange Limited, a Dubai company.

“EMU Legislation” means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

“Environmental Laws” means all treaties, laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by or with any Governmental Authority, relating in any way to the environment, the preservation or reclamation of natural resources, the generation, management, Release or threatened Release of any Hazardous Material or to health and safety matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of medical monitoring, costs of environmental remediation or restoration, administrative oversight costs, consultants’ fees, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law or permit, license or approval issued thereunder, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Equivalents” means all securities convertible into or exchangeable for Equity Interests, and all warrants, options or other rights to purchase or subscribe for any Equity Interests, whether or not presently convertible, exchangeable or exercisable.

“Equity Interests” means shares, shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.



“ERISA Event” means (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived), (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived, (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan, (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“Euro” means the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

“Eurocurrency,” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Eurocurrency Rate.

“Eurocurrency Rate” means, for any Interest Period with respect to a Eurocurrency Loan, the rate per annum equal to the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for deposits in the relevant currency (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the “Eurocurrency Rate” for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in the relevant currency for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the Eurocurrency Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America’s London Branch (or other Bank of America branch or Affiliate) to major banks in the London or other offshore interbank market for such currency at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period.

“Event of Default” has the meaning assigned to such term in Article VII.

“Excess Cash Flow” means, for any fiscal year of the Borrower, the sum (without duplication) of:

(a) the consolidated net income (or loss) of the Borrower and the Subsidiaries for such fiscal year, adjusted to exclude any gains or losses attributable to Prepayment Events; plus

(b) depreciation, amortization and other non-cash charges or losses (including non-cash expenses with respect to the issuance of stock options and deferred income taxes) deducted in determining such consolidated net income (or loss) for such fiscal year; plus

(c) the sum of (i) the amount, if any, by which Net Working Capital decreased during such fiscal year (except as a result of the reclassification of items from short-term to long-term or vice-versa), (ii) the net amount, if any, by which the consolidated deferred revenues of the Borrower and the Subsidiaries increased during such fiscal year and (iii) the net amount, if any, by which the consolidated accrued long-term asset accounts of the Borrower and the Subsidiaries decreased during such fiscal year; minus

(d) the sum of (i) any non-cash gains included in determining such consolidated net income (or loss) for such fiscal year, (ii) the amount, if any, by which Net Working Capital increased during such fiscal year (except as a result of the reclassification of items from long-term to short-term or vice-versa), (iii) the net amount, if any, by which the consolidated deferred revenues of the Borrower and the Subsidiaries decreased during such fiscal year and (iv) the net amount, if any, by which the consolidated accrued long-term asset accounts of the Borrower and the Subsidiaries increased during such fiscal year; minus

(e) the sum of (i) Capital Expenditures made in cash for such fiscal year (except to the extent financed by incurring Long-Term Indebtedness (excluding Indebtedness in respect of the Revolving Loans), by issuing Equity Interests (other than to the Borrower or any Subsidiary), through the receipt of capital contributions (other than capital contributions made by the Borrower or any Subsidiary) or using the proceeds of any disposition of assets outside the ordinary course of business or other proceeds not included in Consolidated EBITDA) and (ii) cash consideration paid during such fiscal year to make the OMX Acquisition, the PHLX Acquisition, the Nord Pool Acquisition or any investment pursuant to subclause (ii), (iv), (viii), (ix), (xiii), (xiv), (xvi), (xviii) or (xxiii) of Section 6.04(a) (except, in each case, to the extent financed by incurring Long-Term Indebtedness (excluding Indebtedness in respect of the Revolving Loans), by issuing Equity Interests (other than to the Borrower or any Subsidiary), through the receipt of capital contributions (other than capital contributions made by the Borrower or any Subsidiary) or using the proceeds of any disposition of assets outside the ordinary course of business or other proceeds not included in Consolidated EBITDA); minus

(f) the aggregate principal amount of Long-Term Indebtedness repaid or prepaid by the Borrower and the Subsidiaries during such fiscal year, excluding (i) Indebtedness in respect of Revolving Loans and Letters of Credit or other revolving credit facilities

(unless there is a corresponding reduction in the aggregate Revolving Commitments or the commitments in respect of such other revolving credit facilities, as the case may be), (ii) Term Loans prepaid pursuant to Section 2.11(c) or (d) and (iii) repayments or prepayments of Long-Term Indebtedness financed (A) by incurring other Long-Term Indebtedness, to the extent that repayments or prepayments in respect of such other Long-Term Indebtedness would, pursuant to this clause (f), be deducted in determining Excess Cash Flow when made, (B) by issuing Equity Interests (other than to the Borrower or any Subsidiary), (C) through the receipt of capital contributions (other than capital contributions made by the Borrower or any Subsidiary) or (D) using the proceeds of any disposition of assets outside the ordinary course of business or other proceeds not included in Consolidated EBITDA; minus

(g) the aggregate amount of Restricted Payments made by the Borrower in cash during such fiscal year pursuant to clause (iii) of Section 6.08(a); minus

(h) the amount, determined in good faith by the Borrower, that would otherwise be included in Excess Cash Flow calculated in accordance with the foregoing that is attributable to or was invested by the Borrower and its Subsidiaries in Regulated Subsidiaries which cannot be distributed without resulting in material adverse legal or regulatory consequences.

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

“Exchange and Clearing Operations” means the business relating to exchange and clearing, depository and settlement operations conducted by OMX, Nord Pool or any of their Subsidiaries.

“Excluded Assets” means any asset of any Loan Party which (x) pursuant to the express terms of the Collateral Agreement is excluded from the Collateral or (y) is of a type with respect to which the Collateral Agreement provides the Loan Parties are not required to take any action in order to perfect the Collateral Agent’s security interest therein other than the filing of financing statements.

“Excluded Subsidiary” means (i) any Broker Dealer Subsidiary, (ii) any Subsidiary regulated as an insurance company, (iii) any trade reporting Subsidiary, (iv) any Subsidiary that is not permitted to provide a Guarantee of the Obligations pursuant to a Requirement of Law or any request of any Governmental Authority, (v) any not-for-profit Subsidiaries, (vi) BSE Clearing Corporation, Stock Clearing Corporation of Philadelphia, Inc. and any Subsidiary acquired after the Closing Date, in each case, for so long as such Subsidiary is registered as a clearing agency with the SEC and (vii) at the option of the Borrower, any Subsidiary for so long as such Subsidiary is not a Material Subsidiary.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in

which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction described in clause (a) above and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.19(b)), any U.S. federal withholding tax that (i) is in effect and would apply to amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to any withholding tax pursuant to Section 2.17(a), or (ii) is attributable to such Foreign Lender's failure to comply with Section 2.17(e).

“Facilities” means the credit and loan facilities provided for in this Agreement.

“Fair Labor Standards Act” means the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“Fee Letter” means the third amended and restated fee letter, dated as of November 6, 2007, by and among the Borrower, Bank of America, N.A., JPMorgan Chase Bank, N.A. and the Arrangers.

“Financial Officer” means the chief financial officer, principal accounting officer, treasurer or controller of the Borrower.

“Foreign Lender” means any Lender that is not a “United States person” as defined in Section 7701(a)(30) of the Code.

“Foreign Pledge Agreement” means a pledge or charge agreement with respect to the Collateral that constitutes Equity Interests of a Foreign Subsidiary, in form and substance reasonably satisfactory to the Administrative Agent.

“Foreign Subsidiary” means (a) any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America, any State thereof or the District of Columbia, (b) any Subsidiary if (i) for United States federal income tax purposes, substantially all of the assets of such Subsidiary consist of stock of “controlled foreign corporations,” as defined in Section 957(a) of the Code (“CFC”) and (ii) such Subsidiary does not have any material assets or Indebtedness other than the stock of its Subsidiaries and any intercompany Indebtedness owed to or from the Borrower or another Subsidiary and does not engage in any operations other than the ownership of such assets and activities incidental thereto and (c) any Subsidiary of a CFC.

“GAAP” means generally accepted accounting principles in the United States of America; provided that the Borrower may make a one-time election to switch to IFRS, if permitted to do so by the SEC in the Borrower’s filings with the SEC, and following such election and the notification in writing to the Administrative Agent by the Borrower thereof, “GAAP” shall mean IFRS. After such election, the Borrower cannot subsequently elect to report under generally accepted accounting principles in the United States of America.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Granting Lender” has the meaning assigned to such term in Section 9.04(e).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation, provided that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Hazardous Materials” means all explosive or radioactive substances, materials or wastes and all hazardous or toxic substances, materials, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances, materials or wastes of any nature regulated pursuant to any Environmental Law.

“Honor Date” has the meaning set forth in Section 2.05(a)(x).

“IFRS” means the International Financial Reporting Standards issued and/or adopted by the International Accounting Standards Board, as in effect from time to time.

“Incremental Facility Amendment” has the meaning assigned to such term in Section 2.20(d).

“Incremental Facility Closing Date” has the meaning assigned to such term in Section 2.20(d).

“Incremental Revolving Commitments” has the meaning assigned to such term in Section 2.20(a).

“Incremental Term Loans” has the meaning assigned to such term in Section 2.20(a).

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding trade accounts payable and other accrued obligations, in each case incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. Notwithstanding the foregoing, in connection with any Permitted Acquisition, the term “Indebtedness” shall not include contingent post-closing purchase price adjustments or earn-outs to which the seller in such Permitted Acquisition may become entitled. For the avoidance of doubt, Qualified Equity Interests shall not be deemed Indebtedness.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Indemnitee” has the meaning set forth in Section 9.03(b).

“Information” has the meaning set forth in Section 9.12.

“Information Memorandum” means the Confidential Information Memorandum to be prepared for the syndication of the Loans relating to the Borrower and the Transactions.

“Initial Tranche A Commitment” means, with respect to each Lender, the commitment, if any, of such Lender to make a Tranche A Term Loan hereunder pursuant to Section 2.01(a), expressed as an amount representing the maximum principal amount of the Tranche A Term Loans to be made by such Lender pursuant to Section 2.01(a), as such commitment may be (a) reduced from time to time pursuant to Section 2.08 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender’s Initial Tranche A Commitment is set forth on Schedule 2.01. The initial aggregate amount of the Lenders’ Initial Tranche A Commitments is \$625,000,000.

“Interest Coverage Ratio” means, on any date, the ratio of (a) Consolidated EBITDA to (b) Consolidated Cash Interest Expense for the period of four consecutive fiscal quarters of the Borrower ended on such date (or, if such date is not the last day of a fiscal quarter, ended on the last day of the fiscal quarter of the Borrower most-recently ended prior to such date for which financial statements have been or were required to be delivered pursuant to clause (a) or (b) of Section 5.01).

“Interest Payment Date” means (a) with respect to any ABR Loan (including a Swingline Loan), the last Business Day of each March, June, September and December and the Maturity Date of such Loan and (b) with respect to any Eurocurrency Loan, the last Business Day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurocurrency Borrowing with an Interest Period of more than three months’ duration, each Business Day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period and the Maturity Date of such Loan.

“Interest Period” means, with respect to any Eurocurrency Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter (or nine or twelve months thereafter if, at the time of the relevant Borrowing, all Lenders participating therein agree in writing to make an interest period of such duration available), as the Borrower may elect, provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, (c) notwithstanding any of the foregoing, until the earlier of (i) the date that is three months after the Closing Date and (ii) the completion of the initial syndication of the Commitments and Loans hereunder (as determined by the Administrative Agent), Interest Periods with respect to any Eurodollar Borrowing shall be a period agreed upon by the Administrative Agent and the Borrower and (d) no Interest Period for any Borrowing shall extend past the Maturity Date for the Loans included in such Borrowing. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means, with respect to any Letter of Credit, the Letter of Credit Application and any other document, agreement and instrument entered into by the Issuing Bank and the Borrower (or any Subsidiary) or in favor of the Issuing Bank and relating to such Letter of Credit.

“Issuing Bank” means Bank of America, in its capacity as the issuer of Letters of Credit hereunder, and its successors in such capacity approved by the Borrower and the Administrative Agent. The Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“Joint Bookrunning Managers” means Banc of America Securities LLC and J.P. Morgan Securities Inc., in their capacities as joint bookrunning managers.

“Judgment Currency” has the meaning assigned to such term by Section 9.17.

“LC Advance” means, with respect to each Revolving Lender, such Lender’s funding of its participation in any LC Borrowing in accordance with its Applicable Percentage.

“LC Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed by the Borrower on the date when made or refinanced as a Revolving Loan. All LC Borrowings shall be denominated in Dollars.

“LC Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“LC Disbursement” means a payment made by the Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn Outstanding Amount of all outstanding Letters of Credit at such time and (b) the aggregate Outstanding Amount of all LC Borrowings at such time. The LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate LC Exposure at such time.

“Lenders” means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to Section 9.04, other than any such Person that ceases to be a party hereto pursuant to Section 9.04. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender.

“Letter of Credit” means any standby letter of credit issued pursuant to this Agreement.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the Issuing Bank.

“Leverage Ratio” means as of any date, the ratio of (a) Total Indebtedness as of such date minus the lesser of (i) cash and cash equivalents (determined in accordance with GAAP) of the Borrower and the Subsidiaries, other than cash and cash equivalents not readily available for use by the Borrower and the Subsidiaries in their discretion (including customer-segregated cash and cash equivalents and cash and cash equivalents required by applicable law or regulatory requirement to be maintained as such by the Borrower or any Subsidiary), and (ii) \$150,000,000 (provided that for any determination on or prior to November 1, 2008, such



\$150,000,000 limitation shall not apply to any proceeds of the Tranche A Term Loans made pursuant to the Nord Pool Delayed Draw Tranche A Commitments in the event that such Tranche A Term Loans are borrowed prior to the consummation of the Nord Pool Acquisition), to (b) Consolidated EBITDA for the period of four consecutive fiscal quarters of the Borrower ended on such date (or, if such date is not the last day of a fiscal quarter, ended on the last day of the fiscal quarter of the Borrower most recently ended prior to such date for which financial statements have been delivered pursuant to Section 5.01).

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Loan Document Obligations” has the meaning assigned to such term in the Collateral Agreement.

“Loan Documents” means this Agreement, each Issuer Document, any Incremental Facility Amendment, the Collateral Agreement and the other Security Documents and, solely for purposes of clause (e) of Article VII, the confidential Third Amended and Restated Bank Fee Letter dated November 6, 2007 among the Borrower, Banc of America Securities LLC, Bank of America, N.A., J.P. Morgan Securities Inc. and JPMorgan Chase Bank, N.A.

“Loan Parties” means the Borrower and the Subsidiary Loan Parties.

“Loans” means the loans made by the Lenders to the Borrower pursuant to this Agreement.

“Long-Term Indebtedness” means any Indebtedness (excluding Indebtedness permitted by Section 6.01(b)(iv)) that, in accordance with GAAP, constitutes (or, when incurred, constituted) a long-term liability.

“Major Event of Default” shall mean an Event of Default under clauses (a), (h) (with respect to the Borrower only), (i) (with respect to the Borrower only) or (r) of Article VII.

“Mandatory Cost” means, with respect to any period, the percentage rate per annum determined in accordance with Schedule 1.01.

“Margin Stock” has the meaning assigned thereto in Regulation U of the Board.

“Material Adverse Effect” means a material adverse effect on (a) the business, operations, properties or financial condition of the Borrower and the Subsidiaries, taken as a whole, (b) the ability of any Loan Party to perform any of its material obligations under any Loan Document or (c) the rights of or remedies available to the Lenders under the Loan Documents, taken as a whole.

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the

Borrower and the Subsidiaries in an aggregate principal amount exceeding \$30,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Material Subsidiary” means, at any date of determination, each of the Borrower’s Subsidiaries (i) which the Borrower has elected to treat as a Material Subsidiary or (ii) (a) whose total assets (on a consolidated basis with its subsidiaries) at the last day of the relevant fiscal year (individually or in the aggregate) were equal to or greater than 2.5% of the consolidated total assets of the Borrower and the Subsidiaries at such date or (b) whose revenues (on a consolidated basis with its subsidiaries) for the most recently ended fiscal year for which financial statements have been delivered pursuant to Section 5.01(a) (individually or in the aggregate) are equal to or greater than 2.5% of the consolidated revenues of the Borrower and the Subsidiaries for such fiscal year; provided that at no time shall the total consolidated assets or total consolidated revenues of all Subsidiaries that are not Material Subsidiaries in reliance on clause (ii) above exceed, at such time, 2.5% of the consolidated total assets or 2.5% of the consolidated total revenues, respectively, of the Borrower and its Subsidiaries and if either such aggregate threshold is exceeded then the Borrower shall designate a sufficient number of Subsidiaries which would not constitute Material Subsidiaries under clause (ii) above as Material Subsidiaries (and comply with the Collateral and Guarantee Requirement with respect thereto) such that neither such aggregate threshold is exceeded.

“Maturity Date” shall mean (a) with respect to Loans and Letters of Credit made pursuant to the Revolving Commitments or the Swingline Commitment, the Revolving Maturity Date, (b) with respect to Tranche A Term Loans, the Tranche A Maturity Date and (c) with respect to Incremental Term Loans, the maturity date with respect thereto in the applicable Incremental Facility Amendment.

“Maximum Rate” has the meaning set forth in Section 9.13.

“Moody’s” means Moody’s Investors Service, Inc.

“Mortgage” means a mortgage, deed of trust, assignment of leases and rents, leasehold mortgage or other security document granting a Lien on any Mortgaged Property to secure the Obligations. Each Mortgage shall be reasonably satisfactory in form and substance to the Administrative Agent.

“Mortgaged Property” means each parcel of real property and the improvements thereto owned by a Loan Party with respect to which a Mortgage is granted pursuant to Section 5.12 or 5.13.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Proceeds” means, with respect to any event, (a) the cash proceeds received in respect of such event, including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note

or installment receivable or purchase price adjustment or earn-out, but excluding any interest payments, but only as and when received), (ii) in the case of a casualty, insurance proceeds, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, minus (b) the sum of (i) all customary fees and out-of-pocket expenses paid by the Borrower and the Subsidiaries to third parties (other than Affiliates) in connection with such event, (ii) in the case of a sale, transfer or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments that are permitted hereunder and are made by the Borrower and the Subsidiaries as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, and (iii) the amount of all taxes paid (or reasonably estimated to be payable) by the Borrower and the Subsidiaries, and the amount of any reserves established by the Borrower and the Subsidiaries to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer), provided that any reduction at any time in the amount of any such reserves (other than as a result of payments made in respect thereof) shall be deemed to constitute the receipt by the Borrower at such time of Net Proceeds in the amount of such reduction. Without limiting the generality of the foregoing, proceeds received in any Prepayment Event of the type described in clause (a) or (b) of the definition of Prepayment Event with respect to any Regulated Subsidiary shall not constitute Net Proceeds if and to the extent that at the time the related prepayment of Loans pursuant to Section 2.11 would be required to be made by the Borrower in good faith believes that the distribution of such proceeds to the Borrower would result in the capital of such Regulated Subsidiary being below the minimum capital requirement set forth by an applicable Governmental Authority for such Regulated Subsidiary.

“Net Working Capital” means, at any date, (a) the consolidated current assets of the Borrower and the Subsidiaries as of such date (excluding cash (including proceeds from the exercise of stock options) or cash equivalents, Permitted Investments and receivables representing (i) tape fees payable to the Borrower or any Subsidiary under the Borrower’s Unlisted Trading Privileges Plan or (ii) transaction fees payable to the Borrower or any Subsidiary under Exchange Act Rule 31(a)) minus (b) the consolidated current liabilities of the Borrower and the Subsidiaries as of such date (excluding deferred income tax liabilities, current liabilities in respect of Indebtedness and payables representing (i) tape fees payable by the Borrower or a Subsidiary under the Borrower’s Unlisted Trading Privileges Plan or (ii) transaction fees payable by the Borrower or any Subsidiary under Exchange Act Rule 31(a)). Net Working Capital at any date may be a positive or negative number. Net Working Capital increases when it becomes more positive or less negative and decreases when it becomes less positive or more negative.

“New Convertible Notes” means up to \$425,000,000 (or up to \$475,000,000 if the initial purchasers’ over-allotment option is exercised) aggregate principal amount of 2.5% Convertible Senior Notes due August 15, 2013 of the Borrower issued on February 26, 2008.

“New Convertible Notes Documents” means the New Convertible Notes Indenture and all side letters, instruments, agreements and other documents evidencing or governing the New Convertible Notes, providing for any right in respect thereof, affecting the terms thereof or entered into in connection therewith and all schedules, exhibits and annexes to each of the foregoing.

“New Convertible Notes Indenture” means the Indenture dated as of February 26, 2008, between the Borrower and The Bank of New York, as trustee, in respect of the New Convertible Notes.

“Non-ABR Lender” means any Lender that does not extend credit based on a U.S. “prime rate” or Federal Funds Rate in the ordinary course of its business.

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(c).

“Nonrenewal Notice Date” has the meaning set forth in Section 2.05(b)(ii).

“Nord Pool” means Nord Pool ASA, a public limited company incorporated and existing under the laws of Norway.

“Nord Pool Acquisition” means the acquisition by OMX of Nord Pool International, Nord Pool Clearing ASA and Nord Pool Consulting AS pursuant to the terms and conditions of the Nord Pool Acquisition Agreement.

“Nord Pool Acquisition Agreement” means the Frame Agreement, dated as of December 19, 2007, between Nord Pool and OMX.

“Nord Pool Delayed Draw Availability Period” means the period following the Closing Date to the earlier of (i) August 27, 2008 and (ii) the date of termination of the Nord Pool Delayed Draw Tranche A Commitments pursuant to Article VII.

“Nord Pool Delayed Draw Tranche A Commitment” means, with respect to each Lender, the commitment, if any, of such Lender to make a Tranche A Term Loan hereunder pursuant to Section 2.01(e), expressed as an amount representing the maximum principal amount of the Tranche A Term Loans to be made by such Lender pursuant to Section 2.01(e), as such commitment may be (a) reduced from time to time pursuant to Section 2.08 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender’s Nord Pool Delayed Draw Tranche A Commitment is set forth on Schedule 2.01. The initial aggregate amount of the Lenders’ Nord Pool Delayed Draw Tranche A Commitments is \$300,000,000.

“Nord Pool Funding Date” means the date on which the Tranche A Term Loans are borrowed pursuant to Section 2.01(e).

“Nord Pool International” means Nord Pool International AS, a Norwegian private limited company to be established in accordance with the Nord Pool Acquisition Agreement as a subsidiary of Nord Pool.

“Nord Pool Parties” means Nord Pool and its subsidiaries (other than any Excluded Subsidiary).

“Nord Pool Seller Note” means the note to be provided by OMX or a subsidiary of OMX to Nord Pool in an aggregate amount of up to 450,000,000 Norwegian Kroner in connection with the Nord Pool Acquisition.

“Norwegian Kroner” means the lawful currency of the Kingdom of Norway.

“Obligations” has the meaning assigned to such term in the Collateral Agreement.

“OMX” means OMX AB (publ), a public limited liability company, registered with the Swedish Companies Registration Office with corporate identity number 556243-8001.

“OMX Acquisition” shall mean the acquisition by the Borrower of not less than 66-2/3% of the outstanding Shares of OMX from Borse Dubai pursuant to the OMX Transaction Agreement.

“OMX Delayed Draw Availability Period” means the period following the Closing Date to the earlier of (i) August 27, 2008 and (ii) the date of termination of the OMX Delayed Draw Tranche A Commitments of the Tranche A Term Lenders pursuant to Article VII.

“OMX Delayed Draw Tranche A Commitment” means, with respect to each Lender, the commitment, if any, of such Lender to make a Tranche A Term Loan hereunder pursuant to Section 2.01(b), expressed as an amount representing the maximum principal amount of the Tranche A Term Loans to be made by such Lender hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender’s OMX Delayed Draw Tranche A Commitment is set forth on Schedule 2.01. The initial aggregate amount of the Lenders’ OMX Delayed Draw Tranche A Commitments is \$425,000,000.

“OMX Group” means OMX and its subsidiaries (provided such subsidiaries were subsidiaries of OMX on the Closing Date).

“OMX Refinancing” means the repayment in full of all of the outstanding Indebtedness for borrowed money of the OMX Group other than Indebtedness permitted by Section 6.01.

“OMX Shares” means any shares of capital stock of OMX.

“OMX Transaction Agreement” means the OMX Transaction Agreement dated as of November 15, 2007, among The Nasdaq Stock Market, Inc., Borse Dubai and BD Stockholm AB.

“Organizational Documents” means, with respect to any Person, the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person.

“Other Taxes” means any and all present or future recording, stamp, documentary, excise, transfer, sales, property or similar Taxes, charges or levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

“Outstanding Amount” means (i) with respect to Loans on any date, the Dollar Equivalent of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Loans occurring on such date; and (ii) with respect to any Letter of Credit or LC Disbursement on any date, the Dollar Equivalent of the aggregate outstanding amount of such Letter of Credit or LC Disbursement on such date after giving effect to any issuance or amendment of any Letter of Credit occurring on such date, any drawing under any Letter of Credit occurring on such date and any other changes in the aggregate amount of the LC Exposure as of such date, including as a result of any reimbursements by the Borrower of LC Disbursements.

“Overnight Rate” means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent, the Issuing Bank, or the Swingline Lender, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternative Currency, the rate of interest per annum at which overnight deposits in the applicable Alternative Currency, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of Bank of America in the applicable offshore interbank market for such currency to major banks in such interbank market.

“Parent Convertible Note Guarantee” has the meaning set forth in Section 6.01(b)(v).

“Participant” has the meaning assigned to such term in Section 9.04(c).

“Participating Member State” means any member state of the European Communities that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Perfection Certificate” means a certificate substantially in the form of Exhibit E.

“Permitted Acquisition” means any acquisition by the Borrower or a Subsidiary (and including any investments by the Borrower or any Subsidiary in any other Subsidiary for purposes of financing such acquisition) of all the outstanding Equity Interests (other than (a) directors’ qualifying shares or (b) any minority Equity Interests of a Person, to the extent that (i) the Borrower has the right to acquire such shares pursuant to a short form merger or substantially similar procedure without the consent of the holders thereof and (ii) the Borrower promptly commences proceedings to acquire such Equity Interests) in, or all or substantially all the assets of, or all or substantially all the assets constituting a division or line of business of, a Person if:

(a) at the time contractually binding obligations are incurred, no Default has occurred and is continuing or would result therefrom,

(b) such acquisition and all transactions related thereto are consummated in accordance with applicable laws,

(c) all actions required to be taken with respect to such acquired or newly formed Subsidiary or such acquired assets under Sections 5.12 and 5.13 shall have been taken within the time periods required by such Sections,

(d) the Borrower shall be in compliance, on a Pro Forma Basis, with the covenants set forth in Section 6.12 and Section 6.13 as of and for the last day of the most recently ended fiscal quarter of the Borrower for which financial statements have been or were required to be delivered pursuant to paragraph (a) or (b) of Section 5.01;

(e) after giving effect to such acquisition, there shall be no less than \$50,000,000 of aggregate unused and available Revolving Commitments,

(f) the business of such Person or such assets (other than assets to be retired or disposed of), as the case may be, constitutes a business permitted by Section 6.03(b), and

(g) the Borrower has delivered to the Administrative Agent a certificate of a Financial Officer to the effect set forth in clauses (a) through (f) above, together with all relevant financial information for the Person or assets to be acquired and setting forth reasonably detailed calculations demonstrating compliance with clause (d) above (which calculations shall be accompanied by a reasonably detailed calculation of Consolidated EBITDA and Consolidated Cash Interest Expense for the relevant period).

“Permitted Encumbrances” means:

(a) Liens imposed by law for taxes, assessments or other governmental charges that are not yet due or are being contested in compliance with Section 5.05;

(b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, landlords’ and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.05;

(c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, pension liabilities, unemployment insurance and other social security laws or regulations or other insurance-related obligations (including, without limitation, pledges or deposits securing liability to insurance carriers under insurance or self-insurance arrangements);

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII;

(f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary;

(g) Liens arising from Permitted Investments described in clause (h) of the definition of the term "Permitted Investments";

(h) Liens arising in connection with ordinary course non-speculative hedging arrangements and bankers' Liens granted in the ordinary course of business relating to the operation of bank accounts maintained by the Borrower or its Subsidiaries or as part of letter of credit transactions and Liens granted in customary escrow arrangements on sales and acquisitions permitted by this Agreement;

(i) any netting or setoff arrangement entered into by the Borrower or any of its Subsidiaries in the ordinary course of its banking arrangements or in connection with the cash pooling activities of the Borrower and its Subsidiaries entered into in the ordinary course of business; and

(j) customary Liens over goods, inventory or documents of title where the shipment or storage price is financed by a documentary credit;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

"Permitted Investments" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) any investment in marketable debt obligations issued or guaranteed by the government of the United Kingdom, any member state of the European Economic Area or any Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;

(c) any investment in marketable debt obligations issued or guaranteed by the government of the United Kingdom, any member state of the European Economic Area or any Participating Member State or by an instrumentality or agency of any of them or by a person whose indebtedness is rated not less than A by S&P or A2 by Moody's (or equivalent from an internationally recognized credit rating agency) maturing within one year from the date of acquisition thereof;



(d) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(e) investments in commercial paper not convertible or exchangeable to any other security (i) for which a recognized trading market exists, (ii) issued by an issuer incorporated in the United Kingdom, any member state of the European Economic Area or any Participating Member State, (iii) which matures within one year after the relevant date of calculation and (iv) which has a credit rating of either A-1 or higher by S&P or Fitch Ratings Ltd or P-1 or higher by Moody's, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;

(f) investments in certificates of deposit, banker's acceptances and time or demand deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000 or any other Acceptable Bank;

(g) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);

(h) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(i) investments in "money market funds" within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (a) through (d) above;

(j) any investment accessible within 60 days in money market funds which have a credit rating of either A-1 or higher by S&P or Fitch Rating Ltd or P-1 or higher by Moody's and which invest substantially all their assets in securities of the types described in clauses (a) through (d) above;

(k) investments that comply with the Investment Policy set forth on Schedule 1.04; and

(l) in the case of any Foreign Subsidiary, other high quality investments similar in tenure and credit quality to those described in clauses (a) through (k) above that are customarily used by companies in the jurisdictions in which such Foreign Subsidiary operates for short term cash management purposes.

"Person" means any natural person or entity, including any corporation, limited liability company, trust, joint venture, association, company, partnership or Governmental Authority or other entity.

“PHLX” means Philadelphia Stock Exchange, Inc., a Delaware corporation.

“PHLX Acquisition” shall mean the merger of PHLX with and into Pinnacle Merger Corporation, a Delaware corporation and Wholly-Owned Subsidiary of the Borrower.

“PHLX Acquisition Agreement” shall mean the merger agreement, dated as of November 6, 2007, by and among, the Borrower, Pinnacle Merger Corporation, PHLX and Citadel Derivatives Group LLC.

“PHLX Delayed Draw Availability Period” means the period following the Closing Date to the earlier of (i) July 31, 2008 and (ii) the date of termination of the PHLX Delayed Draw Tranche A Commitments pursuant to Article VII.

“PHLX Delayed Draw Tranche A Commitment” means, with respect to each Lender, the commitment, if any, of such Lender to make a Tranche A Term Loan hereunder pursuant to Section 2.01(c), expressed as an amount representing the maximum principal amount of the Tranche A Term Loans to be made by such Lender pursuant to Section 2.01(c), as such commitment may be (a) reduced from time to time pursuant to Section 2.08 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender’s PHLX Delayed Draw Tranche A Commitment is set forth on Schedule 2.01. The initial aggregate amount of the Lenders’ PHLX Delayed Draw Tranche A Commitments is \$650,000,000.

“PHLX Funding Date” means the date on which the Tranche A Term Loans are borrowed pursuant to Section 2.01(c).

“PHLX Parties” means PHLX and its subsidiaries (other than any Excluded Subsidiary).

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Platform” has the meaning set forth in Section 5.01.

“Prepayment Event” means:

(a) any sale, transfer or other disposition (including by way of merger or consolidation) of any property or asset of the Borrower or any Subsidiary, other than (i) dispositions permitted by clauses (a), (b), (c), (e), (f), (g) and (h) of Section 6.05 and (ii) other dispositions resulting in aggregate Net Proceeds not exceeding \$10,000,000 during any fiscal year of the Borrower;

(b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of the Borrower or any Subsidiary with a fair market value immediately prior to such event equal to or greater than \$1,000,000; or

(c) the incurrence by the Borrower or any Subsidiary of any Indebtedness, other than Indebtedness permitted under Section 6.01 or permitted by the Required Lenders pursuant to Section 9.02.

“Pro Forma Basis” means, with respect to the calculation of the Leverage Ratio or the Interest Coverage Ratio, that such calculation shall give pro forma effect to all Restricted Payments, creation or incurrence of Liens, Permitted Acquisitions or OMX Acquisition, the PHLX Acquisition, the BSX Acquisition or the Nord Pool Acquisition, all issuances, incurrences or assumptions and all repayments of Indebtedness (with any such Indebtedness being deemed to be amortized over the applicable testing period in accordance with its terms) and all sales, transfers or other dispositions of any material assets outside the ordinary course of business that have occurred since the beginning of the four consecutive fiscal quarter period of the Borrower most-recently ended on or prior to such date for which financial statements have been or were required to be delivered pursuant to paragraph (a) or (b) of Section 5.01 as if they occurred on the first day of such four consecutive fiscal quarter period (including cost savings resulting from headcount reductions, facility closings or similar restructurings to the extent such cost savings (a) would be permitted to be reflected in pro forma financial information complying with the requirements of GAAP and Article XI of Regulation S-X under the Securities Act of 1933, as amended, as interpreted by the Staff of the SEC, and as certified by a Financial Officer or (b) have been realized or for which the steps necessary for realization have been taken, and as certified by a Financial Officer, provided that, for purposes of giving effect to the OMX Acquisition, the PHLX Acquisition, any Permitted Acquisition, the BSX Acquisition or the Nord Pool Acquisition, the Borrower may rely on preliminary good faith estimates of purchase price allocation and preliminary good faith estimates of the fair value of assets acquired and liabilities assumed in connection therewith, pending the finalization of appraisals and other valuation studies.

“Proposed Change” has the meaning assigned to such term in Section 9.02(b).

“Public Lender” has the meaning set forth in Section 5.01.

“Qualified Debt” means Indebtedness of the Borrower or any Subsidiary that (a) does not require any scheduled payment of principal (including pursuant to a sinking fund obligation) or mandatory redemption or redemption at the option of the holders thereof (except for redemptions in respect of asset sales and changes in control on terms that are determined in good faith by senior management of the Borrower to be market terms on the date of issuance and any redemption with respect to which the Borrower has the option to satisfy its obligations thereunder solely through the issuance of Qualified Equity Interests) prior to the date that is 180 days after the Tranche A Maturity Date or, if such Indebtedness is incurred after the Borrower has obtained any Incremental Loans or while any Commitments from Additional Lenders to make Incremental Loans remain in effect, 180 days after the maturity date for such Incremental Loans, unless all such Incremental Loans have been repaid in full and all Commitments in respect thereof have been terminated, (b) contains covenants and events of default that are determined in good faith by senior management of the Borrower to be market terms on the date of issuance, provided that such covenants and events of default are not (taken as a whole) more restrictive

than the covenants and events of default contained in this Agreement (as determined in good faith by senior management of the Borrower) and do not require the maintenance or achievement of any financial performance standards other than as a condition to the taking of specified actions, (c) bears interest at a market rate of interest on the date of issuance of such Indebtedness as determined by the Borrower's board of directors in good faith and (d) at the option of the Borrower, may contain market optional redemption provisions.

"Qualified Equity Interests" means Equity Interests of the Borrower other than Disqualified Equity Interests.

"Register" has the meaning assigned to such term in Section 9.04(b).

"Regulated Subsidiary" means (i) any Broker Dealer Subsidiary, (ii) any Subsidiary regulated as an insurance company, and (iii) any Subsidiary whose dividends may be restricted, other activities undertaken by such Subsidiary may be limited or other regulatory actions with respect to such Subsidiary may be taken, in each case by applicable Governmental Authorities in the event that such Subsidiary does not maintain capital at the level required by applicable Governmental Authorities.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents, trustees and advisors of such Person and such Person's Affiliates.

"Release" means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within or upon any building, structure, facility or fixture.

"Required Lenders" means, at any time, Lenders having Revolving Exposures, outstanding Term Loans and unused Commitments (other than Swingline Commitments), collectively, representing more than 50% of the aggregate Revolving Exposures, outstanding Term Loans and unused Commitments (other than Swingline Commitments) at such time.

"Required Percentage" means, with respect to any fiscal year of the Borrower, (a) 50%, if the Leverage Ratio as of the last day of such fiscal year is greater than 2.00:1.00, (b) 25%, if the Leverage Ratio as of the last day of such fiscal year is greater than 1.25:1.00 but less than or equal to 2.00:1.00, and (c) 0%, if the Leverage Ratio as of the last day of such fiscal year is less than or equal to 1.25:1.00.

"Required Revolving Lenders" means, at any time, Revolving Lenders having outstanding Revolving Commitments (or, if the Revolving Commitments have terminated, the Revolving Exposures), collectively, representing more than 50% of the aggregate outstanding Revolving Commitments (or, if the Revolving Commitments have terminated, the Revolving Exposures) at such time.

"Requirement of Law" means, with respect to any Person, any statute, law, treaty, rule, regulation, order, decree, writ, injunction or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Responsible Officer” means the chief executive officer, president, vice president, chief financial officer, treasurer or assistant treasurer or other similar officer or Person performing similar functions of a Loan Party and, as to any document delivered on the Effective Date, any secretary or assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests in the Borrower or any Subsidiary or any option, warrant or other right to acquire any such Equity Interests in the Borrower or any Subsidiary, or any other payment (including any payment under any Swap Agreement) that has a substantially similar effect to any of the foregoing. For the avoidance of doubt, payments with respect to Indebtedness convertible into Equity Interests shall not be deemed to be Restricted Payments (but shall be subject to Section 6.08(b)).

“Revaluation Date” means (a) with respect to any Loan, each of the following: (i) each date of a Borrowing of a Eurocurrency Loan denominated in an Alternative Currency, (ii) each date of a continuation of a Eurocurrency Loan denominated in an Alternative Currency pursuant to Section 2.03 and (iii) such additional dates as the Administrative Agent shall reasonably determine or the Required Revolving Lenders shall reasonably require; and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in an Alternative Currency, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof (solely with respect to the increased amount), (iii) each date of any payment by the Issuing Bank under any Letter of Credit denominated in an Alternative Currency and (iv) such additional dates as the Administrative Agent or the Issuing Bank shall reasonably determine or the Required Revolving Lenders shall reasonably require.

“Revolving Availability Period” means the period from and including the Closing Date to but excluding the earlier of the Revolving Maturity Date and the date of termination of the Revolving Commitments.

“Revolving Commitment” means, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum possible aggregate amount of such Lender’s Revolving Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.08 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04 or pursuant to any Incremental Facility Amendment. The initial amount of each Lender’s Revolving Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Revolving Commitment, as the case may be. The initial aggregate amount of the Lenders’ Revolving Commitments is \$75,000,000.

“Revolving Exposure” means, with respect to any Lender at any time, the sum of the Outstanding Amount of such Lender’s Revolving Loans and its LC Exposure and Swingline Exposure at such time.

“Revolving Lender” means a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

“Revolving Loan” means a Loan made pursuant to clause (e) of Section 2.01.

“Revolving Maturity Date” means February 27, 2013.

“S&P” means Standard & Poor’s Ratings Group, Inc.

“Same Day Funds” means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent or the Issuing Bank, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

“SEC” means the Securities and Exchange Commission or any Governmental Authority succeeding to any of its principal functions.

“Security Documents” means the Collateral Agreement, the Foreign Pledge Agreements, the Mortgages and each other security agreement or other instrument or document executed and delivered pursuant to Section 5.12 or 5.13 to secure the Obligations.

“Series A Convertible Notes” means any of the \$205,000,000 original aggregate principal amount of 3.75% Series A Convertible Notes due 2012 initially issued pursuant to the Convertible Notes Indenture that are outstanding on the Closing Date.

“Series B Convertible Notes” means any of the \$240,000,000 original aggregate principal amount of 3.75% Series B Convertible Notes due 2012 initially issued pursuant to the Convertible Notes Indenture that are outstanding on the Closing Date.

“SFSA” means the Swedish Financial Supervisory Authority (*Sw: Finansinspektionen*).

“Specified Debt Documents” means (a) the Convertible Notes Documents, (b) the New Convertible Notes Documents and (c) the indenture or indentures under which any Qualified Debt or Specified Refinancing Indebtedness is issued, all side letters, instruments, agreements and other documents evidencing or governing any Qualified Debt or Specified Refinancing Indebtedness, providing for any Guarantee or other right in respect thereof, affecting the terms of the foregoing or entered into in connection therewith and all schedules, exhibits and annexes to each of the foregoing.

“Specified Indebtedness” means the Convertible Notes, any Qualified Debt, the New Convertible Notes and Specified Refinancing Indebtedness.

“Specified Refinancing Indebtedness” means any Indebtedness issued to refinance, redeem or repurchase all or any portion of the Convertible Notes, any Qualified Debt, the New Convertible Notes, including successive refinancings.

“Spot Rate” for a currency means the rate determined by the Administrative Agent or the Issuing Bank, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or the Issuing Bank may obtain such spot rate from another financial institution designated by the Administrative Agent or the Issuing Bank if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that the Issuing Bank may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

“SPV” has the meaning assigned to such term in Section 9.04(e).

“Squeeze-Out Procedure” means the procedure set out in Chapter 22 of the Swedish Companies Act (2005:551) (and including appointment of arbitrators and the composition of an arbitration tribunal) for the compulsory acquisition of any share, warrant and/or convertibles in OMX that have not been acquired in the OMX Acquisition.

“Sterling” and “£” mean the lawful currency of the United Kingdom.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any subsidiary of the Borrower.

“Subsidiary Loan Party” means any Subsidiary other than (i) a Foreign Subsidiary, (ii) the Subsidiaries set forth on Schedule 1.06 and (iii) any Excluded Subsidiary.

“Swap Agreement” means any agreement with respect to any swap, forward, future, spot currency purchase, hedging or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial

or pricing risk or value or any similar transaction or any combination of these transactions, provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

“Swedish Kronor” means the lawful currency of the Kingdom of Sweden.

“Swingline Commitment” means the commitment of the Swingline Lender to make Swingline Loans.

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Lender at any time shall be its Applicable Percentage of the Swingline Exposure at such time.

“Swingline Lender” means Bank of America, in its capacity as lender of Swingline Loans hereunder.

“Swingline Loan” means a Loan made pursuant to Section 2.04.

“Swingline Loan Notice” means a request by the Borrower for a Borrowing of Swingline Loans in accordance with Section 2.03 which, if in writing, shall be in the form of Exhibit B-2.

“Syndication Agent” means JPMorgan Chase Bank, N.A., in its capacity as syndication agent.

“TARGET Day” means any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) payment system (or, if such payment system ceases to be operative, such other payment system (if any) determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings now or hereafter imposed, levied, collected or withheld by any Governmental Authority, and any interest, penalties or additions to tax related thereto.

“Term Loans” mean the Tranche A Term Loans and any Incremental Term Loans.

“Total Indebtedness” means, without duplication, as of any date, the aggregate principal amount of Indebtedness of the Borrower and the Subsidiaries included as a liability on the balance sheet of the Borrower and its Subsidiaries, determined on a consolidated basis plus any guarantee of indebtedness of any third party, provided that the term “Indebtedness” shall not include contingent obligations of the Borrower or any Subsidiary as an account party or applicant in respect of any letter of credit or letter of guaranty unless such letter of credit or letter of guaranty supports an obligation that constitutes Indebtedness.

“Tranche A Commitment” means an Initial Tranche A Commitment or a Delayed Draw Tranche A Commitment.



“Tranche A Lender” means a Lender with a Tranche A Commitment or an outstanding Tranche A Term Loan.

“Tranche A Maturity Date” means February 27, 2013.

“Tranche A Term Loan” means a Loan made pursuant to clause (a), (b), (c) or (d) of Section 2.01.

“Transaction Costs” means all fees, costs and expense incurred or payable by the Borrower or any Subsidiary in connection with the Transactions.

“Transactions” means (a) the execution, delivery and performance by each Loan Party of the Loan Documents to which it is to be a party, the borrowing of Tranche A Term Loans and the issuance of the New Convertible Notes and the use of the proceeds thereof, (b) the OMX Acquisition, (c) the PHLX Acquisition, (d) the BSX Acquisition, (e) the Nord Pool Acquisition and (f) the payment of the Transaction Costs.

“TRF” means The Trade Reporting Facility, LLC, a Delaware limited liability company and a Subsidiary of Borrower.

“Type,” when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Eurocurrency Rate or the Base Rate.

“UK ESOP Program” means any program in which any member of the OMX Group acts as an intermediary in the UK for customers’ exercise of employee stock option programs and/or equivalent incentive schemes that the customers have for its employees.

“Wholly-Owned Subsidiary” means, with respect to any Person at any date, a subsidiary of such Person of which securities or other ownership interests representing 100% of the Equity Interests (other than directors’ qualifying shares) are, as of such date, owned, controlled or held by such Person or one or more Wholly-Owned Subsidiaries of such Person or by such Person and one or more Wholly-Owned Subsidiaries of such Person.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Eurocurrency Loan”) or by Class and Type (e.g., a “Eurocurrency Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Eurocurrency Borrowing”) or by Class and Type (e.g., a “Eurocurrency Revolving Borrowing”).

SECTION 1.03 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words

“include.” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time, provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision (including any definition) hereof to eliminate the effect of any change occurring after the date hereof in GAAP (including any election by the Borrower to operate under IFRS) or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change or election shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

SECTION 1.05 Pro Forma Calculations. For purposes of any determination of the Interest Coverage Ratio or Leverage Ratio pursuant to Section 2.11, Section 2.20 or any covenant set forth in Article VI for any period during which any Permitted Acquisition, OMX Acquisition, PHLX Acquisition, BSX Acquisition, Nord Pool Acquisition or any sale, transfer or other disposition of any material assets outside the ordinary course of business occurs (or has occurred since the last day of such period), the calculation of the Interest Coverage Ratio or Leverage Ratio with respect to such period for such purpose shall be made on a Pro Forma Basis.

SECTION 1.06 Exchange Rates; Currency Equivalents.

(a) The Administrative Agent or the Issuing Bank, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Revolving Exposure and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial ratios hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the Issuing

Bank, as applicable; provided that for purposes of determining compliance with any Dollar-denominated restriction on (x) the incurrence of Indebtedness, the Dollar-equivalent principal amount of Indebtedness denominated in a currency other than Dollars shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness is incurred, in the case of term debt, or first committed, in the case of revolving credit date; provided that, if indebtedness is incurred to extend, replace, refund, refinance, renew or defease other Indebtedness denominated in a currency other than Dollars, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased; and (y) the making of any investment, the Dollar-equivalent amount of any investment denominated in a currency other than Dollars shall be calculated based on the relevant currency exchange rate in effect on the date such investment was made.

(b) Wherever in this Agreement in connection with a Borrowing, conversion, continuation or prepayment of a Eurocurrency Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Borrowing, Eurocurrency Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the Issuing Bank, as the case may be.

SECTION 1.07 Additional Alternative Currencies.

(a) The Borrower may from time to time request that Revolving Loans be made and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternative Currency"; provided that such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars. In the case of any such request with respect to the making of Eurocurrency Loans, such request shall be subject to the approval of the Administrative Agent and the Revolving Lenders; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the Issuing Bank.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., 15 Business Days prior to the date of the desired credit extension (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the Issuing Bank, in its or their sole discretion). In the case of any such request pertaining to Eurocurrency Loans, the Administrative Agent shall promptly notify each Revolving Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the Issuing Bank thereof. Each Revolving Lender (in the case of any such request pertaining to Eurocurrency Loans) or the Issuing Bank (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., seven Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Eurocurrency Rate Revolving Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Revolving Lender or the Issuing Bank, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Lender or the Issuing Bank, as the case may be, to permit Eurocurrency Rate Revolving Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and all the Revolving Lenders consent to making Eurocurrency Loans in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Borrowings of Eurocurrency Rate Revolving Loans; and if the Administrative Agent and the Issuing Bank consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.07, the Administrative Agent shall promptly so notify the Borrower.

SECTION 1.08 Change of Currency.

(a) Each obligation of the Borrower to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption (in accordance with the EMU Legislation). If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the London interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that if any Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent (after consultation with the Borrower) may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent may (after consultation with the Borrower) from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

ARTICLE II

THE CREDITS

SECTION 2.01 Commitments.

(a) Initial Tranche A Term Loans. Subject to the terms and conditions set forth herein, each Tranche A Lender severally agrees to make to the Borrower a single loan denominated in Dollars equal to such Tranche A Lender's Initial Tranche A Commitment on the Closing Date. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Tranche A Term Loans may be ABR Loans or Eurocurrency Loans, as further provided herein.

(b) OMX Delayed Draw Tranche A Term Loans. Subject to the terms and conditions set forth herein, each Tranche A Lender severally agrees to make to the Borrower from time to time and on no more than three occasions during the OMX Delayed Draw Availability Period, loans denominated in Dollars in an aggregate amount not to exceed such Tranche A Lender's OMX Delayed Draw Tranche A Commitment. Amounts borrowed under this Section 2.01(b) and repaid or prepaid may not be reborrowed. Tranche A Term Loans may be ABR Loans or Eurocurrency Loans, as further provided herein.

(c) PHLX Delayed Draw Tranche A Term Loans. Subject to the terms and conditions set forth herein, each Tranche A Lender severally agrees to make to the Borrower during the PHLX Delayed Draw Availability Period, loans denominated in Dollars pursuant to one Borrowing in an aggregate amount not to exceed such Tranche A Lender's PHLX Delayed Draw Tranche A Commitment. Amounts borrowed under this Section 2.01(c) and repaid or prepaid may not be reborrowed. Tranche A Term Loans may be ABR Loans or Eurocurrency Loans, as further provided herein.

(d) Nord Pool Delayed Draw Tranche A Term Loans. Subject to the terms and conditions set forth herein, each Tranche A Lender severally agrees to make to the Borrower during the Nord Pool Delayed Draw Availability Period, loans denominated in Dollars pursuant to one Borrowing in an aggregate amount not to exceed such Tranche A Lender's Nord Pool Delayed Draw Tranche A Commitment. Amounts borrowed under this Section 2.01(d) and repaid or prepaid may not be reborrowed. Tranche A Term Loans may be ABR Loans or Eurocurrency Loans, as further provided herein. Following any Borrowing of Tranche A Term Loans pursuant to this Section 2.01(d), the Administrative Agent may reallocate the Borrowings included in the Tranche A Term Loans of each Lender such that each Borrowing of Tranche A Term Loans is held pro rata by each of the Tranche A Lenders from and after the date of such Borrowing (and the Borrower will comply with Section 2.16 in connection therewith).

(e) Revolving Loans. Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make Revolving Loans denominated in Dollars or an Alternative Currency to the Borrower as elected by the Borrower pursuant to Section 2.02 from time to time, on any Business Day during the Revolving Availability Period, in an aggregate Outstanding Amount that will not result in such Revolving Lender's Revolving Exposure exceeding such Revolving Lender's Revolving Commitment and the Outstanding Amount of Revolving

Loans denominated in Alternative Currencies shall not exceed the Alternative Currency Sublimit. Within the limits of each Revolving Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(e), prepay under Section 2.11, and reborrow under this Section 2.01(e). Revolving Loans denominated in Dollars may be ABR Loans or Eurocurrency Loans, as further provided herein, and Revolving Loans denominated in Alternative Currencies must be Eurocurrency Loans, as further provided herein.

SECTION 2.02 Funding of Loans. Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder, provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required. Each Lender at its option may make any Eurocurrency Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan, provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

SECTION 2.03 Requests for Borrowings.

(a) Each Borrowing (other than Borrowings of Swingline Loans with respect to which this Section 2.03 shall not apply), each conversion of Loans from one Type to the other, and each continuation of Eurocurrency Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 12:00 noon, New York City time, (i) three (3) Business Days prior to the requested date of any Borrowing or continuation of Eurocurrency Loans denominated in Dollars or any conversion of ABR Loans to Eurocurrency Loans, (ii) four (4) Business Days prior to the requested date of any Borrowing or continuation of Eurocurrency Loans denominated in an Alternative Currency, and (iii) one (1) Business Day before the requested date of any Borrowing of ABR Loans. Each telephonic notice by the Borrower pursuant to this Section 2.03(a) must be confirmed promptly by delivery to the Administrative Agent of a written Borrowing Request, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of Eurocurrency Loans shall be in an amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to ABR Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Borrowing pursuant to the OMX Delayed Draw Tranche A Commitment shall be in a minimum principal amount of \$100,000,000 (or, if less, the entire remaining OMX Delayed Draw Tranche A Commitment). Each Borrowing Request (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing of Tranche A Term Loans, Incremental Term Loans or Revolving Loans, a conversion of Term Loans or Revolving Loans from one Type to the other, or a continuation of Eurocurrency Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the currency in which the Loans to be borrowed are to be denominated, (v) the Type of Loans to be borrowed or to which existing Term Loans or Revolving Loans are to be converted, and (vi) if applicable, the duration

of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Borrowing Request or fails to give a timely notice requesting a conversion or continuation, then the applicable Term Loans or Revolving Loans shall be made as, or converted to, ABR Loans (unless the Loan being made or continued is denominated in an Alternative Currency, in which case it shall be made or continued as a Eurocurrency Loan with an Interest Period of one month). Any such automatic conversion to ABR Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Loans in any such Borrowing Request, but fails to specify an Interest Period (or fails to give a timely notice requesting a continuation of Eurocurrency Loans denominated in an Alternative Currency), it will be deemed to have specified an Interest Period of one (1) month. If no currency is specified in a Borrowing Request, the requested Borrowing shall be in Dollars.

(b) Following receipt of a Borrowing Request, the Administrative Agent shall promptly notify each applicable Lender of the amount (and currency) of its pro rata share of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each applicable Lender of the details of any automatic conversion to ABR Loans or continuation of Loans denominated in an Alternative Currency described in Section 2.03(a). In the case of each Borrowing, each applicable Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office for Dollars or the applicable Alternative Currency, as the case may be, not later than 1:00 p.m., New York City time, on the Business Day specified in the applicable Borrowing Request. Upon satisfaction of the applicable conditions set forth in Article IV, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided that if, on the date a Borrowing Request with respect to a Borrowing of Revolving Loans is given by the Borrower, there are LC Borrowings or Swingline Loans outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such LC Borrowings, second, to the prepayment in full of any such Swingline Loans and third, to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurocurrency Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Loan. During the existence of an Event of Default, the Required Lenders may require that no Loans may be converted to or continued as Eurocurrency Loans.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Loans upon determination of such interest rate. The determination of the Eurocurrency Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time that ABR Loans are outstanding, the Administrative Agent shall notify the Borrower and the applicable Lenders of any change in the Administrative Agent's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent.

(f) [Reserved].

(g) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (b) above, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the Overnight Rate plus any administrative, processing, or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.03(g) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing and the Administrative Agent shall promptly remit to Borrower any amounts previously paid by Borrower in respect of such Borrowing under this Section 2.03. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

#### SECTION 2.04 Swingline Loans.

(a) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrower in Dollars from time to time during the Revolving Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate Outstanding Amount of Swingline Loans exceeding \$10,000,000 or (ii) the aggregate Revolving Exposures exceeding the aggregate Revolving Commitments, provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. All Swingline Loans shall be ABR Loans. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.

(b) To request a Swingline Loan, the Borrower shall notify the Administrative Agent and the Swingline Lender. Each such notice must be received by the Swingline Lender



and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$500,000 (and any amount in excess of \$500,000 shall be an integral multiple of \$100,000), and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swingline Lender and the Administrative Agent of a written Swingline Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Promptly after receipt by the Swingline Lender of any telephonic Swingline Loan Notice, the Swingline Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swingline Loan Notice and, if not, the Swingline Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swingline Lender has received notice (by telephone or in writing) from the Administrative Agent, any Loan Party or any Lender prior to 2:00 p.m. on the date of the proposed Swingline Borrowing (A) directing the Swingline Lender not to make such Swingline Loan as a result of the limitations set forth in Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swingline Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swingline Loan Notice, make the amount of its Swingline Loan available to the Borrower.

(c) (i) The Swingline Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swingline Lender to so request on its behalf), that each Revolving Lender make an ABR Revolving Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swingline Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Borrowing Request for purposes hereof) and in accordance with the requirements of Section 2.02 without regard to the minimum and multiples specified therein for the principal amount of ABR Revolving Loans, but subject to the unutilized portion of the Revolving Commitments and the conditions set forth in Section 4.04. The Swingline Lender shall furnish the Borrower with a copy of the applicable Borrowing Request promptly after delivering such notice to the Administrative Agent. Each Revolving Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Borrowing Request available to the Administrative Agent in Same Day Funds for the account of the Swingline Lender at the Administrative Agent's Office for Dollar-denominated payments not later than 1:00 p.m. on the day specified in such Borrowing Request, whereupon, subject to Section 2.04(c)(ii), each Lender that so makes funds available shall be deemed to have made an ABR Revolving Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swingline Lender and such funds shall be applied to repay the applicable Swingline Loan.

(ii) If for any reason any Swingline Loan cannot be refinanced by such a Borrowing of Revolving Loans in accordance with Section 2.04(c)(i), the request for ABR Revolving Loans submitted by the Swingline Lender as set forth herein shall be deemed to be a request by the Swingline Lender that each of the Lenders fund its risk participation in the relevant Swingline Loan and each Lender's payment to the Administrative Agent for the account of the Swingline Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swingline Lender any amount required to be paid by such Lender

pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swingline Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's ABR Revolving Loan included in the relevant Borrowing of Revolving Loans or funded participation in the relevant Swingline Loan, as the case may be. A certificate of the Swingline Lender submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Lender's obligation to make ABR Revolving Loans or to purchase and fund risk participations in Swingline Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Lender's obligation to make ABR Revolving Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.04. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swingline Loans, together with interest as provided herein.

(d) (i) At any time after any Revolving Lender has purchased and funded a risk participation in a Swingline Loan, if the Swingline Lender receives any payment on account of such Swingline Loan, the Swingline Lender will distribute to such Revolving Lender its Applicable Percentage therein in the same funds as those received by the Swingline Lender.

(ii) If any payment received by the Swingline Lender in respect of principal or interest on any Swingline Loan is required to be returned by the Swingline Lender under any of the circumstances described in Section 9.03 (including pursuant to any settlement entered into by the Swingline Lender in its discretion), each Revolving Lender shall pay to the Swingline Lender its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Overnight Rate. The Administrative Agent will make such demand upon the request of the Swingline Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) The Swingline Lender shall be responsible for invoicing the Borrower for interest on the Swingline Loans. Until each Revolving Lender funds its ABR Revolving Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Lender's Applicable Percentage of any Swingline Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swingline Lender.

(f) The Borrower shall make all payments of principal and interest in respect of the Swingline Loans directly to the Swingline Lender.

(g) To the extent not previously refinanced under Section 2.04(c), Borrower shall repay each Swingline Loan on the earlier to occur of (i) the date that is ten Business Days after such Loan is made and (ii) the Revolving Maturity Date.

SECTION 2.05 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the Issuing Bank agrees, in reliance upon the agreements of the other Revolving Lenders set forth in this Section 2.05, (x) from time to time on any Business Day during the period from the Closing Date until the fifth Business Day prior to the Revolving Maturity Date, to issue Letters of Credit for the account of the Borrower (provided that any Letter of Credit may be for the benefit of any Subsidiary of the Borrower) and to amend or renew Letters of Credit previously issued by it, in accordance with this Section 2.05, and (y) to honor drawings under the Letters of Credit and (B) the Revolving Lenders severally agree to participate in Letters of Credit issued pursuant to this Section 2.05; provided that the Issuing Bank shall not be obligated to make LC Credit Extensions with respect to Letters of Credit, and Revolving Lenders shall not be obligated to participate in Letters of Credit if, after giving effect to such LC Credit Extension, (x) the Revolving Exposures would exceed the Revolving Commitments, or (y) the Outstanding Amount of the LC Exposure would exceed \$10,000,000. Each request by the Borrower for an LC Credit Extension shall be deemed to be a representation by the Borrower that the LC Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) The Issuing Bank shall not issue any Letter of Credit if:

(1) subject to Section 2.05(a)(viii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last renewal, unless otherwise agreed by the Issuing Bank and the Administrative Agent; or

(2) the expiry date of such requested Letter of Credit would occur after the applicable fifth Business Day prior to the Revolving Maturity Date, unless each Revolving Lender shall have approved such expiry date.

(iii) The Issuing Bank shall be under no obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any Requirement of Law applicable to the Issuing Bank or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or direct that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or

capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the date of this Agreement, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the date of this Agreement (for which the Issuing Bank is not otherwise compensated hereunder);

(B) the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable to letters of credit generally; or

(C) except as otherwise agreed by the Administrative Agent and the Issuing Bank, such Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency.

(iv) The Issuing Bank shall be under no obligation to amend any Letter of Credit if (A) the Issuing Bank would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(v) The Issuing Bank shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the Issuing Bank shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article VIII with respect to any acts taken or omissions suffered by the Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article VIII included the Issuing Bank with respect to such acts or omissions, and (B) as additionally provided herein with respect to the Issuing Bank.

(vi) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the Issuing Bank (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the Issuing Bank and the Administrative Agent not later than 12:00 noon at least two (2) Business Days prior to the proposed issuance date or date of amendment, as the case may be; or, in each case, such later date and time as the Issuing Bank may agree in a particular instance in its sole discretion. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the Issuing Bank: (a) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (b) the amount thereof; (c) the expiry date thereof; (d) the name and address of the beneficiary thereof; (e) the documents to be presented by such beneficiary in case of any drawing thereunder; (f) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (g) the currency in which the request Letter of Credit will be denominated; and (h) such other information as shall be necessary to prepare such Letter of Credit. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the Issuing Bank (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other information as shall be necessary to amend such Letter of Credit.

(vii) Promptly after receipt of any Letter of Credit Application, the Issuing Bank will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the Issuing Bank will provide the Administrative Agent with a copy thereof. Unless the Issuing Bank has received written notice from the Required Lenders, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the Issuing Bank shall, on the requested date, issue a Letter of Credit for the account of the Borrower (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, acquire from the Issuing Bank a risk participation in such Letter of Credit in an amount equal to such Revolving Lender's Applicable Percentage times the amount of such Letter of Credit.

(viii) If the Borrower so requests in any applicable Letter of Credit Application, the Issuing Bank may, in its sole discretion, agree to issue a Letter of Credit that has automatic renewal provisions (each, an "Auto-Renewal Letter of Credit"); provided that any such Auto-Renewal Letter of Credit must permit the Issuing Bank to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Nonrenewal Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Issuing Bank, the Borrower shall not be required to make a specific request to the Issuing Bank for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the Issuing Bank to permit the renewal of such Letter of Credit at any time to an expiry date not later than the fifth Business Day prior to the Revolving Maturity Date; provided that the Issuing Bank shall not permit any such renewal if (A) the Issuing Bank has determined that it would not be permitted, or would have no obligation at such time to issue such Letter of Credit in its renewed form under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.05(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five (5) Business Days before the Nonrenewal Notice Date from the Administrative Agent or the Required lenders, as applicable, or the Borrower that one or more of the applicable conditions specified in Article IV is not then satisfied.

(ix) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the Issuing Bank will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(x) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the Issuing Bank shall notify promptly the Borrower and the Administrative Agent thereof. In the case of an LC Disbursement with respect to any Letter of Credit denominated in an Alternative Currency, the Borrower shall reimburse the Issuing Bank in such Alternative Currency, unless (A) the Issuing Bank (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, the Borrower shall have notified the Issuing Bank

promptly following receipt of the notice of drawing that the Borrower will reimburse the Issuing Bank in Dollars. In the case of any such reimbursement in Dollars of an LC Disbursement under a Letter of Credit denominated in an Alternative Currency, the Issuing Bank shall notify the Borrower of the Dollar Equivalent of the amount of the LC Disbursement promptly following the determination thereof. Not later than 11:00 a.m. on the first Business Day following the date on which the Borrower receives notice of any LC Disbursement (each such date, an “Honor Date”), the Borrower shall reimburse the Issuing Bank in an amount equal to the amount of such LC Disbursement and in the applicable currency. If the Borrower fails to so reimburse the Issuing Bank by such time, the Administrative Agent shall promptly notify each Revolving Lender of the Honor Date, the amount of the unreimbursed LC Disbursement (expressed in Dollars based on the Dollar Equivalent amount thereof in the case of an Alternative Currency), and the amount of such Revolving Lender’s Applicable Percentage thereof. In such event, the Borrower shall be deemed to have requested an ABR Revolving Loan to be disbursed on the Honor Date in an amount equal to the Outstanding Amount of such LC Disbursement, without regard to the minimum and multiples specified in Section 2.03 for the principal amount of ABR Loans, but subject to the amount of the unutilized portion of the Revolving Commitments, and subject to the applicable conditions set forth in Article IV (other than the delivery of a Borrowing Request). Any notice given by the Issuing Bank or the Administrative Agent pursuant to this Section 2.05(a)(x) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(xi) Each Revolving Lender (including any such Lender acting as the Issuing Bank) shall upon receipt of any notice made pursuant to Section 2.05(a)(x) make funds available to the Administrative Agent for the account of the Issuing Bank at the Administrative Agent’s Office for payments in an amount equal to its Applicable Percentage of any LC Disbursement that has not been reimbursed by the Borrower at or prior to 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.05(a)(xii), each Revolving Lender that so makes funds available shall be deemed to have made an ABR Revolving Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Issuing Bank and such funds shall be applied to repay the applicable LC Disbursement.

(xii) With respect to any LC Disbursement that is not fully reimbursed by the Borrower and has not been refinanced by an ABR Revolving Loan because the applicable conditions set forth in Article IV cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the Issuing Bank an LC Borrowing in the Outstanding Amount of the LC Disbursement that is not so reimbursed or refinanced, which LC Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the rate specified in Section 2.13(c). In such event, each Revolving Lender’s payment to the Administrative Agent for the account of the Issuing Bank pursuant to Section 2.05(a)(xi) shall be deemed payment in respect of its participation in such LC Borrowing and shall constitute an LC Advance from such Lender in satisfaction of its participation obligation under this Section 2.05.

(xiii) Until each Revolving Lender funds its Revolving Loan or LC Advance pursuant to this Section 2.05(a) to reimburse the Issuing Bank for any LC Disbursement, interest in respect of such Lender’s Applicable Percentage of such amount shall be solely for the account of the Issuing Bank.

(xiv) Each Revolving Lender's obligation to make Revolving Loans or LC Advances to reimburse the Issuing Bank for LC Disbursements that are not reimbursed by the Borrower as set forth herein, as contemplated by this Section 2.05(a), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Issuing Bank, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default; or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.05(a) is subject to the applicable conditions set forth in Article IV (other than delivery by the Borrower of a Borrowing Request). No such making of an LC Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the Issuing Bank for the amount of any payment made by the Issuing Bank under any Letter of Credit, together with interest as provided herein.

(xv) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Issuing Bank any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.05(a) by the time specified in Section 2.05(a)(xi), the Issuing Bank shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Issuing Bank at a rate per annum equal to the applicable Overnight Rate from time to time in effect plus any administrative, processing or similar fees customarily charged by the Issuing Bank in connection with the foregoing. A certificate of the Issuing Bank submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.05(a)(xv) shall be conclusive absent manifest error.

(b) Repayment of Participations.

(i) If, at any time after the Issuing Bank has made a payment under any Letter of Credit and has received from any Revolving Lender such Lender's LC Advance in respect of such payment in accordance with Section 2.05(a), the Administrative Agent receives for the account of the Issuing Bank any payment in respect of the related LC Disbursement or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Revolving Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's LC Advance was outstanding) in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the Issuing Bank pursuant to Section 2.05(a)(x) is required to be returned under any of the circumstances described in Section 9.03 (including pursuant to any settlement entered into by the Issuing Bank in its discretion), each Revolving Lender shall pay to the Administrative Agent for the account of the Issuing Bank its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The Obligations of the Revolving Lenders under this clause (b)(ii) shall survive the payment in full of the Obligations and the termination of this Agreement.

(c) The obligation of the Borrower to reimburse the Issuing Bank for each LC Disbursement and to repay each LC Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(A) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(B) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Issuing Bank or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(C) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(D) any payment by the Issuing Bank under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the Issuing Bank under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any bankruptcy or insolvency proceeding;

(E) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrower or any Subsidiary or in the relevant currency markets generally;

(F) any exchange, release or nonperfection of any Collateral, or any release or amendment or waiver of or consent to departure from the Collateral Agreement or any other guarantee, for all or any of the Obligations of any Loan Party in respect of such Letter of Credit; or

(G) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Loan Party;

provided that the foregoing shall not excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are waived by the Borrower to the extent permitted by any Requirement of Law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof, or acts or omissions by the Issuing Bank constituting gross negligence or willful misconduct on the part of the Issuing Bank.



(d) Neither the Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Bank, provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(e) If (i) any Event of Default occurs and is continuing and the Required Lenders require the Borrower to Cash Collateralize the LC Exposure or (ii) an Event of Default pursuant to clause (h) or (i) of Article VII occurs and is continuing, then the Borrower shall Cash Collateralize the LC Exposure (in an amount equal to the Outstanding Amount thereof determined as of the date of such Event of Default), and shall do so not later than 2:00 p.m. New York City time on (x) in the case of the immediately preceding clause (i), (1) the Business Day that the Borrower receives notice thereof, if such notice is received on such day prior to 12:00 Noon New York City time or (2) if clause (1) above does not apply, the Business Day immediately following the day that the Borrower receives such notice and (y) in the case of the immediately preceding clause (ii), the Business Day on which an Event of Default set forth under clause (h) or (i) occurs or, if such day is not a Business Day, the Business Day immediately succeeding such day. For purposes hereof, "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Issuing Bank and the Revolving Lenders, as collateral for the LC Exposure, cash or deposit account balances ("Cash Collateral") pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the Issuing Bank (which documents are hereby consented to by the Revolving Lenders). Derivatives of such term have corresponding meanings. The Borrower hereby grants to the Administrative Agent, for the benefit of the Issuing Bank and the Revolving Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked accounts at the Administrative Agent and may be invested

in readily available Permitted Investments selected by the Administrative Agent in its sole discretion. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Requirements of Law, to reimburse the Issuing Bank. To the extent the amount of any Cash Collateral exceeds the then Outstanding Amount of such LC Exposure and so long as no Event of Default has occurred and is continuing, the excess shall be refunded to the Borrower within three days of date that such excess accrues together with all interest, if any, that has accrued on such amount. If such Event of Default is cured or waived and no other Event of Default is then occurring and continuing, the amount of any Cash Collateral shall be refunded to the Borrower within three days of the occurrence of such cure or waiver together with all interest, if any, that has accrued on such amount.

(f) Applicability of ISP. Unless otherwise expressly agreed by the relevant Issuing Bank and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

(g) Conflict with Letter of Credit Application. Notwithstanding anything else to the contrary in any Letter of Credit Application, in the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

(h) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse the applicable Issuing Bank hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

SECTION 2.06 [Intentionally Omitted].

SECTION 2.07 [Intentionally Omitted].

SECTION 2.08 Termination and Reduction of Commitments.

(a) Unless previously terminated, (i) the Initial Tranche A Commitments shall terminate at 5:00 p.m., New York City time, on the Closing Date, (ii) the OMX Delayed Draw Tranche A Commitments shall terminate at 5:00 p.m., New York City time, on August 27, 2008, (iii) the PHLX Delayed Draw Tranche A Commitments shall terminate at 5:00 p.m., New York City time, on July 31, 2008, (iv) the Nord Pool Delayed Draw Tranche A Commitments shall terminate at 5:00 p.m., New York City time, on August 27, 2008 and (v) the Revolving Commitments and the Swingline Commitment shall terminate on the Revolving Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments of any Class, provided that (i) each reduction of the Commitments of any Class shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000 or if less, the entire remaining amount and (ii) the Borrower shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the aggregate Revolving Exposures (excluding, in the case of any

termination of the Revolving Commitments, the portion of the Revolving Exposures attributable to outstanding Letters of Credit if and to the extent that the Borrower has made arrangements satisfactory to the Administrative Agent and the Issuing Bank with respect to such Letters of Credit and the Issuing Bank has released the Revolving Lenders from their participation obligations with respect to such Letters of Credit) would exceed the aggregate Revolving Commitments.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable, provided that a notice of termination of the Commitments of any Class delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or the receipt of proceeds from the issuance of other Indebtedness, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of the Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Commitments of such Class.

SECTION 2.09 Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan of such Lender on the Revolving Maturity Date in the currency in which such Revolving Loan is denominated, (ii) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan of such Lender as provided in Section 2.10 and (iii) to the Swingline Lender in Dollars the then unpaid principal amount of each Swingline Loan on the Revolving Maturity Date.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the currency, Class and Type thereof and the Interest Period, if any, applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) Absent manifest error, the entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein, provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans and pay interest thereon in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans of any Class made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

**SECTION 2.10 Amortization of Term Loans.**

(a) The Borrower shall repay Tranche A Term Loans on each of the dates set forth below, commencing with the first such date to occur after the Closing Date, in an amount, expressed as a percentage of the original principal amount of all Tranche A Term Loans made on or prior to such date and prior to the applicable payment date, set forth opposite each of the dates below:

<b>Date</b>	<b>Amount</b>
September 30, 2008	1.875%
December 31, 2008	1.875%
March 31, 2009	2.8125%
June 30, 2009	2.8125%
September 30, 2009	2.8125%
December 31, 2009	2.8125%
March 31, 2010	2.8125%
June 30, 2010	2.8125%
September 30, 2010	2.8125%
December 31, 2010	2.8125%
March 31, 2011	8.1944%
June 30, 2011	8.1944%
September 30, 2011	8.1944%
December 31, 2011	8.1944%
March 31, 2012	8.1944%
June 30, 2012	8.1944%
September 30, 2012	8.1944%
December 31, 2012	8.1944%
Tranche A Maturity Date	8.1944%

(b) To the extent not previously paid, all Tranche A Term Loans shall be due and payable on the Tranche A Maturity Date.

(c) Any prepayment of a Term Loan of any Class shall be applied to reduce the subsequent scheduled repayments of the Term Loans of such Class to be made pursuant to this Section or, except as otherwise provided in any Incremental Facility Amendment, pursuant to the corresponding section of such Incremental Facility Amendment, (i) in the case of prepayments made pursuant to Section 2.11(a), at the direction of the Borrower and (ii) in the case of prepayments made pursuant to Section 2.11(c) or (d), ratably to the remaining amortization payments set forth in paragraph (a) above.

(d) Prior to any repayment of any Term Loans of any Class hereunder, the Borrower shall select the Borrowing or Borrowings of the applicable Class of Loans to be repaid and shall notify the Administrative Agent by telephone (confirmed by telecopy) of such election not later than 12:00 p.m., New York City time, three Business Days before the scheduled date of such repayment. Each repayment of a Borrowing shall be applied ratably to the Loans included in the repaid Borrowing. Repayments of Term Borrowings shall be accompanied by accrued interest on the amount repaid.

SECTION 2.11 Prepayment of Loans.

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to the requirements of this Section.

(b) (i) In the event and on such occasion that the aggregate Revolving Exposures exceed 105% of the aggregate Revolving Commitments, the Borrower shall prepay Revolving Loans or Swingline Loans (or, if no such Borrowings are outstanding, Cash Collateralize Letters of Credit pursuant to Section 2.05(e)) in an aggregate amount equal to such excess and (ii) in the event that the Borrower borrows any Tranche A Term Loans pursuant to the Nord Pool Delayed Draw A Commitments and the Nord Pool Acquisition is not consummated on or prior to November 1, 2008 (or, if such Tranche A Term Loans have been borrowed and the Borrower determines on any earlier date that the Nord Pool Acquisition will not be consummated on or prior to November 1, 2008), then no later than the third Business Day following such date (or

date of determination), the Borrower will prepay Tranche A Term Loans in an aggregate principal amount equal to the amount of Tranche A Term Loans borrowed pursuant to the Nord Pool Delayed Draw Tranche A Commitments.

(c) In the event and on each occasion that any Net Proceeds are received by or on behalf of the Borrower or any Subsidiary in respect of any Prepayment Event, the Borrower shall, within three Business Days after such Net Proceeds are received, prepay Tranche A Term Loans on a pro rata basis based on the then outstanding amounts of Tranche A Term Loans; provided that in the case of any event described in clause (a) or (b) of the definition of the term "Prepayment Event," if the Borrower and the Subsidiaries apply the Net Proceeds from such event (or a portion thereof) within 365 days after receipt of such Net Proceeds and at a time when no Default has occurred and is continuing, to acquire real property, equipment or other tangible assets to be used in the business of the Borrower and the Subsidiaries (provided that the Borrower has delivered to the Administrative Agent within three Business Days after such Net Proceeds are received a certificate of a Financial Officer stating its intention to do so and certifying that no Default has occurred and is continuing), then no prepayment shall be required pursuant to this paragraph in respect of the Net Proceeds in respect of such event (or the portion of such Net Proceeds specified in such certificate, if applicable) except to the extent of any such Net Proceeds therefrom that have not been so applied or contractually committed by the end of such 365-day period (and, if so contractually committed in writing but not applied prior to the end of such 365-day period, applied within 180 days of the end of such period) or cease to be contractually committed after such 365-day period, at which time a prepayment shall be required in an amount equal to such Net Proceeds that have not been so applied.

(d) Following the end of each fiscal year of the Borrower, commencing with the fiscal year ending December 31, 2008, the Borrower shall prepay Tranche A Term Loans on a pro rata basis based on the then outstanding amounts of Tranche A Term Loans in an aggregate amount equal to the Required Percentage of Excess Cash Flow for such fiscal year, provided that such amount shall be reduced by the aggregate amount of prepayments of Tranche A Term Loans made pursuant to Section 2.11(a) during such fiscal year. Each prepayment pursuant to this paragraph shall be made within 90 days after the end of such fiscal year for which financial statements are delivered pursuant to Section 5.01 with respect to the fiscal year for which Excess Cash Flow is being calculated.

(e) Prior to any optional or mandatory prepayment of Borrowings hereunder, the Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (f) of this Section. In the event of any optional or mandatory prepayment of Term Borrowings made at a time when Term Borrowings of more than one Class remain outstanding, the Borrower shall select Term Borrowings to be prepaid so that the aggregate amount of such prepayment is allocated between Tranche A Term Borrowings and, to the extent provided in the Incremental Facility Amendment for any Class of Incremental Term Loans, the Borrowings of such Class pro rata based on the aggregate principal amount of outstanding Borrowings of each such Class. Prepayments of Tranche A Term Loans shall be applied ratably to reduce scheduled prepayments required pursuant to Section 2.10(a) as specified by the Borrower.

(f) The Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by telecopy or otherwise in writing) of any prepayment hereunder (i) in the case of prepayment of a Eurocurrency Borrowing denominated in Dollars, not later than 12:00 p.m., New York City time, three Business Days before the date of prepayment, (ii) in the case of prepayment of a Eurocurrency Borrowing denominated in an Alternative Currency, not later than 12:00 p.m., New York City time, four Business Days before the date of prepayment, (iii) in the case of prepayment of an ABR Borrowing, not later than 12:00 p.m., New York City time, one Business Day before the date of prepayment or (iv) in the case of prepayment of a Swingline Loan, not later than 1:00 p.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment, provided that a notice of optional prepayment may state that such notice is conditional upon the effectiveness of other credit facilities or the receipt of the proceeds from the issuance of other Indebtedness, in which case such notice of prepayment may be revoked by the Borrower (by notice to the Administrative Agent on or prior to 12:00 noon New York City time, on the specified date) if such condition is not satisfied. Promptly following receipt of any such notice (other than a notice relating solely to Swingline Loans), the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.03(a), except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13, except in the case of partial prepayment of ABR Loans, which interest shall be payable on the next scheduled interest payment date.

#### SECTION 2.12 Fees.

(a) The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a facility fee in Dollars, which shall accrue at a rate equal to 0.50% per annum on the actual daily amount of the Revolving Commitment of such Lender during the period from and including the Closing Date to but excluding the date on which the Revolving Commitments terminate (and following the termination of the Revolving Commitments, such fee shall be payable on the Revolving Exposure of each Revolving Lender until such Revolving Exposure is reduced to zero). Accrued facility fees shall be payable in arrears on the third Business Day following the last day of March, June, September and December of each year (accruing through the last day of each month) and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the date hereof. All facility fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrower agrees to pay to the Administrative Agent for the account of each Tranche A Lender with (i) an OMX Delayed Draw Tranche A Commitment a commitment fee in Dollars, which shall accrue at a rate equal to 0.50% per annum on the actual daily amount of the unused OMX Delayed Draw Tranche A Commitment of such Lender during the period from and including the Closing Date to but excluding the date on which the OMX Delayed Draw Tranche A Commitments terminate, (ii) a PHLX Delayed Draw Tranche A Commitment a commitment

fee in Dollars, which shall accrue at a rate equal to 0.50% per annum on the actual daily amount of the unused PHLX Delayed Draw Tranche A Commitment of such Lender during the period from and including the Closing Date to but excluding the date on which the PHLX Delayed Draw Tranche A Commitments terminate and (iii) a Nord Pool Delayed Draw Tranche A Commitment a commitment fee in Dollars, which shall accrue at a rate equal to 0.50% per annum on the actual daily amount of the unused Nord Pool Delayed Draw Tranche A Commitment of such Lender during the period from and including the Closing Date to but excluding the date on which the Nord Pool Delayed Draw Tranche A Commitments terminate. Accrued commitment fees pursuant to this Section 2.12(b) shall be payable in arrears on the third Business Day following the last day of March, June, September and December of each year (accruing through the last day of each month) and on the date on which the Delayed Draw Tranche A Commitments of the applicable Class terminate, commencing on the first such date to occur after the date hereof. All commitment fees pursuant to this Section 2.12(b) shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee in Dollars with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Eurocurrency Revolving Loans on the actual daily Outstanding Amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements or LC Borrowings) during the period from and including the Closing Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to the Issuing Bank a fronting fee in Dollars, which shall accrue at a rate equal to 0.25% per annum on the actual daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements or LC Borrowings) during the period from and including the Closing Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued pursuant to this Section 2.12(c) through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the Closing Date, provided that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(d) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(e) All fees payable hereunder shall be paid on the dates due, in immediately available funds in the currency specified herein (or, if no currency is specified, in Dollars), to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders entitled thereto. Fees paid shall not be refundable under any circumstances, absent manifest error.



SECTION 2.13 Interest.

(a) The Loans comprising each ABR Borrowing (including each Swingline Loan) shall bear interest at the Base Rate for Borrowings of such Class plus the Applicable Rate. In addition, if at any time any Term Loans are maintained as ABR Term Loans, the Borrower agrees that within 10 Business Days after receiving any request from any Non-ABR Lender (but not more frequently than quarterly for any Lender), the Borrower will pay such Non-ABR Lender the ABR Gross-Up Amount with respect to the ABR Term Loans of such Non-ABR Lender.

(b) The Loans comprising each Eurocurrency Borrowing shall bear interest at the applicable Eurocurrency Rate for Borrowings of such Class for the Interest Period in effect for such Borrowing plus the Applicable Rate plus (in the case of a Eurocurrency Loan of any Lender which is lent from a lending office in the United Kingdom or a Participating Member State), Mandatory Costs.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder (including any LC Disbursement or LC Borrowing) is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.00% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2.00% plus the rate applicable to ABR Revolving Loans as provided in paragraph (a) of this Section.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and, in the case of Revolving Loans, upon termination of the Revolving Commitments, provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan or a Swingline Loan prior to the end of the Revolving Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurocurrency Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All computations of interest for ABR Loans when the Base Rate is based on the "prime rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year), or, in the case of interest in respect of Revolving Loans denominated in Alternative Currencies as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on

the same day on which it is made shall, bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

SECTION 2.14 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurocurrency Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Eurocurrency Rate for any currency for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Eurocurrency Rate for any currency for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any request pursuant to Section 2.03(a) that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurocurrency Borrowing in the affected currency shall be ineffective and (ii) if any Borrowing Request requests a Eurocurrency Borrowing, such Borrowing shall be made as an ABR Borrowing denominated in Dollars.

SECTION 2.15 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or the Issuing Bank (except (A) any such reserve requirement contemplated by Section 2.15(e) and (B) the requirements of the Bank of England and the Financial Services Authority or the European Central Bank reflected in the Mandatory Cost, other than as set forth below);

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition, cost or expense affecting this Agreement or Eurocurrency Loans made by such Lender or any Letter of Credit or participation therein;

(iii) subject any Lender or the Issuing Bank to any Tax of any kind whatsoever with respect to this Agreement, or any Loan made by it or any Letter of Credit or participation therein, or change the basis of taxation of payments to such Lender or Issuing Bank in respect thereof (except for Indemnified Taxes or Other Taxes indemnified by Section 2.17, and the imposition of, or any change in the rate of, any Excluded Taxes); or

(iv) result in the failure of the Mandatory Cost, as calculated hereunder, to represent the cost to any Lender of complying with the requirements of the Bank of England and/or the Financial Services Authority or the European Central Bank in relation to its making, funding or maintaining Eurocurrency Rate Loans;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurocurrency Loan (or, in the case of clause (iii), any Loan), or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender or the Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or the Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.15 shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

(e) The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such

reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Eurocurrency Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which in each case shall be due and payable on each date or which interest is payable on such Loan, provided the Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest or costs shall be due and payable 10 days from receipt of such notice.

SECTION 2.16 Break Funding Payments. In the event of (a) the payment of any principal of any Eurocurrency Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Revolving Loan or Term Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(f) and is revoked in accordance therewith), (d) the assignment of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19 or Section 9.02(b) or (e) the Borrowings included in each Tranche A Lenders Tranche A Term Loans are reallocated in accordance with Section 2.01(d), then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurocurrency Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the Eurocurrency Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate that such Lender would bid were it to bid, at the commencement of such period, for deposits in the applicable currency of a comparable amount and period from other banks in the Eurocurrency market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.17 Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes, provided that if any applicable withholding agent shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable by such Loan Party shall be increased as necessary so that after making all such required

deductions (including such deductions applicable to additional sums payable under this Section 2.17) the Administrative Agent, Lender or Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions, and (iii) the applicable withholding agent shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Without limiting the provisions of paragraph (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrower shall indemnify and hold harmless the Administrative Agent, each Lender and the Issuing Bank, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes payable by the Administrative Agent, such Lender or the Issuing Bank (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.17) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The written demand shall be made in a certificate setting forth the amount of such Indemnified Taxes or Other Taxes and, in reasonable detail, the calculation and basis for such Indemnified Taxes or Other Taxes.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Loan Party to a Governmental Authority, the Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt, if available, issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) (i) Each Lender that is a United States person as defined in Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two duly completed and signed copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from federal backup withholding.

(ii) Each Lender that is a Foreign Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement whichever of the following is applicable:

(A) two duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for the benefits of an income tax treaty to which the United States is a party,

(B) two duly completed copies of Internal Revenue Service Form W-8ECI,

(C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (A) a certificate substantially in the form of Exhibit G (any such certificate a “United States Tax Compliance Certificate”) and (B) two duly completed copies of Internal Revenue Service Form W-8BEN, or

(D) to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership, or is a Participant holding a participation granted by a participating Lender), Internal Revenue Service Form W-8IMY, accompanied by a Form W-8ECI, W-8BEN, United States Tax Compliance Certificate, Form W-9 or any other required information from each beneficial owner, as applicable.

(iii) Without limitation of its obligations under paragraphs (i) or (ii), each Lender shall, at such time as reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any other documentation prescribed by applicable law, properly completed and executed, as will permit payments made to such Lender under the Loan Documents to be made without or at a reduced rate of withholding tax.

(iv) Each Lender shall deliver to the Borrower and the Administrative Agent two further copies of any previously delivered form or certification (or any applicable successor form) on or before the date that any such form or certification expires or becomes obsolete or inaccurate and promptly after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrower or the Administrative Agent, or promptly notify the Borrower and the Administrative Agent that it is unable to do so. Each Lender shall promptly notify the Borrower and the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered form or certification to the Borrower or the Administrative Agent.

(v) Notwithstanding any other provision of this paragraph (e), a Lender shall not be required to deliver any form that such Lender is not legally able to deliver.

(vi) The Administrative Agent in its capacity as such shall, to the extent it is legally entitled to do so, from time to time deliver to the Borrower a properly executed copy of Internal Revenue Service Form W-8IMY or W-9, as applicable.

(f) If the Administrative Agent, the Issuing Bank or a Lender determines, in its reasonable discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent, the Issuing Bank or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of the Administrative Agent, the Issuing Bank or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, the Issuing Bank or such Lender in the event the Administrative Agent, the Issuing Bank or such Lender is required to repay such refund to such Governmental Authority. This Section shall not be construed to require the Administrative Agent, the Issuing Bank or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

SECTION 2.18 Payments Generally; Pro Rata Treatment; Sharing of Setoffs.

(a) The Borrower shall make each payment required to be made by it under any Loan Document (whether of principal, interest, fees or reimbursement of LC Borrowings or LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 3:00 p.m., New York City time), on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at the Administrative Agent's Office, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. Except as otherwise expressly provided herein and except with respect to principal of and interest on Loans denominated in an Alternative Currency, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds. Except as otherwise expressly provided herein, all payments by the Borrower hereunder with respect to principal and interest on Loans denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such Alternative Currency and in Same Day Funds. If, for any reason, the Borrower is prohibited by any Requirement of Law from making any required payment hereunder in an Alternative Currency, the Borrower shall make such payment in Dollars in the Dollar Equivalent of the Alternative Currency payment amount. The Administrative Agent will promptly distribute to each Lender its pro rata (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's lending office.

(b) Subject to Section 2.18(e), if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Borrowings and LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Borrowings and LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Borrowings and LC Disbursements then due to such parties.

(c) Subject to Section 2.18(e), if any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans, Term Loans, LC Advances or participations in Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans, Term Loans, LC Advances and participations in Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans, Term Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Loans, Term Loans and participations in LC Disbursements and Swingline Loans, provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or other Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption and in its sole discretion, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.04(c), 2.05(c), 2.03(b) or (g), 2.18(d) or 9.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

**SECTION 2.19 Mitigation Obligations; Replacement of Lenders.**

(a) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for



the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not be inconsistent with its internal policies or otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender defaults in its obligation to fund Loans hereunder, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent (and, if a Revolving Commitment is being assigned, the Issuing Bank and Swingline Lender), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, LC Advances and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee or the Borrower, (iii) the Borrower or such assignee shall have paid to the Administrative Agent the processing and recordation fee specified in Section 9.04(b) and (iv) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a material reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise (including as a result of any action taken by such Lender under paragraph (a) above), the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

#### SECTION 2.20 Incremental Loans.

(a) At any time and from time to time prior to the Revolving Maturity Date, and, with respect to Incremental Term Loans, prior to the Tranche A Maturity Date, in each case subject to the terms and conditions set forth herein, the Borrower may, by notice to the Administrative Agent (whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders), request to (x) increase the existing Revolving Commitments (“Incremental Revolving Commitments”) and/or (y) add one or more additional tranches of term loans or increases in the amount of any existing Class of Term Loans (the “Incremental Term Loans”), provided that at the time of each such request and upon the effectiveness of each Incremental Facility Amendment, (A) no Default has occurred and is continuing or shall result therefrom, (B) the Borrower shall be in compliance on a Pro Forma Basis with the covenants contained in Sections 6.12 and 6.13 recomputed as of the last day of the most recent fiscal quarter for which financial statements have been or were required to be delivered pursuant to paragraph (a) or (b) of Section 5.01, (C) the Incremental Loans shall constitute “Senior Indebtedness” under and as defined in the Convertible

Notes Documents and (D) the Borrower shall have delivered a certificate of a Financial Officer to the effect set forth in clauses (A), (B) and (C) above, together with all calculations relevant thereto, including reasonably detailed calculations demonstrating compliance with clause (B) above. Notwithstanding anything to the contrary herein, the aggregate principal amount of the Incremental Revolving Commitments and Incremental Term Loans shall not exceed \$200,000,000 and the aggregate amount of the Incremental Revolving Commitments shall not exceed \$100,000,000. Each exercise of the Borrower's right to seek Incremental Revolving Commitments or Incremental Term Loans shall be in an integral multiple of \$1,000,000 and be in an aggregate principal amount that is not less than \$100,000,000, in the case of Incremental Term Loans, and \$25,000,000, in the case of Incremental Revolving Commitments.

(b) The Incremental Term Loans (i) shall rank pari passu in right of payment in respect of the Collateral and with the Obligations in respect of the Revolving Commitments and the Tranche A Term Loans, (ii) for purposes of prepayments, shall be treated substantially the same as (and in any event no more favorably than) the Tranche A Term Loans and (iii) other than amortization, pricing or maturity date, shall have the same terms as the Tranche A Term Loans, provided that (A) if the Applicable Rate (which, for such purposes only, shall be deemed to include all upfront or similar fees or original issue discount payable to all Lenders providing such Incremental Term Loans) relating to any Incremental Term Loan exceeds the Applicable Rate (which, for such purposes only, shall be deemed to include all upfront or similar fees or original issue discount payable to all Lenders providing the Tranche A Term Loans) relating to the Tranche A Term Loans immediately prior to the effectiveness of the applicable Incremental Facility Amendment, the Applicable Rate relating to the Tranche A Term Loans shall be adjusted to be equal to the Applicable Rate (which, for such purposes only, shall be deemed to include all upfront or similar fees or original issue discount payable to all Lenders providing such Incremental Term Loans) relating to such Incremental Term Loans, (B) any Incremental Term Loan shall not have a final maturity date earlier than the Tranche A Maturity Date, and (C) any Incremental Term Loan shall not have a weighted average life that is shorter than the weighted average life of the then-remaining Tranche A Term Loans.

(c) Obligations incurred pursuant to the Incremental Revolving Commitments shall rank pari passu in right of payment in respect of the Collateral with the Obligations in respect of the Revolving Commitments and the Tranche A Term Loans, and any Incremental Revolving Commitments shall have the same terms as the Revolving Commitments in effect at the time such Incremental Revolving Commitments are obtained and shall be treated as a single Class with such Revolving Commitments for all purposes of this Agreement.

(d) Each notice from the Borrower pursuant to this Section shall set forth the requested amount and proposed terms of the relevant Incremental Loans. Any additional bank, financial institution, existing Lender or other Person that elects to extend Incremental Loans or Incremental Revolving Commitments shall be reasonably satisfactory to the Borrower and the Administrative Agent (any such bank, financial institution, existing Lender or other Person being called an "Additional Lender") and, if not already a Lender, shall become a Lender under this Agreement pursuant to an amendment (an "Incremental Facility Amendment") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, such Additional Lender and the Administrative Agent. No Lender shall be obligated to provide any Incremental Loans or Incremental Revolving Commitment, unless it so agrees. An Incremental Facility

Amendment may, without the consent of any other Lenders, effect such amendments to any Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this Section (including to provide for voting provisions applicable to the Additional Lenders comparable to the provisions of clause (B) of the second proviso of Section 9.02(b)). The effectiveness of any Incremental Facility Amendment shall, unless otherwise agreed to by the Administrative Agent and the Additional Lenders, be subject to the satisfaction on the date thereof (each, an “Incremental Facility Closing Date”) of each of the conditions set forth in Section 4.04 (it being understood that all references to “the date of such Borrowing” in Section 4.04 shall be deemed to refer to the Incremental Facility Closing Date). The Administrative Agent shall receive not less than 10 Business Days’ advance notice (or shorter, if agreed by the Administrative Agent) prior to any proposed Incremental Facility Closing Date.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders that:

SECTION 3.01 Organization; Powers. Each of the Borrower and its Subsidiaries (other than Subsidiaries that are not Loan Parties or Material Subsidiaries) (a) is duly organized, validly existing and (where such concept exists) in good standing (or its equivalent, if any) under the laws of the jurisdiction of its organization, (b) has all requisite corporate power and authority to carry on its business as now conducted except where the failure to have the same could not individually or in the aggregate reasonably be expected to have a Material Adverse Effect, (c) has all requisite corporate power and authority to execute, deliver and perform its obligations under each Loan Document to which it is a party, except where the failure to have the same could not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect and (d) is qualified to do business in, and (where such concept exists) is in good standing (or its equivalent, if any) in, every jurisdiction where such qualification is required except where the failure to be so qualified or to be (where such concept exists) in good standing (or its equivalent, if any) could not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect.

SECTION 3.02 Authorization; Enforceability.

(a) The Transactions to be entered into by each Loan Party are within such Loan Party’s corporate powers and have been or will by the time required be duly authorized by all necessary corporate or other action and, if required, action by the holders of such Loan Party’s Equity Interests.

(b) This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

**SECTION 3.03 Governmental Approvals; No Conflicts.** The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been, or will be by the time required, obtained or made and are, or will be by the time required, in full force and effect and except filings necessary to perfect Liens created under the Loan Documents, (b) will not violate the Organizational Documents of the Borrower or any Subsidiary, (c) will not violate any Requirement of Law applicable to the Borrower or any Subsidiary, (d) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any Subsidiary or their respective assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any Subsidiary or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation thereunder, and (e) will not result in the creation or imposition of any Lien on any asset of the Borrower or any Subsidiary, except Liens created under the Loan Documents and other Liens permitted by Section 6.02, except, in the case of clauses (c) and (d), for any such violations or defaults that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**SECTION 3.04 Financial Condition; No Material Adverse Change.**

(a) The Borrower has heretofore furnished to the Lenders (i) its consolidated balance sheet as of the end of the fiscal years ended December 31, 2005 and 2006 and consolidated statements of income, stockholders' equity and cash flows for the fiscal years ended December 31, 2004, December 31, 2005 and December 31, 2006, in each case reported on by Ernst & Young LLP, independent public accountants for the Borrower, and (ii) its consolidated balance sheet as of September 30, 2007 and 2006 and consolidated statements of income, stockholders' equity and cash flows for the fiscal quarter and the portion of the fiscal year ended September 2007 (and comparable periods for the prior fiscal year), certified by its chief financial officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and the Subsidiaries as of such dates and for such periods in accordance with GAAP consistently applied, subject in the case of clause (ii) to normal year-end audit adjustments and the absence of footnotes.

(b) The Borrower has heretofore furnished to the Lenders its pro forma consolidated balance sheet as of September 30, 2007, prepared giving effect to the Transactions as if the Transactions had occurred on such date, and its pro forma consolidated statement of income for the twelve-month period ended as of such date, prepared giving effect to the Transactions as if the Transactions had occurred on the first day of such twelve-month period. Such pro forma projected consolidated financial statements (i) have been prepared in good faith based on assumptions believed by the Borrower to be reasonable at the time such projections were prepared and (ii) were based on the best information then available to the Borrower after due inquiry, which includes estimates of the results of the OMX Group and PHLX and its subsidiaries for the most recent fiscal quarter ended prior to the Closing Date for which financial statements have been made available to the Arrangers.

(c) Except as disclosed in the financial statements referred to above or the notes thereto and except for the Disclosed Matters, after giving effect to the Transactions, none of the Borrower or the Subsidiaries has, as of the Closing Date, any material direct or contingent liabilities or long-term commitments.

(d) With respect to any credit event following the Closing Date, no event, change or condition has occurred that has had, or could reasonably be expected to have, a material adverse effect on the business, operations, properties, results of operations or condition (financial or otherwise) of the Borrower and the Subsidiaries, taken as a whole, whether or not covered by insurance, since December 31, 2006.

SECTION 3.05 Properties.

(a) Each of the Borrower and the Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business (including the Mortgaged Properties), except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or as proposed to be conducted or to utilize such properties for their intended purposes.

(b) Each of the Borrower and the Subsidiaries owns, or is licensed to use, all trademarks, trade names, copyrights, patents and other intellectual property material to its business, and the use thereof by the Borrower and the Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(c) Schedule 3.05 sets forth the address of each real property that is owned or leased by the Borrower or any Subsidiary Loan Party as of the Closing Date.

SECTION 3.06 Litigation and Environmental Matters.

(a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened against the Borrower or any Subsidiary (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve any of the Loan Documents.

(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any Subsidiary (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, or (iii) has received notice of any claim with respect to any Environmental Liability.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or a Material Adverse Effect.

SECTION 3.07 Compliance with Laws and Agreements. Each of the Borrower and the Subsidiaries is in compliance with (a) its Organizational Documents, (b) all Requirements of Law applicable to it or its property and (c) all indentures, agreements and other instruments binding upon it or its property, except, in the case of clauses (b) and (c) of this Section, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.08 Investment Company Status. None of the Borrower or any Subsidiary is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09 Taxes. Except for failures that would not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect, each of the Borrower and the Subsidiaries has (i) timely filed or caused to be filed all Tax returns and reports required to have been filed; (ii) paid or caused to be paid all Taxes required to have been paid by it, other than any Taxes that are being contested in good faith by appropriate proceedings if such contest shall have the effect of suspending the collection (or the enforcement of any Liens) for such Taxes and adequate reserves for such Taxes have been provided on the books of the Borrower or its Subsidiaries in accordance with GAAP; and (iii) complied with all Tax withholding obligations.

SECTION 3.10 ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The minimum funding standards of ERISA and the Code with respect to each Plan have been satisfied. The present value of all accumulated benefit obligations under all underfunded Plans (determined for each Plan based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Plans by an amount that, if required to be paid by the Borrower and the Subsidiaries, could reasonably be expected to have a Material Adverse Effect.

SECTION 3.11 Disclosure. To the best of Borrower’s knowledge, neither the Information Memorandum, if any, nor any of the other reports, financial statements, certificates or other information, if any, furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of any Loan Document or delivered thereunder (as modified or supplemented by other information so furnished and taken together as a whole) contains any material misstatement of fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, provided that, with respect to projected financial information, the Borrower represents only that such information was prepared based upon good faith assumptions believed by it to be reasonable at the time delivered (it being understood that such forecasts and projections are subject to significant uncertainties and contingencies, many of which are beyond the Borrower’s control, that no assurance can be given that forecasts or projections will be realized, and that actual results may differ from projections and such difference may be material).

SECTION 3.12 Subsidiaries. Schedule 3.12 sets forth the name of, and the ownership interest of the Borrower and each Subsidiary in, each Subsidiary and identifies each Subsidiary that is a Subsidiary Loan Party, in each case as of the Closing Date.

SECTION 3.13 Insurance. The Borrower believes that the insurance maintained by or on behalf of the Borrower and the Subsidiaries is in such amounts (with no greater risk retention) and against such risks as is (i) customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (ii) adequate.

SECTION 3.14 Labor Matters. As of the Closing Date, there are no strikes or lockouts or any other material labor disputes against the Borrower or any Subsidiary pending or, to the knowledge of the Borrower, threatened. Except as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (a) the hours worked by and payments made to employees of the Borrower and the Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with such matters, and (b) all payments due from the Borrower or any Subsidiary on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Borrower or such Subsidiary. There is no organizing activity involving the Borrower or any Subsidiary pending or, to the knowledge of the Borrower or any Subsidiary, threatened by any labor union or group of employees, except those that, in the aggregate, would not reasonably be expected to have a Material Adverse Effect. There are no representation proceedings pending or, to the knowledge of the Borrower or any Subsidiary, threatened with the National Mediation Board, and no labor organization or group of employees of the Borrower or any Subsidiary has made a pending demand for recognition, except those that, in the aggregate, would not reasonably be expected to have a Material Adverse Effect. There are no material complaints or charges against the Borrower or any Subsidiary pending or, to the knowledge of the Borrower or any Subsidiary, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment by the Borrower or any Subsidiary of any individual, except those that, in the aggregate, would not reasonably be expected to have a Material Adverse Effect. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which the Borrower or any Subsidiary is bound.

SECTION 3.15 Solvency. Immediately after the consummation of the Transactions to occur on the Closing Date, (a) the fair value of the assets of the Borrower and its Subsidiaries (on a consolidated basis), at a fair valuation, will exceed their debts and liabilities, subordinated, contingent or otherwise, (b) the present fair saleable value of the property of the Borrower and its Subsidiaries (on a consolidated basis) will be greater than the amount that will be required to pay the liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become matured, (c) the Borrower and its Subsidiaries (on a consolidated basis) will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become matured, and (d) the Borrower and its Subsidiaries (on a consolidated basis) will not have unreasonably small capital with which to conduct their business.

SECTION 3.16 Federal Reserve Regulations.

(a) The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) Taking into account all of the Transactions, no part of the proceeds of the Loans will be used for any purpose that violates the provisions of the Regulations of the Board, including Regulation T, U or X.

SECTION 3.17 Guarantor Other Indebtedness. With respect to the Borrower, the Obligations with respect to Tranche A Term Loans and Revolving Loans made pursuant to Section 2.01 constitute "Guarantor Other Indebtedness" under and as defined in the Convertible Notes Documents.

#### ARTICLE IV

#### CONDITIONS

SECTION 4.01 Conditions to the Closing Date. The obligations of the Lenders to make Loans and of the Issuing Bank to make LC Credit Extensions hereunder shall not become effective unless, on or prior to April 15, 2008, each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The OMX Transaction Agreement shall have not been amended or modified in any respect that is materially adverse to the Lenders without the consent of the Arrangers (which consent shall not be unreasonably withheld). The conditions to the completion of the OMX Acquisition set forth in the OMX Transaction Agreement shall have been satisfied in all material respects in accordance with the OMX Transaction Agreement without any waiver by the Borrower that is materially adverse to the Lenders unless the Arrangers shall have consented to such waiver, which consent shall not be unreasonably withheld, and the OMX Acquisition shall be consummated substantially concurrently with the initial borrowings hereunder.

(b) The Administrative Agent shall have received confirmation that, pursuant to the OMX Acquisition, substantially concurrently with the making of the initial Loans hereunder, the Borrower will own OMX Shares which represent more than 66 2/3% of the OMX Shares (on a fully diluted basis).

(c) The Administrative Agent shall have received the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated a date on or prior to the Closing Date and each in form and substance satisfactory to the Administrative Agent and the Arrangers:

- (i) executed counterparts of the Collateral Agreement from the Borrower and each Subsidiary Loan Party together with (x) Uniform Commercial Code financing statements for each Loan Party in appropriate form for filing with the Secretary of State of each applicable jurisdiction,
- (y) stock certificates and stock powers in favor of the Administrative Agent with respect to all certificated Equity Interests pledged thereunder to the extent required by the Collateral Agreement; provided that, to the extent any Collateral (other than the pledge and perfection of the security interests in the capital stock of wholly-owned domestic Subsidiaries



held by the Loan Parties (to the extent required by the Collateral Agreement) and other assets pursuant to which a Lien may be perfected by the filing of a financing statement under the Uniform Commercial Code) is not provided on the Closing Date after the Borrower has used commercially reasonable efforts to do so, the delivery of such Collateral shall not constitute a condition precedent to the availability of the Loans on the Closing Date but shall be required to be delivered after the Closing Date pursuant to Section 5.13(d);

(ii) lien searches with respect to each Loan Party in such jurisdictions as may be reasonably requested by the Administrative Agent;

(iii) a promissory note executed by the Borrower in favor of each Lender requesting three Business Days in advance a promissory note evidencing the Loan provided by such Lender;

(iv) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(v) a certificate of good standing for each Loan Party from its jurisdiction of organization;

(vi) a certificate signed by the Chief Financial Officer of the Borrower certifying as to the solvency of the Borrower and its Subsidiaries (on a consolidated basis) after giving effect to the OMX Acquisition and the incurrence of all Indebtedness related thereto; and

(vii) a favorable opinion of Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Loan Parties, and local counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, in the form attached as Exhibit D.

(d) The representations and warranties made by the Loan Parties in Section 3.01(c), Section 3.02(b), Section 3.08, Section 3.16 and Section 3.17 as they relate to the Loan Parties at such time shall be true and correct in all material respects.

(e) All accrued fees and expenses of the Administrative Agent and the Lead Arrangers (including the fees and expenses of counsel for the Administrative Agent and the Lead Arrangers and local and special counsel for the Administrative Agent and the Lead Arrangers) shall have been paid. The Borrower shall have paid all items then due and payable under the Fee Letter.

(f) The Administrative Agent shall have received a Borrowing Request in accordance with the requirements of Section 2.03 hereof.

SECTION 4.02 Conditions to the PHLX Delayed Draw Tranche A Term Loans. The obligations of the Lenders to make Tranche A Term Loans pursuant to the PHLX Delayed Draw Tranche A Commitments shall not become effective unless, on or prior to July 31, 2008, the conditions set forth in Section 4.01 have previously been satisfied (or waived in accordance with Section 9.02) and each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The PHLX Acquisition Agreement shall have not been amended or modified in any respect that is materially adverse to the Lenders without the consent of the Arrangers (which consent shall not be unreasonably withheld). The conditions to the completion of the PHLX Acquisition set forth in the PHLX Acquisition Agreement shall have been satisfied in all material respects in accordance with the PHLX Acquisition Agreement without any waiver by the Borrower that is materially adverse to the Lenders unless the Arrangers shall have consented to such waiver, which consent shall not be unreasonably withheld (it being understood that any waiver of the condition that the order of the Court of Chancery of the State of Delaware approving the settlement of the litigation pending against PHLX in the Court of Chancery of the State of Delaware, captioned Ginsburg v. Philadelphia Stock Exch., et al., shall have become final and binding and all appeals have been exhausted shall be deemed to be materially adverse to the Lenders), and the PHLX Acquisition shall be consummated substantially concurrently with the borrowing of the Tranche A Term Loans pursuant to the PHLX Delayed Draw Tranche A Commitments.

(b) The Administrative Agent shall have received the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing PHLX Parties, each dated a date on or prior to the PHLX Funding Date and each in form and substance satisfactory to the Administrative Agent:

(i) executed counterparts of a joinder to the Collateral Agreement from each PHLX Party together with (w) Uniform Commercial Code financing statements for each PHLX Party in appropriate form for filing with the Secretary of State of each applicable jurisdiction and (x) stock certificates and stock powers in favor of the Administrative Agent with respect to all certificated Equity Interests pledged thereunder to the extent required by the Collateral Agreement, (y) an executed Mortgage in appropriate form for recording with respect to each Mortgaged Property; provided that, to the extent any Collateral (other than the pledge and perfection of the security interests in the capital stock of wholly-owned domestic Subsidiaries held by the PHLX Parties (to the extent required by the Collateral Agreement) and other assets pursuant to which a Lien may be perfected by the filing of a financing statement under the Uniform Commercial Code) is not provided on the PHLX Funding Date after the Borrower has used commercially reasonable efforts to do so, the delivery of such Collateral shall not constitute a condition precedent to the availability of the Tranche A Term Loans on the PHLX Funding Date but shall be required to be delivered after the PHLX Funding Date pursuant to Section 5.13(d);

(ii) lien searches with respect to each PHLX Party in such jurisdictions as may be reasonably requested by the Administrative Agent;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each PHLX Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such PHLX Party is a party or is to be a party;

(iv) a certificate of good standing for each PHLX Party from its jurisdiction of organization;

(v) a certificate signed by the Chief Financial Officer of the Borrower certifying as to the solvency of the Borrower and its Subsidiaries (on a consolidated basis) after giving effect to the PHLX Acquisition and the incurrence of all Indebtedness related thereto;

(vi) a favorable opinion of Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Loan Parties, and local counsel to the PHLX Parties, in form satisfactory to the Administrative Agent.

(c) The representations and warranties made by (i) the Loan Parties in Section 3.01(c), Section 3.02(b), Section 3.08, Section 3.16 and Section 3.17 as they relate to the Loan Parties at such time and (ii) by PHLX in the PHLX Acquisition Agreement as are material to the interests of the Lenders, but only to the extent in the case of this subclause (ii) that the Borrower would have the right to terminate its obligations under the PHLX Acquisition Agreement as a result of a breach of such representations and warranties in the PHLX Acquisition Agreement, shall in each case be true and correct in all material respects.

(d) No Major Event of Default shall have occurred and shall be continuing.

(e) All accrued fees and expenses of the Administrative Agent and the Lead Arrangers (including the fees and expenses of counsel for the Administrative Agent and the Lead Arrangers and local and special counsel for the Administrative Agent and the Lead Arrangers) shall have been paid. The Borrower shall have paid all items then due and payable under the Fee Letter.

(f) The Administrative Agent shall have received a Borrowing Request in accordance with the requirements of Section 2.03 hereof.

SECTION 4.03 Conditions to the Nord Pool Delayed Draw Tranche A Term Loans. The obligations of the Lenders to make Tranche A Term Loans pursuant to the Nord Pool Delayed Draw Tranche A Commitments shall not become effective unless, on or prior to August 27, 2008, the conditions set forth in Section 4.01 have previously been satisfied (or waived in accordance with Section 9.02) and each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The Nord Pool Acquisition Agreement shall have not been amended or modified in any respect that is materially adverse to the Lenders without the consent of the Arrangers (which consent shall not be unreasonably withheld). The conditions to the completion of the Nord Pool Acquisition set forth in the Nord Pool Acquisition Agreement shall have been satisfied in all material respects in accordance with the Nord Pool Acquisition Agreement without any waiver by the Borrower that is materially adverse to the Lenders unless the Arrangers shall have consented to such waiver, which consent shall not be unreasonably withheld, and the Nord Pool Acquisition shall be consummated substantially concurrently with the borrowing of the Tranche A Term Loans pursuant to the Nord Pool Delayed Draw Tranche A Commitments; provided that the condition set forth in this clause (a) shall not be required to be satisfied in connection with any Borrowing of Tranche A Term Loans on the last Business Day of the Nord Pool Delayed Draw Availability Period if the Borrower has delivered a certificate of a Responsible Officer to the Administrative Agent stating that the Borrower will cause the proceeds of the Tranche A Term Loans to be held in a segregated account of the Borrower until such time as such funds are used to pay all or a portion of the consideration payable in the Nord Pool Acquisition or to prepay Tranche A Term Loans pursuant to Section 2.11(b)(ii).

(b) The Borrower shall have furnished to the Lenders copies of all historical financial statements received prior to such time pursuant to the Nord Pool Acquisition Agreement.

(c) The Administrative Agent shall have received a certificate signed by the Chief Financial Officer of the Borrower certifying that the Borrower would be in compliance as of such date, on a Pro Forma Basis after giving effect to the Nord Pool Acquisition and the incurrence of all Indebtedness to be incurred in connection therewith, with the covenants set forth in Section 6.12 and Section 6.13 as of and for the last day of the most recently ended fiscal quarter of the Borrower for which financial statements have been or were required to be delivered pursuant to paragraph (a) or (b) of Section 5.01.

(d) the conditions set forth in Section 4.04 shall be satisfied.

SECTION 4.04 Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing (except for any Borrowing on the Closing Date or the Borrowing of Tranche A Term Loans pursuant to the PHLX Delayed Draw Tranche A Commitments), and of the Issuing Bank to make any LC Credit Extension (except for LC Credit Extensions on the Closing Date or for the purpose set forth in Section 6.01(b)(xiv) and 6.02(k)), is subject to receipt of the request therefor in accordance herewith and to the satisfaction of the following conditions:

(a) Other than any Clean-Up Default, the representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as the case may be (except to the extent that any representation and warranty expressly relates to an earlier date, in which case such representation and warranty shall have been true and correct in all material respects as of such earlier date).

(b) Other than any Clean-Up Default, at the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as the case may be, no Default shall have occurred and be continuing.

Each Borrowing (provided that a conversion or a continuation of a Borrowing shall not constitute a "Borrowing" for purposes of this Section) and each LC Credit Extension shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

## ARTICLE V

### AFFIRMATIVE COVENANTS

Beginning on the Closing Date after giving effect to the Loans made on the Closing Date and continuing thereafter until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable under any Loan Document shall have been paid in full and all Letters of Credit shall have expired or been terminated and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

SECTION 5.01 Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent on behalf of each Lender:

(a) within 90 days after the end of each fiscal year of the Borrower, its audited consolidated balance sheet and audited consolidated statements of income, stockholders' equity and cash flows as of the end of and for such year, and related notes thereto, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by Ernst & Young LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and the Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, its unaudited consolidated balance sheet and unaudited consolidated statements of income, stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer as presenting fairly in all material respects the financial condition and results of operations of the Borrower and the Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under paragraph (a) or (b) above, a certificate of a Financial Officer (i) stating that, except as set forth in such certificate, such Financial Officer has no knowledge of any Default having occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations (A) demonstrating compliance with the covenants contained in Sections 6.12 and 6.13 and (B) in the case of financial statements delivered under paragraph (a) above, beginning with the financial statements for the fiscal year of the Borrower ending December 31, 2008, of Excess Cash Flow and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the Borrower's audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(d) within 45 days after the commencement of each fiscal year of the Borrower, commencing with the fiscal year ending December 31, 2008, a detailed consolidated budget for such fiscal year (including a projected consolidated balance sheet and consolidated statements of projected income and cash flows as of the end of and for such fiscal year and setting forth the assumptions used for purposes of preparing such budget) and, promptly when available, any significant revisions of such budget;

(e) promptly after the same become publicly available, copies of all periodic reports, proxy statements and other material filings (as reasonably determined by the Borrower) filed by the Borrower or any Subsidiary with the SEC or with any national securities exchange, or distributed by the Borrower to the holders of its Equity Interests generally; and

(f) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent or any Arranger may reasonably request.

Information required to be delivered pursuant to clauses (a), (b) and (e) shall be deemed to have been delivered on the date on which the Borrower provides notice to the Administrative Agent and the Lenders that such information has been posted on the Borrower's website on the Internet at [www.nasdaq.com/investorrelations/ir\\_home.stm](http://www.nasdaq.com/investorrelations/ir_home.stm), at [www.sec.gov/edgar/searchedgar/webusers.htm](http://www.sec.gov/edgar/searchedgar/webusers.htm) or at another website identified in such notice and accessible by the Lenders without charge, provided that (i) such notice may be included in a certificate delivered pursuant to clause (c) and (ii) the Borrower shall deliver paper copies of the information required to be delivered pursuant to clauses (a), (b) and (e) to any Lender that requests such delivery.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the Issuing Bank materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "Public Lender"). The Borrower hereby agrees that it will use commercially reasonable

efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC," which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the Issuing Bank and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 9.12); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

SECTION 5.02 Notices of Material Events. The Borrower will furnish to the Administrative Agent (for distribution to each Lender through the Administrative Agent) prompt written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or, to the knowledge of a Financial Officer or another executive officer of the Borrower or any Subsidiary, affecting the Borrower or any Affiliate thereof that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(c) within three Business Days after the Borrower becomes aware of the occurrence of any ERISA Event or any fact or circumstance that gives rise to a reasonable expectation that any ERISA Event will occur that, in either case, alone or together with any other ERISA Events that have occurred or are reasonably expected to occur, could reasonably be expected to result in material liability of the Borrower and the Subsidiaries;

(d) any change in the ratings of the credit facilities made available under this Agreement by S&P or Moody's, or any notice from either such agency indicating its intent to effect such a change or to place the Borrower or such credit facilities on a "CreditWatch" or "WatchList" or any similar list, in each case with negative implications, or its cessation of, or its intent to cease, rating such credit facilities; and

(e) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a written statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03 Information Regarding Collateral.

(a) The Borrower will furnish to the Administrative Agent prompt written notice of any change (i) in any Loan Party's legal name, (ii) in the jurisdiction of incorporation or organization of any Loan Party or (iii) in any Loan Party's organizational identification number. The Borrower agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral.

(b) At the time of delivery of financial statements pursuant to Section 5.01(a), the Borrower shall deliver to the Administrative Agent a certificate executed by a Financial Officer or chief legal officer of the Borrower (i) setting forth the information required pursuant to Sections 7, 8, 9, 11, 12, 13 and 14 of the Perfection Certificate or confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the Closing Date or the date of the most recent certificate delivered pursuant to this Section and (ii) certifying that all Uniform Commercial Code financing statements (including fixture filings, as the case may be) or other appropriate filings, recordings or registrations, including all refilings, rerecordings and reregistrations, containing a description of the Collateral have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified pursuant to clause (i) above to the extent necessary to protect and perfect the security interests under the Collateral Agreement for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period).

SECTION 5.04 Existence; Conduct of Business. The Borrower will, and will cause each Subsidiary to, do or cause to be done all things necessary to obtain, preserve, renew and keep in full force and effect (a) its legal existence and (b) the rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business, except, in the case of clause (b), to the extent that failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.05 Payment of Obligations. The Borrower will, and will cause each Subsidiary to, pay its obligations (other than Indebtedness and any obligations in respect of any Swap Agreements), including Tax liabilities that, if unpaid, could result in a Lien on any of its assets or properties, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such contests shall have the effect of suspending any collection or the enforcement of such obligations, (c) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (d) any failures to make such payments pending such contests could not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect.

SECTION 5.06 Maintenance of Properties. The Borrower will, and will cause each Subsidiary to, keep and maintain all property material to the conduct of its business in good



working order and condition, ordinary wear and tear excepted, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.07 Insurance. The Borrower will, and will cause each Subsidiary to, maintain, with financially sound and reputable insurance companies, (a) insurance in such amounts (with no greater risk retention) and against such risks as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all other insurance as may be required by law or any other Loan Document. The Borrower will furnish to the Lenders, upon request of the Administrative Agent, information in reasonable detail as to the insurance so maintained. The Borrower will cause all property and casualty insurance policies to be endorsed or otherwise amended to include a "mortgagee" endorsement and a "standard" or "New York" lender's loss payable endorsement, in form and substance reasonably satisfactory to the Administrative Agent, which endorsement shall provide that, from and after the Closing Date, if the insurance carrier shall have received written notice from the Administrative Agent of the occurrence of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to the Borrower or the other Loan Parties under such policies directly to the Administrative Agent.

SECTION 5.08 Casualty and Condemnation. The Borrower will furnish to the Administrative Agent (for distribution to each Lender through the Administrative Agent) prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of or any material interest in the Collateral under power of eminent domain or by condemnation or similar proceeding.

SECTION 5.09 Books and Records; Inspection and Audit Rights. The Borrower will, and will cause each Subsidiary to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Subject to Section 9.12, the Borrower will, and will cause each Subsidiary to, permit any representatives designated by the Administrative Agent or any Lender (which shall be coordinated through the Administrative Agent), upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested, provided that, excluding any such visits and inspections during the continuation of an Event of Default, the Administrative Agent and the Lenders shall not exercise such rights more often than two times during any calendar year.

SECTION 5.10 Compliance with Laws. The Borrower will, and will cause each Subsidiary to, comply with all Requirements of Law with respect to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.11 Use of Proceeds and Letters of Credit. The proceeds of the Tranche A Term Loans (together with Revolving Loans, if any, drawn on the Closing Date) will be used, directly or indirectly, to consummate a portion of the OMX Refinancing and the OMX Acquisition and to pay Transaction Costs. The proceeds of the Tranche A Term Loans made

pursuant to the OMX Delayed Draw Tranche A Commitments will be used to acquire OMX Shares not acquired on the Closing Date and to refinance certain Indebtedness of the OMX Group. The proceeds of the Tranche A Term Loans made pursuant to the PHLX Delayed Draw Tranche A Commitments will be used to consummate the PHLX Acquisition and to refinance certain existing indebtedness of PHLX. The proceeds of the Tranche A Term Loans made pursuant to the Nord Pool Delayed Draw Tranche A Commitments will be used to consummate the Nord Pool Acquisition and to refinance certain existing indebtedness of Nord Pool (it being understood and agreed that such proceeds may also be held in a segregated account of the Borrower to be used to pay all or a portion of the consideration payable in the Nord Pool Acquisition upon the consummation thereof). The proceeds of the Revolving Loans and Swingline Loans drawn after the Closing Date will be used only for general corporate purposes (including Permitted Acquisitions and the payment of Transaction Costs). No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X. Letters of Credit will be used only for general corporate purposes.

SECTION 5.12 Additional Subsidiaries. If any additional Subsidiary is formed or acquired after the Closing Date, the Borrower will, within five Business Days after such Subsidiary is formed or acquired, notify the Administrative Agent and the Lenders thereof and cause the Collateral and Guarantee Requirement to be satisfied with respect to such Subsidiary (if it is a Subsidiary Loan Party) and with respect to any Equity Interest in or Indebtedness of such Subsidiary owned by or on behalf of any Loan Party; provided that with respect to newly acquired Foreign Subsidiaries the Borrower will have thirty days to deliver a pledge of any Equity Interests in such Subsidiary, which thirty day period may be extended at the sole discretion of the Administrative Agent.

SECTION 5.13 Further Assurances.

(a) On and after the Closing Date, the Borrower will, and will cause each Subsidiary Loan Party to, execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents), that may be required under any applicable law, or that the Administrative Agent or the Required Lenders may reasonably request, to cause the Collateral and Guarantee Requirement to be and remain satisfied, all at the expense of the Loan Parties. On and after the Closing Date, the Borrower also agrees to provide to the Administrative Agent, from time to time upon request, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

(b) If any material assets (including any real property or improvements thereto or any interest therein with a fair market value in excess of \$5,000,000) are acquired by the Borrower or any Subsidiary Loan Party after the Closing Date (other than (i) assets constituting Collateral under the Collateral Agreement that become subject to the Lien created by the Collateral Agreement upon acquisition thereof and (ii) Excluded Assets), the Borrower will notify the Administrative Agent and the Lenders thereof and, if requested by the Administrative Agent or the Required Lenders, the Borrower will cause such assets to be subjected to a Lien securing the Obligations and will take, and cause the Subsidiary Loan Parties to take, such actions as shall be

necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (a) of this Section, all at the expense of the Loan Parties.

(c) Notwithstanding the provision of clauses (a) and (b) of this Section 5.13, the Administrative Agent shall not take a security interest in those assets with respect to which the Administrative Agent and the Borrower determine that the cost of granting any such Lien on any such assets is excessive in relation to the benefit to the Lenders afforded by such Lien on such assets or to the extent that the taking of such security interest is unlawful or would reasonably be expected to result in a risk of material liability to the Borrower and its Subsidiaries taken together or would reasonably be expected to result in a risk of liability to their respective directors (civil or criminal) or would reasonably be expected to result in a materially adverse tax consequence to the Borrower and its Subsidiaries taken together.

(d) To the extent that any OMX Shares are owned by any Loan Party on the 120<sup>th</sup> day following the Closing Date, the Borrower shall cause such OMX Shares to be subject to a Foreign Pledge Agreement governed by the laws of Sweden and in form reasonably satisfactory to the Administrative Agent, and, subject to Schedule 1.02, the Loan Parties shall have taken all actions on or prior to such date as may be reasonably requested by the Administrative Agent in order to perfect the security interest of the Administrative Agent therein; *provided*, that if an Event of Default (other than a Clean-Up Default) has occurred and is continuing on or prior to such 120<sup>th</sup> day and the Administrative Agent or the Required Lenders shall so request in a written notice to the Borrower, the Loan Parties shall, subject to Schedule 1.02, take all such actions to perfect such security interest as promptly as reasonably practicable notwithstanding that such 120 day period shall not yet have expired.

**SECTION 5.14 Interest Rate and Foreign Currency Protection.**

(a) As promptly as practicable, and in any event from the date that is 180 days after the Closing Date through the second anniversary of the Closing Date, the Borrower shall enter into Swap Agreements to the extent required to ensure that at least 30% of the aggregate principal amount of Indebtedness for borrowed money of the Borrower and its consolidated Subsidiaries shall either bear interest at a fixed rate or the interest cost in respect thereto shall be fixed or capped pursuant to one or more Swap Agreements entered into with one or more Lenders (or Affiliates thereof) on terms and conditions reasonably acceptable to the Administrative Agent.

(b) At all times from and after the Closing Date, the Borrower shall maintain a sound and fiscally responsible hedging program, in accordance with prudent business practices, designed to protect the Borrower and its Subsidiaries against foreign exchange and currency fluctuations.

**SECTION 5.15 Rated Credit Facilities.** The Borrower will use commercially reasonable efforts to cause the Loans to be continuously rated by S&P and Moody's.

**SECTION 5.16 Change of Name.** Within three Business Days following the Closing Date, the Borrower will change its name to "The NASDAQ OMX Group, Inc."

NEGATIVE COVENANTS

Beginning on the Closing Date after giving effect to the Loans made on the Closing Date and continuing thereafter until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees, expenses and other amounts payable (other than contingent amounts not yet due) under any Loan Document have been paid in full and all Letters of Credit have expired or been terminated, the Borrower covenants and agrees with the Lenders that:

SECTION 6.01 Indebtedness; Certain Equity Securities.

(a) The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Indebtedness, provided that so long as no Event of Default has occurred and is continuing the Borrower or any Subsidiary Loan Party may incur Qualified Debt, if on a Pro Forma Basis (x) the Leverage Ratio for the Borrower's most recently ended four full fiscal quarters for which financial statements have been delivered pursuant to paragraph (a) or (b) of Section 5.01 would be less than the Applicable Leverage Ratio and (y) the Borrower would be in compliance on a Pro Forma Basis with the covenant set forth in Section 6.12 as of the most recent test date for which financial statements have been delivered pursuant to paragraph (a) or (b) of Section 5.01.

(b) The limitations set forth in paragraph (a) of this Section 6.01 shall not apply to any of the following items:

(i) Indebtedness created under the Loan Documents;

(ii) (A) the Convertible Notes, (B) the New Convertible Notes and (C) refinancings, extensions, renewals and replacements of any such Indebtedness or Indebtedness incurred pursuant to subclauses (A) and (B), provided that such refinancing, extending, renewal or replacement Indebtedness (I) shall not be Indebtedness of a Subsidiary obligor that is not a Loan Party unless such Subsidiary was an obligor with respect to the Indebtedness being refinanced, extended, renewed or replaced, (II) shall not be in a principal amount that exceeds the principal amount of the Indebtedness being refinanced, extended, renewed or replaced (plus any accrued but unpaid interest and premium or penalty payable by the terms of such Indebtedness thereon and reasonable fees and expenses associated therewith), (III) shall not have an earlier maturity date or shorter weighted average life than the Indebtedness being refinanced, extended, renewed or replaced and (IV) if the Indebtedness being refinanced, extended, renewed or replaced is subordinated to the Obligations, such Indebtedness shall be subordinated to the Obligations on the same terms as the Indebtedness being refinanced, extended, renewed or replaced;

(iii) Indebtedness existing on the date hereof and set forth on Schedule 6.01 and refinancings, extensions, renewals and replacements of any such Indebtedness or Indebtedness incurred pursuant to Section 6.01(a), provided that such refinancing, extending,

renewal or replacement Indebtedness (A) shall not be Indebtedness of a Subsidiary obligor that is not a Loan Party unless such Subsidiary was an obligor with respect to the Indebtedness being refinanced, extended, renewed or replaced, (B) shall not be in a principal amount that exceeds the principal amount of the Indebtedness being refinanced, extended, renewed or replaced (plus any accrued but unpaid interest and premium or penalty payable by the terms of such Indebtedness thereon and reasonable fees and expenses associated therewith), (C) shall not have an earlier maturity date or shorter weighted average life than the Indebtedness being refinanced, extended, renewed or replaced and (D) if the Indebtedness being refinanced, extended, renewed or replaced is subordinated to the Obligations, such Indebtedness shall be subordinated to the Obligations on the same terms as the Indebtedness being refinanced, extended, renewed or replaced;

(iv) Indebtedness of the Borrower to any Subsidiary and of any Subsidiary to the Borrower or any other Subsidiary, provided that (A) Indebtedness of any Subsidiary that is not a Loan Party to the Borrower or any Subsidiary Loan Party shall be subject to Section 6.04 and (B) Indebtedness of the Borrower or any Subsidiary Loan Party to any Subsidiary that is not a Subsidiary Loan Party shall be subordinated to the Obligations on terms set forth in Exhibit F;

(v) Guarantees by the Borrower of Indebtedness of any Subsidiary and by any Subsidiary (other than any Excluded Subsidiary) of Indebtedness of the Borrower or any other Subsidiary, provided that (A) the Indebtedness so Guaranteed is permitted by this Section (other than clause (b)(iii) (except as it relates to refinancing of Indebtedness incurred pursuant to Section 6.01(a) or (b)(vii)), (B) Guarantees by the Borrower or any Subsidiary Loan Party of Indebtedness of any Subsidiary that is not a Loan Party shall be subject to Section 6.04, (C) Guarantees permitted under this clause (v) shall be subordinated to the Obligations of the applicable Subsidiary to the same extent and on the same terms as the Indebtedness so Guaranteed is subordinated to the Obligations, (D) no Indebtedness incurred pursuant to Section 6.01(a) (or refinancing Indebtedness incurred pursuant to Section 6.01(b)(iii) in respect of Indebtedness incurred pursuant to Section 6.01(a) or Indebtedness outstanding in reliance on Section 6.01(b)(ii) shall be Guaranteed by any Subsidiary, unless such Subsidiary is a Loan Party that has Guaranteed the Obligations pursuant to the Collateral Agreement and (E) any Guarantee by the Borrower of the Convertible Notes (the "Parent Convertible Note Guarantee") shall be subordinated to the Obligations to at least the same extent and on the same terms as the Parent Convertible Note Guarantee is subordinated to the Obligations on and as of the Closing Date;

(vi) (A) Indebtedness of the Borrower or any Subsidiary (other than any Excluded Subsidiary) incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed by the Borrower or any Subsidiary in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, provided that such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, and (B) extensions, renewals and replacements of any such Indebtedness so long as the principal amount of such refinancings, extensions, renewals and replacements does not exceed the principal amount of the Indebtedness being refinanced, extended, renewed or replaced (plus any accrued but unpaid

interest and premium or penalty payable by the terms of such Indebtedness thereon and reasonable fees and expenses associated therewith), provided that the aggregate principal amount of Indebtedness permitted by this clause (vi) shall not exceed \$30,000,000 at any time outstanding;

(vii) Indebtedness of any Person that is merged or consolidated with and into the Borrower or any Subsidiary or of any Person that otherwise becomes a Subsidiary after the date hereof, provided that such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary, and extensions, renewals and replacements of any such Indebtedness so long as the principal amount of such extensions, renewals and replacements does not exceed the principal amount of the Indebtedness being extended, renewed or replaced (plus any accrued but unpaid interest and redemption premium payable by the terms of such Indebtedness thereon), provided that (i) the Borrower would be in compliance on a Pro Forma Basis with the covenants set forth in Section 6.12 and Section 6.13 as of the most recent test date for which financial statements have been delivered pursuant to paragraph (a) or (b) of Section 5.01 and (ii) the aggregate principal amount of Indebtedness permitted by this clause (vii) shall not exceed \$100,000,000 at any time outstanding (of which no more than \$50,000,000 shall be Indebtedness of Subsidiaries that are not Loan Parties);

(viii) other unsecured Indebtedness of the Borrower and the Subsidiaries in an aggregate principal amount not exceeding \$20,000,000 at any time outstanding;

(ix) Indebtedness owed to any Person (including obligations in respect of letters of credit for the benefit of such Person) providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(x) Indebtedness of the Borrower or any Subsidiary in respect of performance bonds, bid bonds, appeal bonds, surety bonds, performance and completion guarantees and similar obligations (other than in respect of other Indebtedness), in each case provided in the ordinary course of business;

(xi) Indebtedness in respect of Swap Agreements permitted by Section 6.07;

(xii) Indebtedness arising from the honoring by a bank or financial institution of a check or similar instrument drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness is repaid within five Business Days;

(xiii) Indebtedness of TRF owing to Borrower or another Subsidiary not to exceed \$10,000,000 at any time outstanding;

(xiv) Indebtedness in the form of a letter of credit or guaranty in an aggregate amount required in order to consummate the Squeeze-Out Procedure and obtain advanced access (Sw: *förhandstillträde*); provided that the Borrower shall use Tranche A Term Loans to promptly repay any draws on such letter of credit or guaranty (or to "cash collateralize" its obligations on any such letter of credit or guaranty prior to any draw);

(xv) Indebtedness in respect of letters of credit, guarantees, counter-indemnities and short term facilities incurred by any Subsidiary engaged in Exchange and Clearing Operations in connection with the ordinary clearing, depository and settlement procedures (including, without limitation, any letter of credit or guarantees provided to any central securities depositories or external custodians) relating thereto; provided that any advances thereunder are repaid within 10 days following the date of such advance or any drawing under any letter of credit or guarantee;

(xvi) any Indebtedness arising under arrangements in connection with the participation in or through any clearing system or investment, commodities or stock exchange where the Indebtedness arises under the rules, normal procedures, agreements or legislation governing trading on or through such system or exchange; provided that any advances thereunder are repaid within 10 days following the date of such advance or any drawing under any letter of credit or guarantee;

(xvii) any Indebtedness arising as a result of short-term sale and repurchase transactions entered into by the Borrower or any of its Subsidiaries on market terms and in respect of marketable securities held for investment purposes where such member of the OMX Group enters into back to back, foreign exchange, swap or derivative transaction in the ordinary course of business, provided that the amount of such Indebtedness doesn't exceed the principal amount of the securities sold;

(xviii) Indebtedness incurred in connection with the administration of the UK ESOP Program in the ordinary course of business and not outstanding longer than seven days;

(xix) Indebtedness of any Regulated Subsidiary incurred under a revolving credit facility or working capital or similar facility entered into at such Regulated Subsidiary's sole and absolute discretion to satisfy such Regulated Subsidiary's determination of any requirement imposed at any time or from time to time by any Governmental Authority;

(xx) Indebtedness of any Regulated Subsidiary to the Borrower or any other Subsidiary entered into at such Regulated Subsidiary's sole and absolute discretion to satisfy such Regulated Subsidiary's determination of any requirement imposed at any time or from time to time by any Governmental Authority;

(xxi) Guarantees by the Borrower or any other Subsidiary of any Indebtedness of any Regulated Subsidiary entered into at such Regulated Subsidiary's sole and absolute discretion to satisfy such Regulated Subsidiary's determination of any requirement imposed at any time or from time to time by any Governmental Authority;

(xxii) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(xxiii) Indebtedness of the OMX Group incurred on behalf of its customers in its market technology business consisting of purchase money Indebtedness and Capital Lease Obligations not to exceed \$50,000,000 outstanding at any time in respect of back-to-back lease arrangements; and

(xxiv) Indebtedness in respect of the Nord Pool Seller Note.

(c) The Borrower will not, nor will it permit any Subsidiary to, issue any preferred Equity Interests or any Disqualified Equity Interests, except (i) in the case of the Borrower, preferred Equity Interests that are Qualified Equity Interests, and (ii) any such Equity Interests issued to the Borrower or a Subsidiary Loan Party.

SECTION 6.02 Liens. The Borrower will not, nor will it permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens created under the Loan Documents;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of the Borrower or any Subsidiary existing on the Closing Date and set forth in Schedule 6.02, provided that (A) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (B) such Lien shall secure only those obligations that it secures on the date hereof and refinancings, extensions, renewals and replacements thereof so long as the principal amount of such refinancings, extensions, renewals and replacements does not exceed the principal amount of the obligations being refinanced, extended, renewed or replaced (plus any accrued but unpaid interest and premium or penalty payable by the terms of such obligations thereon and reasonable fees and expenses associated therewith);

(d) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary (including, for the avoidance of doubt, OMX, PHLX, BSX, Nord Pool and their respective Subsidiaries) after the date hereof prior to the time such Person becomes a Subsidiary, provided that (A) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (B) such Lien shall not apply to any other property or asset of the Borrower or any Subsidiary and (C) such Lien shall secure only those obligations that it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be, and refinancings, extensions, renewals and replacements thereof so long as the principal amount of such refinancings, extensions, renewals and replacements does not exceed the principal amount of the obligations being refinanced, extended, renewed or replaced (plus any accrued but unpaid interest and premium or penalty payable by the terms of such obligations thereon and reasonable fees and expenses associated therewith); and provided, further, that in the case of the OMX Group, no Liens in respect of borrowed money shall be permitted pursuant to this clause (d);



(e) Liens on fixed or capital assets acquired, constructed or improved (including any such assets made the subject of a Capital Lease Obligation incurred) by the Borrower or any Subsidiary, provided that (A) such Liens secure Indebtedness incurred to finance such acquisition, construction or improvement and permitted by clause (vi)(A) of Section 6.01(b) or to extend, renew or replace such Indebtedness and permitted by clause (vi)(B) of Section 6.01(b), (B) such Liens and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement (provided that this clause (B) shall not apply to any Indebtedness permitted by clause (vi)(B) of Section 6.01(b) or any Lien securing such Indebtedness), (C) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital asset and (D) such Liens shall not apply to any other property or assets of the Borrower or any Subsidiary;

(f) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the Uniform Commercial Code in effect in the relevant jurisdiction covering only the items being collected upon;

(g) Liens representing any interest or title of a licensor, lessor or sublicensor or sublessor under any lease or license permitted by this Agreement;

(h) Liens not otherwise permitted by this Section to the extent that neither (A) the aggregate outstanding principal amount of the obligations secured thereby nor (B) the aggregate fair market value (determined as of the date such Lien is incurred) of the assets subject thereto exceeds \$10,000,000 at any time outstanding;

(i) Liens granted by a Subsidiary that is not a Loan Party in favor of the Borrower or another Loan Party in respect of Indebtedness or other obligations owed by such Subsidiary to such Loan Party;

(j) Liens on the assets of any Subsidiary that is not a Subsidiary Loan Party securing Indebtedness of such Subsidiary permitted by Section 6.01;

(k) Liens on insurance policies and the proceeds thereof securing Indebtedness permitted by Section 6.01(b)(xxii);

(l) Liens granted by a Subsidiary that is not a Subsidiary Loan Party to secure obligations that do not constitute Indebtedness and are incurred in connection with the exchange and clearing operations of such Subsidiary; and

(m) Liens on cash deposits required to be made in order to consummate the Squeeze-Out Procedure and obtain advanced access (Sw: *förhandstillträde*).

#### SECTION 6.03 Fundamental Changes.

(a) The Borrower will not, nor will it permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing (i) any Person may merge into the Borrower

in a transaction in which the Borrower is the surviving corporation, (ii) any Subsidiary may merge into any Person in order to consummate an investment or Asset Sale permitted by Section 6.04 or 6.05, (iii) any Subsidiary may merge into the Borrower or any other Subsidiary; provided that when any Subsidiary that is a Loan Party is merging with another Subsidiary, a Loan Party shall be the continuing or surviving Person and (iv) any Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders.

(b) The Borrower will not, nor will it permit any Subsidiary to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and the Subsidiaries on the Closing Date and businesses reasonably related thereto and the businesses of OMX, PHLX, BSX, Nord Pool and their respective Subsidiaries in effect on the Closing Date and businesses reasonably related thereto.

SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions.

(a) The Borrower will not, nor will it permit any Subsidiary to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a Wholly-Owned Subsidiary prior to such merger) any Equity Interests in or evidences of Indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit, except:

(i) Permitted Investments;

(ii) Permitted Acquisitions;

(iii) investments existing on the date hereof and set forth on Schedule 6.04 or made pursuant to binding commitments existing on the date hereof and set forth on Schedule 6.04;

(iv) investments required by the DIFX Transaction Documents;

(v) investments by the Borrower and the Subsidiaries in Equity Interests of their respective Subsidiaries, provided that (x) any such Equity Interests held by a Loan Party shall be pledged pursuant to the Collateral Agreement to the extent required by the Collateral and Guarantee Requirement, (y) the aggregate amount of investments made pursuant to this clause (v) by Loan Parties in Subsidiaries that are not Loan Parties (together with outstanding intercompany loans permitted under clause (y) to the proviso to paragraph (vi) of this Section and outstanding Guarantees permitted under the proviso to paragraph (vii) of this Section) shall not exceed \$5,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs), except that the Borrower shall be permitted to make investments in OMX to fund all or a portion of the OMX Refinancing; provided further that notwithstanding the foregoing subclause (y) the Borrower and its Subsidiaries may make investments in Regulated Subsidiaries that are required in order to comply with Applicable Requirements;

(vi) loans or advances made by the Borrower to any Subsidiary and made by any Subsidiary to the Borrower or any other Subsidiary, provided that (x) any such loans and advances in excess of \$1,000,000 made by a Loan Party shall be evidenced by a promissory note pledged pursuant to the Collateral Agreement, (y) the amount of such loans and advances made pursuant to this clause (y) by Loan Parties to Subsidiaries (other than the Regulated Subsidiaries) that are not Loan Parties (together with investments permitted under clause (y) of the proviso to clause (v) of this Section and outstanding Guarantees permitted under the proviso to clause (vii) of this Section) shall not exceed \$5,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs), except that the Borrower shall be permitted to make investments in OMX to fund all or a portion of the OMX Refinancing; provided further that the limitations in the foregoing proviso shall not apply to intercompany loans made by the Borrower and its Subsidiaries to (A) any Subsidiary in order to comply with any Applicable Requirement, (B) any Subsidiary of the Borrower so long as such loans shall be repaid within 10 days of the incurrence thereof or (C) any Subsidiary of the Borrower engaged in exchange and clearing operations to enable such Subsidiary to post cash collateral for obligations of such Subsidiary not constituting Indebtedness so long as such loans are repaid within 60 days of the incurrence thereof;

(vii) Guarantees of Indebtedness of the Borrower or any Subsidiary that are permitted by Section 6.01, provided that the aggregate principal amount of Indebtedness of Subsidiaries that are not Loan Parties that is Guaranteed by any Loan Party (together with investments permitted under clause (y) of the proviso to clause (v) of this Section and intercompany loans permitted under clause (y) to the proviso to clause (vi) of this Section) shall not exceed \$5,000,000 at any time outstanding (in each case determined without regard to any write-downs or write-offs);

(viii) loans or advances to employees, officers and directors of the Borrower or any Subsidiary made in the ordinary course of business of the Borrower or any Subsidiary not exceeding \$5,000,000 in the aggregate outstanding at any time (determined without regard to any write-downs or write-offs of such loans or advances), provided that no such loans or advances to any single employee, officer or director shall exceed \$2,000,000 in the aggregate outstanding at any time (determined without regard to any write-downs or write-offs of such loans or advances);

(ix) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses of the Borrower or any Subsidiary for accounting purposes and that are made in the ordinary course of business;

(x) investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(xi) investments in the form of Swap Agreements permitted by Section 6.07;

(xii) investments of any Person existing at the time such Person becomes a Subsidiary or consolidates or merges with the Borrower or any Subsidiary (including in connection with a Permitted Acquisition) so long as such investments were not made in contemplation of such Person becoming a Subsidiary or of such consolidation or merger;

- (xiii) investments resulting from pledges or deposits described in clause (c) or (d) of the definition of the term "Permitted Encumbrance";
- (xiv) investments received in connection with the disposition of any asset permitted by Section 6.05;
- (xv) receivables or other trade payables owing to the Borrower or a Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms, provided that such trade terms may include such concessionary trade terms as the Borrower or any Subsidiary deems reasonable under the circumstances;
- (xvi) the OMX Acquisition, the PHLX Acquisition, the Nord Pool Acquisition, the acquisition of minority interests of OMX and the acquisition of BSX in accordance with the agreement in effect on the Closing Date with respect to such acquisitions;
- (xvii) investments in the Depository Trust Clearing Corporation to the extent required by applicable law;
- (xviii) other investments, loans and advances by the Borrower or any Subsidiary in an aggregate amount, as valued at cost at the time each such investment, loan or advance is made and including all related commitments for future investments, loans or advances (and the principal amount of any Indebtedness that is assumed or otherwise incurred in connection with such investment, loan or advance), not exceeding \$175,000,000 in the aggregate for all such investments, made or committed to be made from and after the Closing Date plus an amount equal to any returns of capital or sale proceeds actually received in cash in respect of any such investments (which amount shall not exceed the amount of such investment valued at cost at the time such investment was made);
- (xix) investments in TRF not to exceed \$10,000,000 since the Closing Date;
- (xx) [omitted];
- (xxi) additional investments in OMX and its Subsidiaries in an aggregate amount not to exceed (x) \$125.0 million per calendar year and (y) \$250.0 million at any time outstanding (provided that for purposes of determining compliance with this clause (y), the amount of such investments in OMX and its Subsidiaries deemed outstanding shall be reduced by the amount of any dividends, distributions or other return on capital received by the Borrower and its wholly-owned Domestic Subsidiaries with respect to such investments (or, in the case of an investment that is a loan or advance, any principal repayment of such loan or advance));
- (xxii) so long as no Default has occurred and is continuing, investments out of the Available Amount;

(xxiii) investments in the form of deposits contemplated by Section 6.01(b)(xv);

(xxiv) investments consisting of the issuance, contribution or transfer of Equity Interests of any Foreign Subsidiary, or incurrence of Indebtedness by any Foreign Subsidiary, in each case to the Borrower or any other Subsidiary and the receipt (or reduction or cancellation) of Equity Interests or Indebtedness of a Foreign Subsidiary in connection therewith;

(xxv) asset purchases (including purchases of inventory, supplies and materials) and the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons in the ordinary course of business; and

(xxvi) Guarantees by the Borrower or any Subsidiary of leases (other than capitalized leases) or other obligations that do not constitute Indebtedness in the ordinary course of business;

provided that this Section 6.04 shall not prohibit any repurchase of Indebtedness or Equity Interests of the Borrower by the Borrower, or any repurchase of Equity Interests or Indebtedness of any Subsidiary by such Subsidiary, in each case to the extent such repurchase is otherwise permitted by this Agreement. For purposes of covenant compliance, the amount of any investment shall be the amount actually invested without adjustment for subsequent increases in the value of such investment.

SECTION 6.05 Asset Sales. The Borrower will not, nor will it permit any Subsidiary to, sell, transfer, license, lease or otherwise dispose of any asset, including any Equity Interest (other than Equity Interests of the Borrower) owned by it, nor will the Borrower permit any Subsidiary to issue any additional Equity Interest in such Subsidiary (other than directors' qualifying shares and Equity Interests issued to the Borrower or another Subsidiary in compliance with Section 6.04(e)) (each of the foregoing an "Asset Sale"), except:

(a) sales, transfers, leases and other dispositions of (i) inventory, (ii) used or surplus equipment and (iii) Permitted Investments, in each case in the ordinary course of business;

(b) Asset Sales made by any Broker Dealer Subsidiaries in the ordinary course of business;

(c) sales, transfers, leases and other dispositions to the Borrower or a Subsidiary; provided that if the seller is a Loan Party, either (x) the buyer shall also be a Loan Party or (y) such sale, transfer or other disposition is an Investment permitted by Section 6.04;

(d) sales, transfers and other dispositions of accounts receivable in connection with the compromise, settlement or collection thereof consistent with past practice;

(e) sales, transfers, leases and other dispositions of property to the extent that such property constitutes an investment permitted by clause (x), (xii), (xiii) or (xiv) of Section 6.04(a) or another asset received as consideration for the disposition of any asset permitted by this Section (in each case, other than Equity Interests in a Subsidiary, unless all Equity Interests in such Subsidiary are sold);

(f) sale and leaseback transactions permitted by Section 6.06;

(g) leases entered into in the ordinary course of business, to the extent that they do not materially interfere with the business of the Borrower or any Subsidiary;

(h) licenses or sublicenses of intellectual property in the ordinary course of business, to the extent that they do not materially interfere with the business of the Borrower or any Subsidiary;

(i) dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of the Borrower or any Subsidiary;

(j) sales, transfers and other dispositions of assets (other than Equity Interests in a Subsidiary unless all Equity Interests in such Subsidiary are sold) that are not permitted by any other clause of this Section, provided that the aggregate fair market value of all assets sold, transferred or otherwise disposed of in reliance upon this clause (j) shall not exceed 5.0% of Consolidated Net Tangible Assets;

(k) sales, transfers and other dispositions of property or assets which become obsolete, uneconomical or no longer useful in the business of the Borrower or its Subsidiaries as a result of integration and restructuring activities in connection with the Transactions to Persons other than the Borrower or a Loan Party;

(l) [omitted];

(m) Asset Sales listed on Schedule 6.05(m); and

(n) Asset Sales made pursuant to the DIFX Transaction Documents;

provided that all sales, transfers, leases and other dispositions permitted hereby (other than those permitted by clause (b)) shall be made for fair value and (other than those permitted by clause (b) (unless the disposition is by a Loan Party to a Subsidiary that is not a Loan Party), (d) or (h)) for at least 75% cash consideration payable at the time of such sale, transfer or other disposition.

For the avoidance of doubt, the granting of Liens permitted by Section 6.02, the making of Investments permitted by Section 6.04, any mergers, consolidations, liquidations or dissolutions permitted by Section 6.03(a) and any Restricted Payment or payment or distribution in respect of Specified Indebtedness permitted by Section 6.08 will not be deemed to be Asset Sales for purposes of this Section 6.05.

**SECTION 6.06 Sale and Leaseback Transactions.** The Borrower will not, nor will it permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it

intends to use for substantially the same purpose or purposes as the property sold or transferred, except for any such sale of any fixed or capital assets by the Borrower or any Subsidiary that is made for cash consideration in an amount not less than the fair value of such fixed or capital asset and is consummated within 90 days after the Borrower or such Subsidiary acquires or completes the construction of such fixed or capital asset, provided that, if any such sale and leaseback results in a Capital Lease Obligation, such Capital Lease Obligation is permitted by Section 6.01(b)(vi) and any Lien made the subject of such Capital Lease Obligation is permitted by Section 6.02(e).

SECTION 6.07 Swap Agreements. The Borrower will not, nor will it permit any Subsidiary to, enter into any Swap Agreement, except Swap Agreements (a) required by Section 5.14, (b) entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has actual exposure (other than those in respect of shares of capital stock or other equity ownership interests of the Borrower or any Subsidiary), or (c) in connection with non-speculative hedging arrangements.

SECTION 6.08 Restricted Payments; Certain Payments of Indebtedness.

(a) The Borrower will not, nor will it permit any Subsidiary to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except (i) the Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests; (ii) the Borrower may declare and pay dividends with respect to its Equity Interests or with respect to Equity Equivalents, in each case, payable solely in Equity Interests or Equity Equivalents (other than Disqualified Equity Interests); (iii) the Borrower may make Restricted Payments not exceeding \$10,000,000 during any fiscal year pursuant to and in accordance with stock option plans, employment agreements or other benefit plans approved by the Borrower's board of directors for management, directors, former directors, employees and former employees of the Borrower and the Subsidiaries; (iv) OMX may make Restricted Payments pursuant to and in accordance with stock option plans, employment agreements and/or benefit plans in existence on the Closing Date, provided that such plans or agreements were not procured or approved by Borrower or its subsidiaries (other than the OMX Group); (v) the Borrower may make Restricted Payments out of the Available Amount, provided that (x) on a Pro Forma Basis (A) the Leverage Ratio as of the Borrower's most recently ended full fiscal quarter for which financial statements have been delivered pursuant to paragraph (a) or (b) of Section 5.01 would be less than the Applicable Leverage Ratio and (B) the Borrower would be in compliance on a Pro Forma Basis with the covenant set forth in Section 6.12 as of the most recent test date as of the most recent test date for which financial statements have been delivered pursuant to paragraph (a) or (b) of Section 5.01, (y) at the time of any such payment, no Default shall have occurred and be continuing or would result therefrom, and (z) the Borrower has delivered to the Administrative Agent a certificate of a Financial Officer, together with all relevant financial information reasonably requested by the Administrative Agent, demonstrating the calculation of such Available Amount; (vi) the Borrower may make additional Restricted Payments in an aggregate amount (when aggregated with the amount expended pursuant to Section 6.08(b)(iv) below) not to exceed \$25,000,000 during the term of this Agreement; and (vii) the Borrower or its Subsidiaries may redeem, repurchase or otherwise acquire Qualified Equity Interests with the proceeds of a substantially contemporaneous offering of Qualified Equity Interests of the Borrower.

(b) The Borrower will not, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Specified Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Specified Indebtedness, or any other payment that has a substantially similar effect to any of the foregoing, except:

(i) payment of regularly scheduled interest and principal payments as, in the form of payment and when due in respect of any Specified Indebtedness, other than payments in respect of the Convertible Notes and Specified Refinancing Indebtedness in respect thereof prohibited by the subordination provisions thereof;

(ii) refinancings of Specified Indebtedness to the extent permitted by Section 6.01;

(iii) payments in respect of Specified Indebtedness out of the Available Amount, provided that (x) on a Pro Forma Basis (A) the Leverage Ratio for the Borrower's most recently ended four full fiscal quarters for which financial statements have been delivered pursuant to paragraph (a) or (b) of Section 5.01 would be less than the Applicable Leverage Ratio and (B) the Borrower would be in compliance on a Pro Forma Basis with the covenant set forth in Section 6.12 as of the most recent test date as of the most recent test date for which financial statements have been delivered pursuant to paragraph (a) or (b) of Section 5.01, (y) at the time of any such payment, no Default shall have occurred and be continuing or would result therefrom, and (z) the Borrower has delivered to the Administrative Agent a certificate of a Financial Officer, together with all relevant financial information reasonably requested by the Administrative Agent, demonstrating the calculation of such Available Amount;

(iv) the Borrower may make additional payment and distributions in respect of Specified Indebtedness in an aggregate amount (when aggregated with the amount expended pursuant to Section 6.08(a)(vi) above) not to exceed \$25,000,000 during the term of this Agreement; and

(v) any payments or distribution that is made solely in the form of Qualified Equity Interests.

**SECTION 6.09 Transactions with Affiliates.** The Borrower will not, nor will it permit any Subsidiary to, sell, lease, license or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (i) transactions in the ordinary course of business at prices and on terms and conditions not materially less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (ii) transactions between or among (x) the Borrower and the Subsidiaries or (y) between Subsidiaries that are not Loan Parties, in each case, not involving any other Affiliate, (iii) loans or advances to employees permitted under Section 6.04(a)(viii), (iv) payroll, travel and similar advances to cover matters permitted under Section 6.04(a)(ix), (v) the payment of reasonable fees to directors



of the Borrower or any Subsidiary who are not employees of the Borrower or any Subsidiary, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of the Borrower or the Subsidiaries in the ordinary course of business, (vi) any issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans approved by the Borrower's board of directors, (vii) employment and severance arrangements entered into in the ordinary course of business between the Borrower or any Subsidiary and any employee thereof and approved by the Borrower's board of directors, (viii) any Restricted Payment permitted by Section 6.08, (ix) any substitution of obligations and liabilities of the Borrower to any Subsidiary under, or issuance of common stock of the Borrower to any holder of Convertible Notes upon conversion of such holder's Convertible Notes in accordance with the terms of the Convertible Notes Documents, (x) investments, loans, advances, guarantees and acquisitions by and among the Borrower and/or its Subsidiaries to the extent permitted pursuant to Section 6.04 and (xi) transactions pursuant to the DIFX Transaction Documents.

SECTION 6.10 Restrictive Agreements. The Borrower will not, nor will it permit any Subsidiary to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary, provided that (i) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.10 (but shall apply to any extension or renewal of, or any amendment, modification or replacement of, any such restriction or condition set forth in clause (a) or clause (b) above unless it is determined in good faith by senior management of the Borrower that any such extension, renewal, amendment, modification or replacement does not expand the scope of such restriction or condition), (ii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any assets pending such sale, provided that such restrictions and conditions apply only to the Subsidiary or assets that is or are to be sold or the proceeds thereof and such sale is permitted hereunder, (iii) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by (A) any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness or (B) any Specified Debt Documents, (iv) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof, (v) the foregoing shall not apply to any restrictions or conditions set forth in any agreement in effect at any time any Person becomes a Subsidiary (but shall apply to any extension or renewal of, or any amendment, modification or replacement of, any such restriction or condition unless it is determined in good faith by senior management of the Borrower that any such extension, renewal, amendment, modification or replacement does not expand the scope of such restriction or condition), provided that such agreement was not entered into in contemplation of such Person becoming a Subsidiary and the restriction or condition set forth in such agreement does not apply to the Borrower or any other Subsidiary (other than subsidiaries of such Person), (vi) clause (a) of the foregoing shall not apply to any negative pledge provision of any joint venture agreements, stockholder or partnership agreements or other organizational documents relating to joint ventures or partnerships and (vii) the foregoing shall not apply

to any restrictions or conditions existing as a result of Applicable Requirements (including any provisions of any Organizational Documents designed to comply with any Applicable Requirements).

SECTION 6.11 Amendment of Material Documents. The Borrower will not, nor will it permit any Subsidiary to, amend, modify, waive, terminate or release (a) its Organizational Documents, (b) the DIFX Transaction Documents, (c) the OMX Transaction Agreement, (d) Specified Debt Documents or (e) the Indebtedness permitted under Section 6.01(b)(iii), in each case unless senior management of the Borrower determines in good faith that the effect of such amendment, modification, waiver, termination or release is not materially adverse to the Borrower, any Subsidiary or the Lenders.

SECTION 6.12 Interest Expense Coverage Ratio. From and after the beginning of the first full fiscal quarter after the Closing Date (and first tested on the last date of such fiscal quarter), the Borrower will not permit the Interest Coverage Ratio for any period of four consecutive fiscal quarters of the Borrower ending on or about the date set forth below to be less than the ratio set forth below opposite such period:

<u>Period Ending</u>	<u>Ratio</u>
June 30, 2008	3.50 to 1.0
September 30, 2008	3.50 to 1.0
December 31, 2008	3.75 to 1.0
March 31, 2009	4.00 to 1.0
June 30, 2009	4.50 to 1.0
September 30, 2009 and the last day of each fiscal quarter of the Borrower ending thereafter	5.00 to 1.0

SECTION 6.13 Leverage Ratio. From and after the beginning of the first full fiscal quarter after the Closing Date (and first tested on the last date of such fiscal quarter), the Borrower will not permit the Leverage Ratio as of the last day of any four consecutive fiscal quarter period ending on any date set forth below to exceed the ratio set forth below opposite such date:

<u>Period Ending</u>	<u>Ratio</u>
June 30, 2008	3.75 to 1.0
September 30, 2008	3.75 to 1.0
December 31, 2008	3.50 to 1.0

<u>Period Ending</u>	<u>Ratio</u>
March 31, 2009	3.00 to 1.0
June 30, 2009	2.75 to 1.0
September 30, 2009	2.50 to 1.0
December 31, 2009	2.50 to 1.0
March 31, 2010	2.25 to 1.0
June 30, 2010	2.25 to 1.0
September 30, 2010 and the last day of each fiscal quarter of the Borrower ending thereafter	2.00 to 1.0

SECTION 6.14 Changes in Fiscal Periods. The Borrower will neither (a) permit its fiscal year or the fiscal year of any Subsidiary to end on a day other than December 31, nor (b) change its method of determining fiscal quarters.

SECTION 6.15 Regulatory Capital. The Borrower will not permit any Broker Dealer Subsidiary's capital to be at or below the highest level at which dividends by such Broker Dealer Subsidiary may be restricted, other activities undertaken by such Broker Dealer Subsidiary may be limited or other regulatory actions taken with respect to such Broker Dealer Subsidiary may be taken, in each case by applicable Governmental Authorities based upon such capital, for a period of more than three consecutive Business Days after the date that a Financial Officer becomes aware that such capital is below such level (or, in the case of interpretation of any applicable law by a Governmental Authority with retroactive effect, after the date the Borrower receives notice from such Governmental Authority).

## ARTICLE VII

### EVENTS OF DEFAULT

If any of the following events (any such event, an "Event of Default") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in paragraph (a) of this Article) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five Business Days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall, if qualified by materiality, prove to have been incorrect or, if not so qualified, prove to have been incorrect in any material respect, in each case when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, 5.04 (with respect to the existence of the Borrower) or 5.11 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraph (a), (b) or (d) of this Article) or any undertaking set forth in a certificate delivered to the Administrative Agent pursuant to Section 4.03(a), and such failure shall continue unremedied for a period of 30 days after notice thereof from any Lender or the Administrative Agent to the Borrower;

(f) the Borrower or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable or within any applicable grace period;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, provided that this paragraph (g) shall not apply to secured Indebtedness that becomes due as a result of the sale, transfer or other disposition (including as a result of a casualty or condemnation event) of the property or assets securing such Indebtedness (to the extent such sale, transfer or other disposition is not prohibited under this Agreement);

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter

in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in paragraph (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Borrower or any Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of \$30,000,000 shall be rendered against the Borrower, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Subsidiary to enforce any such judgment;

(l) an ERISA Event shall have occurred that, in the reasonable opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(m) on or after the Closing Date, any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any Collateral with a fair value in excess of \$10,000,000 in the aggregate of all such Liens, with the priority required by the applicable Security Document, except (i) as a result of the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents, (ii) as a result of the Collateral Agent's failure to (A) maintain possession of any stock certificates, promissory notes or other instruments delivered to it under the Collateral Agreement or (B) file Uniform Commercial Code continuation statements or (iii) to the extent any Security Document provides that such Lien is not required to be a perfected Lien;

(n) on or after the Closing Date, any Loan Document or any Guarantee of the Loan Document Obligations shall for any reason be asserted in writing by any Loan Party not to be a legal, valid and binding obligation of any Loan Party that is a party thereto;

(o) on or after the Closing Date, the Guarantees of the Loan Document Obligations by the Subsidiary Loan Parties pursuant to the Collateral Agreement shall cease to be in full force and effect (in each case, other than in accordance with the terms of the Loan Documents);

(p) (i) the SEC shall have revoked or suspended the status of the Borrower, or any Subsidiary with total capital in excess of \$10,000,000 in the aggregate of all such entities, as a national securities exchange under the Exchange Act (if such status has been granted) or as a broker or dealer under the Exchange Act, or (ii) the Securities Investor Protection Corporation shall have applied for a protective decree with respect to the Borrower or any Subsidiary with total capital in excess of \$10,000,000 in the aggregate of all such entities;

(q) the SFSA has pursuant to the Securities Market Act (Sw. *lagen 2007:528 (om värdepappersmarknaden)*) (i) revoked any of the Borrower's permits and authorizations to indirectly own shares in a Broker Dealer Subsidiary, and/or (ii) revoked any Broker Dealer Subsidiary's authorizations and/or permits; or

(r) a Change in Control shall occur,

then, and in every such event (other than an event with respect to the Borrower described in paragraph (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take any of the following actions, at the same or different times: (i) terminate the Commitments (other than the PHLX Delayed Draw Tranche A Commitments unless such Event of Default constitutes a Major Event of Default), and thereupon the Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and (iii) require the Borrower to Cash Collateralize the LC Exposure; and in case of any Event of Default with respect to the Borrower described in paragraph (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable and the Borrower shall be required to Cash Collateralize the LC Exposure, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

Notwithstanding any other provision of this Agreement or any other Loan Document, any Event of Default constituting a Clean-up Default shall only apply if it is continuing on or at any time after the expiry of the Clean-up Period and until such time, none of the Lenders, the Administrative Agent, the Swingline Lender, the Issuing Bank or the Collateral Agent shall be entitled to take any Deferred Enforcement Action as a result of any Clean-up Default; provided that (A) to the extent it can do so without breaching any confidentiality obligations entered into in good faith and binding on it and to the extent it receives such information, the Borrower notifies the Administrative Agent as soon as reasonably practicable after it becomes aware of the circumstance constituting a Clean-up Default and (B) the Clean-up Default has not been knowingly procured by a Loan Party and is capable of cure (or, to the extent not so capable of being cured, would not have a Material Adverse Effect) and the Borrower takes such steps as are commercially reasonably available to it to procure that OMX or its subsidiaries (as appropriate) cure such Clean-up Default, it being acknowledged that such steps shall not require the Borrower to take any action that, until such time as OMX is a Wholly-Owned Subsidiary, extend to the convening of any shareholders' meeting or the exercise of any right (as shareholder) to remove directors of the relevant members of OMX and its subsidiaries or the taking of any action that the Borrower as a shareholder in good faith and acting on the advice of counsel considers may reasonably

result in an action by the minority shareholders in OMX or any of its subsidiaries against the officers or shareholders of the Borrower or its Subsidiaries on the grounds of unfair prejudice, breach of duty or otherwise.

## ARTICLE VIII

### THE AGENTS

#### SECTION 8.01 Regarding the Agents.

Each of the Lenders and the Issuing Bank hereby irrevocably appoints Bank of America to act on its behalf as Administrative Agent and as Collateral Agent and authorizes the Administrative Agent and the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent and the Collateral Agent, respectively, by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. Therefore, the Collateral Agent is the agent of and is acting for and on behalf of the Lenders (including, without limitation to enter into any Security Document and to exercise any rights provided for thereunder). The provisions of this Article are solely for the benefit of the Administrative Agent, the Collateral Agent, the Lenders and the Issuing Bank, and the Borrower shall not have rights as a third party beneficiary of any of such provisions. References in this Article VIII to "Agents" shall mean Administrative Agent and Collateral Agent, collectively.

Each bank serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not such Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not such Agent hereunder.

No Agent shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that such Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary or believed by the such Agent in good faith to be necessary under the circumstances as provided in Section 2.05 or Section 9.02), and (c) except as expressly set forth in the Loan Documents, no Agent shall have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any Subsidiary that is communicated to or obtained by the bank serving as such Agent or any of its Affiliates in any capacity. No Agent shall be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 2.05 or Section 9.02) or in the absence of its own gross negligence or willful misconduct. No Agent shall be deemed to have knowledge of any Default unless and until written notice thereof is given to such Agent by the Borrower or a Lender, and no Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or

other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to such Agent.

Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed or sent or otherwise authenticated by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. Each Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of such Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as such Agent.

Any Agent may resign at any time upon notice to the Lenders, the Issuing Bank and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after such retiring Agent gives notice of its resignation, then such retiring Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Agent that shall be a bank with an office in the United States or an Affiliate of any such bank, provided that if such Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) such retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders or the Issuing Bank under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security until such time as a successor Collateral Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through such Agent shall instead be made by or to each Lender and the Issuing Bank directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this paragraph. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from all its duties and obligations under the Loan Documents. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower



and such successor. After such Agent's resignation hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as such Agent.

Any resignation by Bank of America as Administrative Agent pursuant to this Article shall also constitute its resignation as Issuing Bank and Swingline Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank and Swingline Lender, (ii) the retiring Issuing Bank and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

Each Lender and the Issuing Bank acknowledges that it has, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Bank also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this any Loan Document or any related agreement or any document furnished thereunder.

In case of the pendency of any proceeding under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or LC Exposure shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise, to (a) file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Exposures and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Bank and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Bank and the Agents and their respective agents and counsel and all other amounts due the Lenders, the Issuing Bank and the Agents under Sections 2.05(e) and 2.12) allowed in such judicial proceeding, and (b) collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the Issuing Bank to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Bank, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 2.12.

Nothing contained herein shall be deemed to authorize any Agent to authorize or consent to or accept or adopt on behalf of any Lender or the Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the Issuing Bank to authorize the Administrative Agent to vote in respect of the claim of any Lender or the Issuing Bank or in any such proceeding.

To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding tax. If the Internal Revenue Service or any other authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding tax ineffective), such Lender shall indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower pursuant to Section 2.15 or Section 2.17 and without limiting the obligation of the Borrower to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error.

Notwithstanding anything herein to the contrary, none of the institutions identified as an Arranger, Joint Bookrunning Manager, Syndication Agent or Documentation Agent on the cover page hereof shall have any powers, duties or responsibilities under any Loan Document, except in its capacity, as applicable, as the Administrative Agent, the Collateral Agent, a Lender or the Issuing Bank hereunder.

#### SECTION 8.02 Parallel Debt.

For purposes of any Foreign Pledge Agreements only:

(i) The Borrower irrevocably and unconditionally undertakes to pay to the Collateral Agent an amount equal to the aggregate of all Obligations to the Administrative Agent, all the Lenders and the Issuing Bank from time to time due in accordance with the terms and conditions of this Agreement (such payment undertaking and the obligations and liabilities which are the result thereof are referred to as "Parallel Debt").

(ii) Each of the parties to this Agreement acknowledges that (i) the Parallel Debt of the Borrower constitutes undertakings, obligations and liabilities of the Borrower to the Collateral Agent which are separate and independent from, and without prejudice to, the Obligations which the Borrower owes to the Administrative Agent, any Lender or Issuing Bank and (ii) that the Parallel Debt represents the Collateral Agent's own claim to receive payment of such Parallel Debt by the Borrower; provided that the total amount which may become due under the Parallel Debt of the Borrower under this paragraph shall never exceed the total amount which may become due under all the Obligations of the Borrower to the Administrative Agent, all the Lenders and the Issuing Bank.

(iii) (A) The total amount due by the Borrower as the Parallel Debt under this paragraph shall be decreased to the extent that the Borrower shall have irrevocably and unconditionally paid any amounts to the Administrative Agent, the Lenders and the Issuing Bank or any of them to reduce the Borrower's outstanding Obligations or the Administrative Agent, any Lender or Issuing Bank otherwise receives any amount in irrevocable and unconditional payment of such Obligations (other than by virtue of subclause (B) below), in each case, as if such amount were received as a payment of the Parallel Debt on the date of receipt of such amounts by the Administrative Agent, the Lenders or the Issuing Bank or any of them; and

(B) To the extent that the Borrower shall have irrevocably and unconditionally paid any amounts to the Collateral Agent under the Parallel Debt or the Collateral Agent shall have otherwise received monies in irrevocable and unconditional payment of such Parallel Debt, the total amount due under the Obligations shall be decreased as if such amount were received as a payment of the Obligations on the date of receipt of such amounts by the Collateral Agent.

To the extent the Collateral Agent irrevocably receives any amount in payment of the Parallel Debt, the Collateral Agent shall distribute such amount among the Secured Parties in accordance with Section 5.02 of the Collateral Agreement. The Administrative Agent, the Collateral Agent, the Issuing Bank and each of the Lenders acknowledges and agrees that (i) any irrevocable payment in respect of the Parallel Debt shall fully satisfy the Borrower's obligations with respect to the amount of such payment under both the Parallel Debt and the Obligations even if the Collateral Agent shall fail to distribute such payment in accordance with the first sentence of this paragraph and (ii) any irrevocable payment in respect of the Obligations shall fully satisfy the Borrower's obligations with respect to the amount of such payment under both the Obligations and the Parallel Debt.

Notwithstanding the foregoing provisions of this Section 8.02, or any provision of the Foreign Pledge Agreements, the Administrative Agent, the Collateral Agent, the Issuing Bank and each of the Lenders hereby acknowledge and agree that (i) the aggregate amount of the Parallel Debt secured by the Foreign Pledge Agreements shall in no event exceed the aggregate amount payable in respect of the Obligations (as reduced in accordance with this Section 8.02), (ii) the Borrower and the Guarantors, collectively, shall in no event be required to make payments in respect of the Obligations that, in the aggregate, exceed the Parallel Debt and (iii) the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders, collectively, shall not make claims in respect of the Obligations owed to the Administrative Agent, the Collateral Agent, the Issuing Bank and the Lenders that, in the aggregate, exceed the Parallel Debt (as reduced in accordance with this Section 8.02).

For purposes of any Foreign Pledge Agreements only:

(i) Each party hereto agrees that the Collateral Agent:

(A) will be the joint and several creditor (together with the relevant Administrative Agent, Lenders and/or the Issuing Bank) of each and every obligation of the Borrower towards the Administrative Agent, each Lender and the Issuing Bank under this Agreement; and

(B) will have its own independent right to demand performance by the Borrower of those obligations.

(ii) Discharge by the Borrower of any obligation owed to the Administrative Agent, another Lender or the Issuing Bank shall, to the same extent, discharge the corresponding obligation owing to the other.

(iii) Without limiting or affecting the Collateral Agent's rights against the Borrower (whether under this Article VIII or under any other provision of the Credit Agreement), the Collateral Agent agrees with the Administrative Agent, each other Lender and the Issuing Bank (on a several and divided basis) that, subject to paragraph (iv) below, it will not exercise its rights as a joint and several creditor with the Administrative Agent, any Lender or an Issuing Bank except with the consent of the relevant Administrative Agent, Lenders or Issuing Bank.

(iv) Nothing in clause (iii) above shall in any way limit the Collateral Agent's right to act in the protection or preservation of rights under or to enforce any Foreign Pledge Agreement as contemplated by this Agreement and/or the relevant Foreign Pledge Agreement (or to do any act reasonably incidental to any of the above).

## ARTICLE IX

### MISCELLANEOUS

SECTION 9.01 Notices. Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

- (a) if to the Borrower, to it at 9600 Blackwell Road, Rockville, Maryland 20850, Attention of General Counsel (Telecopy No. (301) 978-8472);
- (b) if to the Administrative Agent, to the Administrative Agent's Office;
- (c) if to an Issuing Bank or Swingline Lender other than the Administrative Agent, to it at the address or telecopy number set forth separately in writing; and
- (d) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. Notices and other communications to the Lenders and the Issuing Bank hereunder may also be delivered or furnished by electronic

communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Issuing Bank pursuant to Article II if such Lender or the Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, the Issuing Bank or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, the Issuing Bank or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

SECTION 9.02 Waivers; Amendments.

(a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or the issuance, amendment, renewal or extension of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

Except as provided in Section 2.20 with respect to any Incremental Facility Amendment, neither any Loan Document nor any provision thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders, provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan, LC Disbursement or LC Advance or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the maturity of any Loan, or the date of any scheduled payment of the principal amount of any Term Loan under Section 2.10 or the applicable Incremental Facility Amendment, or the required date of reimbursement of any LC Disbursement, or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender affected thereby, (iv) alter the manner in which payments or prepayments of principal, interest or other amounts hereunder shall be applied as among the Lenders or Types of Loans or change Section 2.18(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, in each case without the written consent of each Lender adversely affected thereby, (v) change any of the provisions of this Section or the percentage set forth in the definition of "Required Lenders" or "Required Revolving Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (or each Lender of such Class, as the case may be) (it being understood that, other than pursuant to any Incremental Facility Amendment (the consent requirements for which are set forth in Section 2.20), with the consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Term Loans and Revolving Commitments on the date hereof), (vi) release any material Subsidiary Loan Party from its Guarantee under the Collateral Agreement (except as expressly provided in the Collateral Agreement), or limit its liability in respect of such Guarantee, without the written consent of each Lender, (vii) release all or substantially all the Collateral from the Liens of the Security Documents, without the written consent of each Lender, (viii) change any provisions of any Loan Document in a manner that by its terms adversely affects the rights in respect of payments due to Lenders holding Loans of any Class differently than those holding Loans of any other Class, without the written consent of Lenders holding a majority in interest of the outstanding Loans and unused Commitments of each affected Class or (ix) modify the protections afforded to an SPV pursuant to the provisions of Section 9.04(e) without the written consent of such SPV; provided further that (A) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank or the Swingline Lender without the prior written consent of the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be, and (B) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any

other Class) may be effected by an agreement or agreements in writing entered into by the Borrower and requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time. Notwithstanding the foregoing, upon the election of the Borrower to switch from GAAP to IFRS this Agreement may be amended (or amended and restated) with only the written consent of the Administrative Agent and the Subsidiary Loan Parties (and not any other Lender or the Required Lenders) to eliminate any changes to the meaning of this Agreement as a result of such election.

(b) In connection with any proposed amendment, modification, waiver or termination (a “Proposed Change”) requiring the consent of all Lenders or all affected Lenders, if the consent of the Required Lenders (and, to the extent any Proposed Change requires the consent of Lenders holding Loans of any Class pursuant to clause (v) or (viii) of paragraph (a) of this Section, the consent of a majority in interest of the outstanding Loans and unused Commitments of such Class) to such Proposed Change is obtained, but the consent to such Proposed Change of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in paragraph (b) of this Section being referred to as a “Non-Consenting Lender”), then, the Borrower may, at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that (a) the Borrower shall have received the prior written consent of the Administrative Agent (and, if a Revolving Commitment is being assigned, the Issuing Bank and Swingline Lender), which consent shall not unreasonably be withheld, (b) such Non-Consenting Lender shall have received payment of an amount equal to the outstanding principal of its Loans and LC Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (c) the Borrower or such assignee shall have paid to the Administrative Agent the processing and recordation fee specified in Section 9.04(b).

**SECTION 9.03 Expenses; Indemnity; Damage Waiver.**

(a) The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the Issuing Bank or any Lender, in connection with the enforcement or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) The Borrower shall indemnify the Administrative Agent, the Collateral Agent, the Issuing Bank and each Lender, each Arranger, each Joint Bookrunning Manager, the Syndication Agent and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee by any third party or by the Borrower or any Subsidiary arising out of, in connection with, or as a result of (i) the execution or delivery of any Loan Document or any other agreement or instrument contemplated thereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated thereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on, at, to or from any Mortgaged Property or any other property currently or formerly owned or operated by the Borrower or any Subsidiary, or any other Environmental Liability related in any material respect to the Borrower or any Subsidiary, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any Subsidiary and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or any affiliates controlled by such Indemnified Party or any of their respective Related Parties.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent, the Collateral Agent or the Issuing Bank under paragraph (a) or (b) of this Section but without affecting the Borrower’s obligations thereunder, each Lender severally agrees to pay to the Administrative Agent, the Collateral Agent or the Issuing Bank, as the case may be, such Lender’s pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Collateral Agent or the Issuing Bank, as the case may be, in its capacity as such. For purposes hereof, a Lender’s “pro rata share” shall be determined based upon its share of the aggregate Revolving Exposures, outstanding Term Loans and unused Commitments at the time such indemnity or reimbursement is sought; provided that for purposes of indemnifying the Issuing Bank hereunder a Lender’s “pro rata share” will be based on the proportionate amount of the aggregate Revolver Exposure. The obligations of the Lenders under this paragraph (c) are subject to the second sentence of Section 2.02 (which shall apply mutatis mutandis to the Lenders’ obligations under this paragraph (c)).

(d) To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special,



indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Loan Document or any agreement or instrument contemplated thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable not later than five Business Days after written demand therefor.

SECTION 9.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of (A) the Borrower, provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund (as defined below) or, if a Default has occurred and is continuing, any other assignee, (B) the Administrative Agent, not to be unreasonably withheld, provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund and (C) the Issuing Bank and Swingline Lender, provided that no consent of the Issuing Bank or Swingline Lender shall be required for an assignment of all or any portion of a Term Loan or Term Commitment.

(ii) Assignments shall be subject to the following additional conditions: (A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the trade date specified in the Assignment and Assumption with respect to such assignment or, if no trade date is so specified, as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$2,500,000 or, in the case of a Term Loan and/or Term Commitment, \$1,000,000, unless the Borrower and the Administrative Agent otherwise consent (such consent not to be unreasonably withheld or delayed), provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing, (B) each partial

assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, provided that this clause (B) shall not be construed to prohibit assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans (it being understood that the OMX Delayed Draw Tranche A Commitments, PHLX Delayed Draw Tranche A Commitments and the Tranche A Term Loans of each Lender shall be assigned in the same proportion as such Commitments and Tranche A Term Loans are held by the assigning Lender), (C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in an amount of \$3,500 (it being understood that the Administrative Agent may elect, in its sole discretion, to waive such processing and recordation fee for any assignment and only one such Fee shall be payable in connection with simultaneous assignments to or by two or more Approved Funds); provided that assignments made pursuant to Section 2.19(b) or Section 9.02(b) shall not require the signature of the assigning Lender to become effective, and (D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required by Section 2.17(e).

For purposes of paragraph (b) of this Section, the terms "Approved Fund" and "CLO" have the following meanings:

"Approved Fund" means (a) a CLO and (b) with respect to any Lender that is a fund that invests in bank loans and similar extensions of credit, any other fund that invests in bank loans and similar extensions of credit and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"CLO" means an entity (whether a corporation, partnership, trust or otherwise) that is engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its activities and is administered or managed by a Lender or an Affiliate of such Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(v) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03 and to any fees payable hereunder that have accrued for such Lender's account but have not yet been paid). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c)(i) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements and interest thereon owing

to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Issuing Bank and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Promptly upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and any tax forms required by Section 2.17(e) (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(vi) The words "execution," "signed," "signature" and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

(c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent, the Issuing Bank or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it), provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents, provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17, subject to the requirements and limitations therein (provided that such Participant agrees to be subject to Section 2.18(c) as though it were a Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided that such Participant agrees to be subject to Section 2.18(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register

on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement (the "Participant Register"). The entries in the Participant Register shall be conclusive and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.15 or Section 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent not to be unreasonably withheld or delayed.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest, provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledge or assignee for such Lender as a party hereto.

(e) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPV"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement, provided that (i) nothing herein shall constitute a commitment by any SPV to make any Loan and (ii) if an SPV elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPV hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPV shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPV, such party will not institute against, or join any other person in instituting against, such SPV any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any State thereof. In addition, notwithstanding anything to the contrary contained in this Section 9.04, any SPV may (i) with notice to, but without the prior written consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by the Borrower and Administrative Agent) providing liquidity or credit support to or for the account of such SPV to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPV. Each party hereto hereby agrees that an SPV shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein), but neither the grant to any SPV nor the exercise by any SPV of such option shall increase the costs

or expenses or otherwise increase the obligations of the Borrower under such Sections unless the grant to the SPV was made with the Borrower's prior written consent (not to be unreasonably withheld or delayed),

(f) The Collateral Agent shall be notified of any assignment or participation pursuant to this Section and any such assignment or participation shall include a transfer of a proportional interest under any Foreign Pledge Agreement governed by Swedish law.

(g) Notwithstanding anything to the contrary contained herein, if at any time any Issuing Bank or Swingline Lender assigns all of its Revolving Commitments and Revolving Loans pursuant to Section 9.04(b), such Issuing Bank may, (i) upon 30 days' written notice to the Borrower and the Lenders, resign as Issuing Bank and/or (ii) upon 30 days' written notice to the Borrower, resign as Swingline Lender. In the event of any such resignation as Issuing Bank or Swingline Lender, the Borrower shall be entitled to appoint from among the Lenders a successor Issuing Bank or Swingline Lender hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of the resigning Person as Issuing Bank or Swingline Lender, as the case may be. If any Issuing Bank or Swingline Lender resigns as Issuing Bank, it shall retain all the rights, powers, privileges and duties of the Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Issuing Bank and all LC Exposures with respect thereto. If any Person resigns as Swingline Lender, it shall retain all the rights of the Swingline Lender provided for hereunder with respect to Swingline Loans made by it and outstanding as of the effective date of such resignation. Upon the appointment of a successor Issuing Bank and/or Swingline Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank or Swingline Lender, as the case may be, and (b) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements reasonably satisfactory to the retrieving Person to effectively assume the obligations of the resigning Person with respect to such Letters of Credit.

SECTION 9.05 Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to any Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent or the syndication of the Loans and Commitments constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Article IV, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the Issuing Bank or any such Affiliate to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender or the Issuing Bank, irrespective of whether or not such Lender or the Issuing Bank shall have made any demand under this Agreement and although such obligations may be unmatured or are owed to a branch or office of such Lender or Issuing Bank different from the branch or office holding such deposit or obligated on such Indebtedness. The applicable Lender and the Issuing Bank shall notify the Borrower and the Administrative Agent of such setoff and application, provided that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff and application under this Section. The rights of each Lender, the Issuing Bank and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Bank and their respective Affiliates may have.

SECTION 9.09 Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of

New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in any Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to any Loan Document against the Borrower or their respective properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in any Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12 Confidentiality. Each of the Administrative Agent, the Collateral Agent, the Lenders and the Issuing Bank agrees to maintain the confidentiality of the Information (as defined below) and neither use nor disclose such Information, except that Information may be used by such Person in evaluating the credit worthiness of the Borrower or in providing financial services to Borrower or any of its Subsidiaries and may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information

confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (in which case the Borrower will be promptly notified), (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (ii) any pledgee referred to in Section 9.04(d) or (iii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender, the Issuing Bank or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, “Information” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the Issuing Bank on a non-confidential basis prior to disclosure by any Loan Party or any Subsidiary thereof, provided that, in the case of information received from a Loan Party or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the Issuing Bank acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable law, including Federal and state securities laws.

SECTION 9.13 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or participation in any LC Disbursement, together with all fees, charges and other amounts that are treated as interest on such Loan or LC Disbursement or participation therein under applicable law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan or LC Disbursement or participation therein in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan or LC Disbursement or participation therein but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or LC Disbursement or participation therein or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.



SECTION 9.14 USA Patriot Act. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

SECTION 9.15 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Borrower acknowledges and agrees that: (i) the credit facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower and its Affiliates, on the one hand, and the Administrative Agent and the Arrangers, on the other hand, and the Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, the Administrative Agent and the Arrangers each is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person; (iii) neither the Administrative Agent nor either Arranger has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether the Administrative Agent or either Arranger has advised or is currently advising the Borrower or any of its Affiliates on other matters) and neither the Administrative Agent nor either Arranger has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Administrative Agent and each Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor either Arranger has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Administrative Agent and the Arrangers have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. The Borrower hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent and each Arranger with respect to any breach or alleged breach of agency or fiduciary duty.

SECTION 9.16 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with

such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable law).

**SECTION 9.17 Release of Collateral.**

(a) **Partial Release of Collateral.** Subject to the last sentence of this Section 9.17(a), upon the sale, lease, transfer or other disposition of any item of Collateral of any Loan Party (including, without limitation, as a result of the sale, in accordance with the terms of the Loan Documents, of a Subsidiary Loan Party that owns such Collateral, but excluding Asset Sales among Loan Parties) or upon the liquidation or dissolution of any Subsidiary whose Equity Interests have been pledged under any Security Document in accordance with the terms of the Loan Documents, or upon the effectiveness of any written consent to the release of the security interest in any Collateral pursuant to Section 9.02 hereto, the security interest created in such item of Collateral or the Equity Interests of such liquidated or dissolved Subsidiary, as applicable, under the Security Documents shall be automatically released and the Collateral Agent will, at the Borrower's expense, execute and deliver to such Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral or Equity Interests from the assignment and security interest granted under the Security Documents in accordance with the terms of the Loan Documents and, if applicable, the release of such Subsidiary Loan Party from its obligations under the Collateral Agreement. In furtherance of the foregoing, subject to the last sentence of this Section 9.17(a), in the event of a transfer by Borrower of any assets to a Subsidiary that is not a Subsidiary Loan Party in accordance with the terms hereof, the security interest granted pursuant to the Collateral Agreement in such assets shall be immediately released, and the Collateral Agent shall, after receipt of written notice two Business Days prior to such transfer, make available to Borrower at least one Business Day prior to the date of such transfer, at Borrower's expense, any instruments as may be reasonably requested to evidence such release. Notwithstanding anything in this Agreement or any other Loan Document to the contrary, no release of any security interest in any assets subject to a Foreign Pledge Agreement governed by the laws of Sweden shall be permitted except in accordance with the terms of such Foreign Pledge Agreement.

(b) Release of Liens. Upon the payment in full of all Obligations and the termination of all the Commitments, the Agents shall take such action as may be required by the Borrower, at the expense of the Borrower, to release the Liens created by the Loan Documents.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

THE NASDAQ STOCK MARKET, INC.

By: /s/ David S. Warren  
Name: David S. Warren  
Title: Executive Vice President  
and Chief Financial Officer

BANK OF AMERICA, N.A., as  
Administrative Agent, Collateral Agent, Swingline Lender,  
Issuing Bank and a Lender

By: /s/ Brad Jones  
Name: Brad Jones  
Title: Managing Director

JPMORGAN CHASE BANK, N.A., as Syndication Agent and Lender

By: /s/ Gary L. Spevack

Name: Gary L. Spevack

Title: Vice President

JPMorgan Chase Bank, N.A.

**NASDAQ Completes OMX Transaction to Become The NASDAQ OMX Group, Inc.**

NEW YORK, Feb 27, 2008 (PrimeNewswire via COMTEX News Network) — The Nasdaq Stock Market, Inc. (Nasdaq:NDAQ) (NASDAQ(r)) has completed its combination with OMX AB, creating the world's largest exchange company, The NASDAQ OMX Group, Inc. (NASDAQ OMX Group).

NASDAQ OMX Group has operations around the world, spanning developed and emerging markets. Its global offerings include trading across multiple asset classes, capital formation solutions, financial services and exchanges technology, market data products, and financial indexes.

“NASDAQ OMX Group is a new type of exchange company. It is unique in its ability to serve customers at multiple levels, from trading platforms supporting multiple asset classes to listings, financial services technology, and data and financial products,” said Bob Greifeld, Chief Executive Officer of The NASDAQ OMX Group.

As part of the transaction, NASDAQ OMX Group also became a 33 1/3% shareholder in DIFX, Dubai's international financial exchange. As previously announced and approved, Borse Dubai is a 19.9% shareholder of NASDAQ OMX Group.

Greifeld added, “We are grateful for the support of OMX shareholders. We look forward to executing on our plan that will benefit all of our constituencies, including investors, shareholders and customers.” The NASDAQ OMX Group, Inc. is the world's largest exchange company. It delivers trading, exchange technology and public company services across six continents, and with over 3,900 companies, it is number one in worldwide listings among major markets. NASDAQ OMX offers multiple capital raising solutions to companies around the globe, including its U.S. listings market; the OMX Nordic Exchange, including First North; and the 144A PORTAL Market. The company offers trading across multiple asset classes including equities, derivatives, debt, commodities, structured products and ETFs. NASDAQ OMX technology supports the operations of over 60 exchanges, clearing organizations and central securities depositories in more than 50 countries. OMX Nordic Exchange is not a legal entity but describes the common offering from Nasdaq OMX exchanges in Helsinki, Copenhagen, Stockholm, Iceland, Tallinn, Riga, and Vilnius. For more information about NASDAQ OMX, visit [www.nasdaqomx.com](http://www.nasdaqomx.com).

**Cautionary Note Regarding Forward-Looking Statements**

The matters described herein contain forward-looking statements that are made under the Safe Harbor provisions of the Private Securities Litigation Reform Act of 1995. These statements include, but are not limited to, statements about NASDAQ OMX's products and offerings. We caution that these statements are not guarantees of future performance. Actual results may differ materially from those expressed or implied in the forward-looking statements. Forward-looking statements involve a number of risks, uncertainties or other factors beyond NASDAQ OMX's control. These factors include, but are not limited to factors detailed in NASDAQ OMX's annual report on Form 10-K, and periodic reports filed with the U.S. Securities and Exchange Commission. We undertake no obligation to release any revisions to any forward-looking statements.

The NASDAQ OMX Group, Inc.

Media Contacts:

Bethany Sherman

(212) 401-8714

[bethany.sherman@nasdaq.com](mailto:bethany.sherman@nasdaq.com)

Silvia Davi

(646) 441-5014

[Silvia.davi@nasdaq.com](mailto:Silvia.davi@nasdaq.com)

Jonas Rodny

+46-8-405 72 67

[Jonas.rodny@omxgroup.com](mailto:Jonas.rodny@omxgroup.com)

Investor Contact:

Vincent Palmiere

(301) 978-5242

[vincent.palmiere@nasdaq.com](mailto:vincent.palmiere@nasdaq.com)

## NASDAQ OMX Group Announces Executive Management Team

**NEW YORK, March 3, 2008** — The NASDAQ OMX Group, Inc. (NASDAQ:NDAQ) (NASDAQ OMX Group), today announced the global executive management team of the newly combined company.

The following individuals comprise the senior management team, led by Bob Greifeld, Chief Executive Officer:

Magnus Böcker	President
Bruce E. Aust	Executive Vice President, Corporate Client Group
Chris R. Concannon	Executive Vice President, Transaction Services U.S.
Anna M. Ewing	Executive Vice President, Global Software Development, Chief Information Officer
Adena T. Friedman	Executive Vice President, Corporate Strategy and Global Data Products
Markus Gerdien	Executive Vice President, Market Technology
John L. Jacobs	Executive Vice President, Worldwide Marketing and Financial Products
Hans-Ole Jochumsen	Executive Vice President, Transaction Services Nordics
Edward S. Knight	Executive Vice President, General Counsel
Jukka Ruuska	Executive Vice President, Transaction Services Europe
David P. Warren	Executive Vice President, Chief Financial Officer
Carl-Magnus Hallberg	Senior Vice President, Global IT Services
James L. Johnson, Jr.	Senior Vice President, Human Resources and Government Relations

Greifeld commented, “We are pleased to bring the talented NASDAQ and OMX leadership teams together, combining our strengths in the exchange and technology arenas with our proven capability in successfully operating and integrating businesses.” He continued, “As the world’s largest exchange company, our team will be working to deliver to customers the benefits of trading across multiple asset classes, a comprehensive choice of capital raising solutions, innovative exchange technology, as well as and global data and financial products.”

Background on each member of the executive management team follows.

Bob Greifeld is Chief Executive Officer of The NASDAQ OMX Group. Mr. Greifeld has a 20-year history in technology, and as an entrepreneur created one of the first electronic stock order matching systems. Today he leads the world’s largest exchange company which delivers trading, exchange technology and public company services across six continents. With over 3,900 companies, it is number one in worldwide listings among major markets. In 2007, Mr. Greifeld led NASDAQ’s combination with OMX AB and the acquisitions of the Philadelphia Stock Exchange and the Boston Stock Exchange. Under Mr. Greifeld’s leadership, the growth of The Nasdaq Stock Market has been impressive, with 13 consecutive quarters of top line

growth. The year 2007 was NASDAQ's most successful since it began reporting financials in 1997.

Magnus Böcker is President of The NASDAQ OMX Group. During Mr. Böcker's tenure as CEO of OMX he strengthened the position of the Nordic region as a part of the international financial market. In a period of three years, OMX integrated seven national exchanges in Northern Europe into one. Today the OMX Nordic Exchange offers trading in cash equities, fixed income and derivatives in Denmark, Finland, Sweden, Iceland, Estonia, Latvia and Lithuania. Over 850 companies now list on the Nordic Exchange. Mr. Böcker was also crucial in making OMX the world's largest provider of technology solutions for exchanges, clearing organizations, and securities depositories. While CEO of OMX, Mr. Böcker turned the company around from loss-making back to high profitability; in both 2006 and 2007 OMX reported its highest revenues and highest operating profit ever in company history, with continued operational improvements and increased activity by all business areas.

Bruce E. Aust is Executive Vice President, Corporate Client Group. In this role, Mr. Aust is responsible for global business development and relationship management with the 3,900 companies listed on The NASDAQ OMX Group, Inc. Mr. Aust oversees a regionally based sales force in the U.S. as well as global representatives serving countries including China, India, Israel, Russia, Japan, Korea, South America and the Nordic and Baltic regions. During Mr. Aust's tenure, NASDAQ has attracted some of the country's highest profile IPOs, including JetBlue, Google, and Baidu, as well as NYSE company switches including Charles Schwab, Liberty Media, United and Sears. He has also built a corporate services business through the acquisition of Carpenter Moore, Shareholder.com, PrimeNewswire and Director's desk to assist companies with investor relations, corporate governance and risk management.

Christopher R. Concannon is Executive Vice President, Transaction Services U.S. In this role, he is responsible for the management and operation of the U.S. transaction services business, which includes The Nasdaq Stock Market and The NASDAQ Options Market. Mr. Concannon joined NASDAQ in May 2003 as Executive Vice President. Prior to joining NASDAQ, Mr. Concannon was President of Instinet Clearing Services, Inc., where he managed the clearing and execution services business offered by Instinet Clearing. Before joining Instinet, Mr. Concannon was Special Counsel and Vice President of Business Development for the Island ECN.

Anna M. Ewing is Executive Vice President and Chief Information Officer. In this capacity, Ms. Ewing is responsible for global software development and for NASDAQ OMX Group's technology roadmap. As NASDAQ's Chief Information Officer, she led the technology integration of the INET platform within NASDAQ's existing trading systems and was also the Technical Project Manager for the implementation of the NASDAQ Market Center and the integration of the Brut ECN. Prior to joining NASDAQ, Ms. Ewing was employed at CIBC World Markets in New York and Toronto, where she served as Managing Director of Global Applications Services and as a founding member of CIBC.com. Before that, Ms. Ewing served as Vice President at Merrill Lynch, where she held various leadership positions within the Corporate and Institutional Client Group Technology Division, including Global Head of Institutional Client Technology, Global Head of Financial Futures and Options Technology, Global Head of Prime Brokerage Technology and Regional Head of Technology at Merrill Lynch Canada.



Adena T. Friedman is Executive Vice President, Corporate Strategy and Global Data Products. Ms. Friedman's responsibilities include identifying and developing strategic opportunities, including mergers and acquisitions. Ms. Friedman led the team responsible for the successful acquisition of OMX AB. In addition, Friedman oversaw the acquisition of INET, as well as the establishment of working agreements with other global exchanges, including the Shanghai Stock Exchange and the Tel Aviv Stock Exchange. Ms. Friedman also oversees a key business unit, Global Data Products, which is focused on global dissemination of market information and analytical tools to support and provide market transparency for securities traded through the NASDAQ and OMX exchanges. Ms. Friedman joined NASDAQ in 1993.

Markus Gerdien is Executive Vice President, Market Technology. Mr. Gerdien was previously President of OMX Market Technology, taking the business to the leading position as an exchange technology provider to 60 exchanges based in 50 countries. Prior to joining OMX in 2005, Mr. Gerdien has served as Executive Vice President Market & Business Development and Executive Vice President for the Communication Tools Division at the Observer Group. He was a partner and co-founder of Common Agenda Venture Management. From 1988-2000, Mr. Gerdien was at the fore of the financial and IT industries at Front Capital Systems where he served in key marketing positions and as Managing Director of the subsidiary Prosoftia.

John L. Jacobs is Executive Vice President, Worldwide Marketing and Financial Products. As Chief Marketing Officer, Mr. Jacobs leads the strategic development and implementation of the branding and messaging for The NASDAQ OMX Group. Mr. Jacobs is also charged with maximizing and monetizing opportunities presented by NASDAQ OMX Group's index data through the creation of index products and financial instruments for use by the trading and investing community. Among other things, Mr. Jacobs is known for being the creator of the NASDAQ-100 ETF – the QQQs. He most recently led NASDAQ's modernization and further push into the 144A market through its PORTAL marketplace.

Hans-Ole Jochumsen is Executive Vice President, Transaction Services Nordics. In this role, he is responsible for the management and operation of the transaction services business in Sweden, Finland, Denmark, Iceland, and the Baltic countries. The products include shares, fixed income and derivatives. He has served as President and CEO of Copenhagen Stock Exchange and FUTOP Clearingcentralen Ltd. He was at the helm of the Copenhagen Stock Exchange during its exceptional turnaround from 1998-2006. He also spearheaded the merger of the Copenhagen and Stockholm exchanges. From 1990 to 1998 he served as member of the Management Board in BRFkredit, Girobank, and BG-Bank, all well-known institutions in the Danish financial sector.

Edward S. Knight is Executive Vice President, General Counsel. Mr. Knight is responsible for providing legal counsel to senior management and for overseeing the quality of legal services across the organization. He also oversees government relations, listing qualifications, market regulation and the office of the corporate secretary. Mr. Knight has been very active navigating the different legal environments and requirements around the NASDAQ OMX Group union. Also of note, Knight led The Nasdaq Stock Market's efforts to operate as a national securities exchange. His success allowed The Nasdaq Stock Market to complete its separation from NASD and realize its vision as the premier market in the world. He is the Chief Regulatory Officer of the NASDAQ Exchange. Mr. Knight served as General Counsel of the U.S. Treasury Department from 1994-1999.

Jukka Ruuska is Executive Vice President, Transaction Services Europe. Mr. Ruuska joined OMX in 2000. Between 1986 and 1994, he held various appointments in the Investment Banking Division of Kansallis-Osake-Pankki. In 1994, he joined the investment bank Prospectus Oy as Deputy CEO. Before joining HEX Group as President and CEO in 2000, he was Director, Corporate Planning for the Finnet Group and subsequently Director, Corporate Planning at the Telecommunication Group HTC. Mr. Ruuska currently serves as President of FESE (Federation of European Securities Exchanges). Mr. Ruuska has been the architect of the Nordic integration and Nordic Exchanges.

David P. Warren is Executive Vice President, Chief Financial Officer. As CFO, Mr. Warren has lead capital raising efforts for the company, improved The Nasdaq Stock Market's financial flexibility via the reduction of debt, actively participated in numerous acquisitions and managed the company's bottom-line to consistently increasing profitability. Mr. Warren played a key role in NASDAQ's demutualization and separation from its owner-regulator, the NASD, leading the organization's transformation to a publicly traded, for-profit stock exchange. In early 2005, Mr. Warren led the exchange's first public offering of common stock.

Carl-Magnus Hallberg is Senior Vice President of Global IT Services Operations. In this position, he is responsible for the day-to-day IT operations and support services for customers around the world, including NASDAQ OMX internal operations. Mr. Hallberg joined OMX in 2001 and was previously head of the IT Services business within OMX Market Technology. During Mr. Hallberg's leadership, the unit grew to be one of the largest providers of IT outsourcing in the securities industry, with technology and processes tailored to meet the highest demands of its clients.

James L. Johnson, Jr. is Senior Vice President, Human Resources and Government Relations. As head of HR, Mr. Johnson is responsible for global workforce management issues. He also leads the company's advocacy efforts before the U.S. Congress and Executive Branch, as well as the development of public policy.

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#### *Cautionary Note Regarding Forward-Looking Statements*

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expressed or implied in the forward-looking statements. Forward-looking statements involve a number of risks, uncertainties or other factors beyond NASDAQ OMX Group's control. These factors include, but are not limited to factors detailed in NASDAQ OMX Group's annual report on Form 10-K, and periodic reports filed with the U.S. Securities and Exchange Commission. We undertake no obligation to release any revisions to any forward-looking statements.

**Contacts:**

Bethany Sherman, NASDAQ OMX Group  
212.401.8949  
[Bethany.sherman@nasdaq.com](mailto:Bethany.sherman@nasdaq.com)