

## NASDAQ Corporate Organization

### NASDAQ Stock Market LLC

#### BY-LAWS

##### BY-LAWS OF THE NASDAQ STOCK MARKET LLC

These By-Laws have been established as the By-laws of the NASDAQ Stock Market LLC, a Delaware limited liability company (the "*Company*"), pursuant to the Second Amended Limited Liability Company Agreement of the Company as of July 9, 2009 (as amended from time to time, the "*LLC Agreement*"), and, together with the LLC Agreement, constitute the limited liability company agreement of the Company within the meaning of the LLC Act (as amended from time to time, the "*LLC Act*"). In the event of any inconsistency between the LLC Agreement and these By-Laws, the terms of the LLC Agreement shall control.

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

#### Article I DEFINITIONS

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

- (a) "Act" means the Securities Exchange Act of 1934, as amended.
- (b) "affiliate" has the meaning ascribed to that term in Rule 12b-2 of the General Rules and Regulations of the NASDAQ Stock Market LLC in effect on the date of the LLC Agreement.
- (c) "Board" or "Board of Directors" means the Board of Directors of the Company.
- (d) "broker" shall have the same meaning as in Section 3(a)(4) of the Act.
- (e) "Commission" means the Securities and Exchange Commission.
- (f) "Company Member" means the means The NASDAQ OMX Group, Inc., as the sole member of the Company.
- (g) "day" means calendar day.
- (h) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act.
- (i) "Director" means the Persons elected or appointed to the Board of Directors from time to time in accordance with the LLC Agreement and these By-Laws, in their capacity as managers of the Company.
- (j) "Election Date" means a date selected by the Board on an annual basis, on which Nasdaq Members may elect or reelect Member Representative Directors in the event of a contested election.
- (k) "Executive Representative" shall have the same meaning as in the Nasdaq Rules.
- (l) "Industry Director" means a Director (excluding any two officers of the Company, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")), who (i) is or has been for the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director who is not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director who is not engaged in the day-to-day management of a broker or dealer), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than ten percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-

of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker or dealer corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

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

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

(o) "List of Candidates" means the list of candidates for Member Representative Director positions to be elected at the next Election Date.

(p) "Member Nominating Committee" means the Member Nominating Committee appointed pursuant to these By-Laws.

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

(r) "Member Representative member" means a Nasdaq Listing and Hearing Review Council member, Nasdaq Review Council member, or member of any other committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to these By-Laws.

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

(t) "Nasdaq Member" means any registered broker or dealer that has been admitted to membership in the securities exchange operated by the Company. A Nasdaq Member is not a member of the Company by reason of being a Nasdaq Member.

(u) "Nominating Committee" means the Nominating Committee of the Board appointed pursuant to these By-Laws.

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

(w) "Non-Industry member" means a Nasdaq Listing and Hearing Review Council member, Nasdaq Review Council member, or member of any other committee appointed by the Board who is (i) a Public member; (ii) an employee of an issuer of securities listed on the national securities exchange operated by the Company; or (iii) any other individual who would not be an Industry member.

(x) "person associated with a Nasdaq Member" or "associated person of a Nasdaq Member" means any person who is a director, or branch manager of a Nasdaq member (or person occupying a similar status or performing similar duties) or any person directly or indirectly controlling, controlled by, or under common control with such Nasdaq member, except that any person associated with a Nasdaq member whose function is purely clerical or ministerial shall not be included in the meaning of such term for purposes of these By-Laws.

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

(z) "Public member" means a Nasdaq Listing and Hearing Review Council member, Nasdaq Review Council member, or member of any other committee appointed by the Board who has no material business relationship with the Company or its affiliates, or FINRA.

(aa) "Record Date" means a date selected by the Board for the purpose of determining the Nasdaq Member Representative Directors on an Election Date in the event of a Contested Election.

(bb) "registered broker or dealer" means any registered broker or dealer, as defined in Section 3(a)(48) of the Act, which is registered with the Commission under the Act.

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

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

(ee) "Contested Election" means an election for one or more Member Representative Directors for which the number of candidates on the List of Candidates exceeds the number of positions to be elected.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 (November 30, 2007); amended by SR-NASDAQ-2008-043 (July 21, 2008); amended by SR-NASDAQ-2009-042 (July 9, 2009).

## **Article II ANNUAL ELECTION OF MEMBER REPRESENTATIVE DIRECTORS AND OTHER ACTIONS BY MEMBERS**

### **Section 1. Record and Election Date**

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

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

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007.

## **Section 2. Voting**

In the event of a Contested Election, each Nasdaq Member shall have the right to cast one vote for each Member Representative Director position to be filled; provided, however, that any such vote must be cast for a single candidate. Notwithstanding the foregoing, a Nasdaq member, either alone or together with its affiliates, shall not cast votes representing more than 20% of the votes cast for a candidate, and any votes cast by the Nasdaq member alone or together with its affiliates, in excess of such 20% limitation shall be disregarded. The votes may be cumulated. The votes shall be cast by written ballot, electronic transmission or any other means as set forth in the rules of the Company. The votes shall be cast by the Nasdaq Members sent by the Company prior to the Election Date. Only votes received prior to 11:59 PM on the Election Date shall count for the election of a Member Representative Director. The Person or Persons receiving the most votes shall be elected to the Member Representative Director position.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007, and by SR-NASDAQ-2009-042 (July 9, 2009).

## **Section 3. Filling of Vacancies**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

## **Section 4. Member Meetings**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

## **Article III BOARD OF DIRECTORS**

### **Section 1. Selection**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 2. Qualifications**

(a) The number of Non-Industry Directors, including at least one Public Director and at least one representative (or if the Board consists of ten or more Directors, at least two issuer representatives), exceed the sum of the number of Industry Directors and Member Representative Directors to be elec terms of the LLC Agreement. A Director may not be subject to a statutory disqualification.

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30,

### **Section 3. Regulation**

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

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 4. Committees**

(a) Upon request of the Secretary of the Company, each prospective committee member who is shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a the prospective committee member's classification as an Industry, Member Representative, Non-Indu Committee member. The Secretary of the Company shall certify to the Board each prospective comm classification. Such committee members shall update the information submitted under this subsector

and upon request of the Secretary of the Company, and shall report immediately to the Secretary such information.

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 5. Committees Composed Solely of Directors**

(a) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the Company between meetings of the Board. The number of members on the Executive Committee shall equal or exceed the number of Industry Directors on the Board. The percentage of Public Directors on the Executive Committee shall be at least as great as the percentage of Public Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee shall be at least as great as the percentage of Member Representative Directors on the whole Board. Each Executive Committee member shall hold office for a term of one year.

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

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007, and by SR-NASDAQ-2009-042 (July 9, 2009).

### **Section 6. Committees Not Composed Solely of Directors**

(a) The Board shall appoint a Nasdaq Listing and Hearing Review Council and a Nasdaq Review Council as provided in Articles V and VI of the By-Laws.

(b) The Board shall appoint a Nominating Committee and a Member Nominating Committee. The Nominating Committee shall nominate candidates for each Member Representative Director position on the Board to be elected by Nasdaq Members or the Company Member under the terms of the LLC Agreement and the By-Laws, and shall nominate candidates for appointment by the Board for each vacant or new position on the Board, Listing and Hearing Review Council, the Nasdaq Review Council, or other committee that is to be filled by a Member Representative member under the terms of these By-Laws. The Nominating Committee shall nominate all other vacant or new Director positions on the Board, and candidates for all other vacant or new positions on the Board, Listing and Hearing Review Council or the Nasdaq Review Council.

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

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

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

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

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

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

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

**(ii)** The Quality of Markets Committee shall include broad representation of participants in the securities exchange operated by the Company, including investors, market makers, integrated retail broker-dealers, and entry firms. The Quality of Markets Committee shall include a number of Member Representative members equal to at least 20 percent of the total number of members of the Quality of Markets Committee. The number of Non-Industry members of the Quality of Markets Committee shall equal or exceed the sum of the number of Non-Industry members and Member Representative members.

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

**(d)** The Board shall appoint a Market Operations Review Committee, which shall exercise the functions of the Market Operations Review Committee under the Nasdaq Rules, in accordance with procedures specified therein. The Market Operations Review Committee shall include a number of Member Representative members that is equal to at least 20 percent of the total

members of the Market Operations Review Committee. No more than 50 percent of the members of the Market Operations Review Committee shall be engaged in market making activity or employed by a Nasdaq Member whose revenues from market making activity exceed 10 percent of its total revenues.

(e) In the event that Nasdaq establishes an arbitration or mediation program that is not operated in accordance with FINRA rules, the Board shall appoint an Arbitration and Mediation Committee.

(i) If Nasdaq appoints an Arbitration and Mediation Committee, such Committee shall advise on the development and maintenance of an equitable and efficient system of dispute resolution that will meet the needs of public investors and Nasdaq Members, shall monitor rules and procedures governing the dispute resolution, and shall have such other powers and authority as are necessary to effectuate the purpose of the Nasdaq Rules.

(ii) Any Arbitration and Mediation Committee shall consist of no fewer than 3 and no more than 5 members and shall have at least 50 percent Non-Industry members.

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

(f) The Board shall appoint a Market Regulation Committee, or shall cause the Company to enter into an agreement with a self-regulatory organization that provides regulatory services pursuant to which such organization shall appoint a Market Regulation Committee on the Company's behalf.

(i) The Market Regulation Committee shall advise the Board on regulatory proposals and industry practices relating to quotations, execution, trade reporting, and trading practices; advise the Board in its adoption of programs and systems for the surveillance and enforcement of rules governing Nasdaq Members' trading activities in the national securities exchange operated by the Company; provide a pool of arbitrators for hearing panels under the Nasdaq Rules; participate in the training of hearing panelists on issues relating to quotations, executions, trade reporting, and trading practices; and review and recommend to the Board changes to Nasdaq's Sanction Guidelines. The Market Regulation Committee shall not have authority to institute disciplinary proceedings.

(ii) The Market Regulation Committee shall have at least 50 percent Non-Industry members.

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007; and amended by SR-NASDAQ-2009-042 (July 9, 2009).

#### **Section 7. Conflicts of Interest; Contracts and Transactions Involving Directors**

(a) A Director or a member of the Nasdaq Listing and Hearing Review Council, the Nasdaq Review Council, or any other committee shall not directly or indirectly participate in any adjudication of the interests of any Nasdaq Member or Nasdaq Listing and Hearing Review Council member, Nasdaq Review Council member, or other committee member if such member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness in the transaction reasonably be questioned. In any such case, the Director or Nasdaq Listing and Hearing Review Council member, or other committee member shall recuse himself or herself or shall not participate in the transaction.



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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 8. Compensation of Board, Council, and Committee Members**

The Board may provide for reasonable compensation of the Chair of the Board, the Directors, Nasdaq Hearing Review Council and Nasdaq Review Council members, and the members of other committees. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the Company.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

## **Article IV OFFICERS, AGENTS, AND EMPLOYEES**

### **Section 1. Delegation of Duties of Officers**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 2. Resignation and Removal of Officers**

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

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 3. Chair of the Board**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 4. Chief Executive Officer**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 5. President**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 6. Vice President**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 7. Chief Regulatory Officer**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 8. Secretary**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 9. Assistant Secretary**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 10. Treasurer**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 11. Assistant Treasurer**

In the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assis approved by the Board, shall exercise all powers and perform all duties of the Treasurer. An Assistant T also exercise such other powers and perform such other duties as may be assigned to such Assistant T time to time by the Board or the Treasurer.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Article V NASDAQ LISTING AND HEARING REVIEW COUNCIL**

#### **Section 1. Appointment and Authority**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 2. Number of Members and Qualifications**

(a) The Nasdaq Listing and Hearing Review Council shall consist of no fewer than eight and no m members, of which not more than 50 percent may be engaged in market-making activity or employe Member whose revenues from market-making activity exceed ten percent of its total revenues. The N Hearing Review Council shall include at least five Non-Industry members (including at least two Publi a number of Member Representative members that is equal to at least 20 percent of the total numbe the Nasdaq Listing and Hearing Review Council.

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 3. Nomination Process**

The Secretary of the Company shall collect from each nominee for the office of member of the Nasda Hearing Review Council such information as is reasonably necessary to serve as the basis for a determi nominee's qualifications and classification as an Industry, Member Representative, Public, or Non-Indus the Secretary shall certify to the Nominating Committee or the Member Nominating Committee (as app nominee's qualifications and classification. After appointment to the Nasdaq Listing and Hearing Review

member shall update such information at least annually and upon request of the Secretary, and shall immediately to the Secretary any change in such information.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 4. Term of Office**

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

(b) The Nasdaq Listing and Hearing Review Council shall be divided into three classes. The term of the first class shall expire in January 2006, the term of office of those of the second class shall exp 2007, and the term of office of those of the third class shall expire in January 2008.

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 5. Resignation**

A member of the Nasdaq Listing and Hearing Review Council may resign at any time upon written no Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to resignation effective.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 6. Removal**

Any or all of the members of the Nasdaq Listing and Hearing Review Council may be removed from o for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Bo:

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 7. Disqualification**

Notwithstanding Article V, Section 4, the term of office of a Nasdaq Listing and Hearing Review Council terminate immediately upon a determination by the Board, by a majority vote, (a) that the member no the classification (Industry, Member Representative, Public, or Non-Industry) for which the member wa that the member's continued service as such would violate the compositional requirements of the Nasd. Hearing Review Council set forth in Article V, Section 2. If the term of office of a Nasdaq Listing and He Council member terminates under this Section, and the remaining term of office of such member at the termination is not more than six months, during the period of vacancy the Nasdaq Listing and Hearing I shall not be deemed to be in violation of Article V, Section 2 by virtue of such vacancy.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 8. Filling of Vacancies**

If a position on the Nasdaq Listing and Hearing Review Council becomes vacant, whether because of disqualification, removal, or resignation, the Nominating Committee or the Member Nominating Commi applicable) shall nominate, and the Board shall appoint a person satisfying the qualifications for the pos in Article V, Section 2(a) to fill such vacancy, except that if the remaining term of office for the vacant I more than six months, no replacement shall be required.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 9. Quorum and Voting**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 10. Meetings**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

## **Article VI NASDAQ REVIEW COUNCIL**

### **Section 1. Appointment and Authority**

The Board shall appoint a Nasdaq Review Council. The Nasdaq Review Council may be authorized to act in a manner consistent with these By-Laws and the Nasdaq Rules with respect to an appeal or review of a listing proceeding, a statutory disqualification proceeding, or a membership proceeding; a review of an offer of listing, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; the exercise of exemptive relief and such other proceedings or actions as may be authorized by the Nasdaq Rules. The Nasdaq Review Council shall consider and make recommendations to the Board on policy and rule changes relating to business and operations of the Nasdaq Members and associated persons and enforcement policies, including policies with respect to financial reporting and sanctions. The Board may delegate such other powers and duties to the Nasdaq Review Council as the Board may determine to be appropriate.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 2. Number of Members and Qualifications**

The Nasdaq Review Council shall consist of no fewer than 8 and no more than 12 members. The Nasdaq Review Council shall include a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Nasdaq Review Council. The number of Non-Industry members, including all Non-Industry members, shall equal or exceed the sum of the number of Industry members and Member Representative members. As soon as practicable following the appointment of members, the Nasdaq Review Council shall elect a Chair and one or more Vice Chairs. The Chair shall have such powers and duties as may be determined from time to time by the Council. The Board, by resolution adopted by a majority of Directors then in office, may remove the Chair from office at any time for refusal, failure, neglect, or inability to discharge the duties of Chair.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007.

### **Section 3. Nomination Process**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 4. Term of Office**

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

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

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007.

#### **Section 5. Resignation**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 6. Removal**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 7. Disqualification**

Notwithstanding Article VI, Section 4, the term of office of a Nasdaq Review Council member shall terminate immediately upon a determination by the Board, by a majority vote, (a) that the member no longer satisfies the classification (Industry, Member Representative, Non-Industry, or Public) for which the member was elected, or (b) that the member's continued service as such would violate the compositional requirements of the Nasdaq Review Council set forth in Article VI, Section 2. If the term of office of a Nasdaq Review Council member terminates and the remaining term of office of such member at the time of termination is not more than six months, the period of vacancy of the Nasdaq Review Council shall not be deemed to be in violation of Article VI, Section 4, during such vacancy.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 8. Filling of Vacancies**

If a position on the Nasdaq Review Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee or the Member Nominating Committee (as applicable) shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Section 2 to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

**Section 9. Quorum and Voting**

At all meetings of the Nasdaq Review Council, a quorum for the transaction of business shall consist of the Nasdaq Review Council, including not less than 50 percent of the Non-Industry members of the Nasdaq Review Council and at least one Member Representative member of the Nasdaq Review Council. In the absence of a majority of the members present may adjourn the meeting until a quorum is present.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

**Section 10. Meetings**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

**Section 11. Review Subcommittee**

The Nasdaq Review Council shall appoint a Review Subcommittee to determine whether disciplinary proceedings or other decisions should be called for review by the Nasdaq Review Council under the Nasdaq Rule or any other function authorized by the Nasdaq Rules. The Review Subcommittee shall be composed of not more than four members of the Nasdaq Review Council. The number of Non-Industry members on the Review Subcommittee shall equal or exceed the sum of the number of Industry members and Member Representatives on the Review Subcommittee, and the Review Subcommittee shall include at least one Member Representative. At all meetings of the Review Subcommittee, a quorum for the transaction of business shall consist of not less than 50 percent of the members of the Review Subcommittee, including not less than 50 percent of the Non-Industry members of the Review Subcommittee and one Member Representative member of the Review Subcommittee.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

**Article VII MISCELLANEOUS PROVISIONS****Section 1. Waiver of Notice**

(a) Whenever notice is required to be given by law, the LLC Agreement or these By-Laws, a waiver of notice by a Person or Persons entitled to such notice, whether before or after the time stated therein, shall be deemed to be given if the business to be transacted at, nor the purpose of, any regular or special meeting of the members of a committee, need be specified in any waiver of notice.

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

**Section 2. Execution of Instruments, Contracts, etc.**

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

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

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

## **Article VIII AMENDMENTS; EMERGENCY BY-LAWS**

### **Section 1. By the Company Member or Board**

These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, by a resolution of the Board at any regular or special meeting of the Board and a written agreement executed and delivered by a Company Member.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30,

### **Section 2. Emergency By-Laws**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30,

## **Article IX EXCHANGE AUTHORITIES**

### **Section 1. Rules**

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30,

### **Section 2. Disciplinary Proceedings**

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

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

(i) (i) a breach by a Nasdaq Member or a person associated with a Nasdaq Member of any provision of the Company or its members;



**(ii)** (ii) violation by a Nasdaq Member or a person associated with a Nasdaq Member of any conditions, covenants, and provisions of the By-Laws, the Rules, or the federal securities laws, including and regulations adopted thereunder;

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

**(iv)** (iv) failure by a Nasdaq Member or person associated with a Nasdaq Member to adhere to an order, direction, or decision of or to pay any sanction, fine, or costs imposed by the Board or any other body the Board has delegated its powers.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 3. Membership Qualifications**

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

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

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 4. Fees, Dues, Assessments, and Other Charges**

The Board shall have authority to fix and levy the amount of fees, dues, assessments, and other charges on Nasdaq Members and issuers and any other persons using any facility or system that the Company operates or provides, however, that such fees, dues, assessments, and other charges shall be equitably allocated among Members and issuers and any other persons using any facility or system that the Company operates or provides.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 5. Authority to Take Action Under Emergency or Extraordinary Market Conditions**

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

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

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

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

**Certificate of Formation of the NASDAQ Stock Market LLC**  
The NASDAQ Stock Market LLC

This Certificate of Formation of The NASDAQ Stock Market LLC (the "Company"), dated as December 15, 2006, was executed and filed by Joan C. Conley, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.).

FIRST. The name of the limited liability company formed hereby is The NASDAQ Stock Market LLC.

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

THIRD. The name and address of the registered agent for service of process on the Company in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

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

-----

NAME: Joan C. Conley

Authorized Person

**Second Amended Limited Liability Company Agreement Of The NASDAQ Stock Market LLC**

This Second Amended Limited Liability Company Agreement (together with the exhibit and schedules attached hereto as "Agreement") of the NASDAQ Stock Market LLC (the "Company") is entered into by The NASDAQ OMX Group, Inc. ("NASDAQ OMX") and The NASDAQ Stock Market LLC ("The Company"). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A attached hereto.

WHEREAS, The Company desires to form a limited liability company pursuant to the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq., as amended from time to time (the "LLC Act"), by filing a Certificate of Formation with the office of the Secretary of State of the State of Delaware and entering into this Agreement;

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the undersigned hereby agree as follows:

Section 1. Name.

The name of the limited liability company formed hereby is The NASDAQ Stock Market LLC.

Section 2. Principal Business Office.

The principal business office of the Company shall be located at One Liberty Plaza, New York, New York 10048, or at such other location as may hereafter be determined by the Board of Directors.

Section 3. Registered Office.

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

#### Section 4. Registered Agent.

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

#### Section 5. Member.

The mailing address of the Member is set forth on Schedule B attached hereto. The Member was admitted to the Company as a member of the Company upon its execution of a counterpart signature page to this Agreement.

#### Section 6. Certificates.

Joan C. Conley, as an "authorized person" within the meaning of the LLC Act, has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware (such filing being approved and ratified in all respects). Upon the filing of the Certificate of Formation with the Secretary of State of Delaware, her powers as an "authorized person" ceased, and the Member, each Director and each Officer became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the LLC Act. The Member, any Director or any Officer, as an authorized person within the meaning of the LLC Act, shall execute, deliver and file, or cause the execution, delivery and filing of, all certificates (and any amendment or restatement thereof) required or permitted by the LLC Act to be filed with the Secretary of State of the State of Delaware. The Member, any Director or any Officer shall execute, deliver and file, or cause the execution, delivery and filing of, all certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until the cancellation of the Certificate of Formation as provided in the LLC Act. Upon the cancellation of the Certificate of Formation in accordance with the LLC Act, the Company shall terminate.

#### Section 7. Purposes.

The Company is formed for the object and purpose of, and the nature of the business to be conducted and the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the laws of the State of Delaware, including, but not limited to, engaging in any and all activities necessary or incidental to the foregoing. Without limiting the generality of the nature of the business or purposes to be conducted and promoted shall include (i) supporting the operation and surveillance of the national securities exchange operated by the Company, (ii) preventing fraudulent acts and practices, promoting just and equitable principles of trade, fostering cooperation and coordination among persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removing impediments to and perfecting the mechanisms of a free and open market and a national market for securities, protecting investors and the public interest, (iii) supporting the various elements of the national market for securities pursuant to Section 11A of the Exchange Act and the rules thereunder, (iv) fulfilling the Company's self-regulatory responsibilities as set forth in the Exchange Act, and (v) supporting such other initiatives as the Board may deem appropriate.

#### Section 8. Powers.

The Company, and the Board of Directors and the Officers of the Company on behalf of the Company, (i) shall exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the laws of the State of Delaware.

#### Section 9. Management.

(a) Board of Directors. The business and affairs of the Company shall be managed by or under the direction of the Board of Directors.

Directors. Each Director is hereby designated as a "manager" within the meaning of the LLC Act. The Member at any time in its sole and absolute discretion the number of Directors to constitute the Board. The authorized Directors may be increased or decreased by the Member at any time in its sole and absolute discretion, up to 10 Directors, but no decrease in the number of Directors shall shorten the term of any incumbent Member Representative Director. At least twenty percent (20%) of the Directors shall be Member Representative Directors. All Member Representative Directors shall be elected by the Member in the manner described in the By-Laws. Any Director elected, designated or appointed by the Member shall hold office until a successor is elected and qualified to succeed to the Director's earlier death, resignation, expulsion or removal. Member Representative Directors shall be elected in accordance with the By-Laws. Each Director shall execute and deliver an instrument accepting such appointment and shall be bound by all the terms and conditions of this Agreement and the By-Laws. A Director need not be a member of the Company.

(b) Powers. The Board of Directors shall have the power to do any and all acts necessary, convenient or in the furtherance of the purposes described herein, including all powers, statutory or otherwise. The Board of Directors shall have the authority to bind the Company. To the fullest extent permitted by applicable law, the By-Laws, and this Agreement, the Board may delegate any of its powers to a committee appointed pursuant to Section 9(g) or to any officer, director or agent of the Company.

(c) By-Laws. The Company, the Member and the Board of Directors hereby adopt the By-Laws of the Company attached hereto as Exhibit A, as the same may be amended from time to time in accordance with the terms of this Agreement (the "By-Laws"). The Board, each Officer and the Member shall be subject to the express provisions of this Agreement and of the By-Laws. In case of any conflict between the provisions of this Agreement and any provisions of the By-Laws, the provisions of this Agreement shall control.

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

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

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

(g) Committees.

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

- ii. Except as otherwise provided by the By-Laws, members of a committee shall hold office for such period fixed by a resolution adopted by the Board. Any member of a committee may be removed from such office by the Board. Vacancies in the membership of any committee shall be filled by the Board.
- iii. Each committee may adopt its own rules of procedure and may meet at stated times or on such other times as the committee may determine. Each committee shall keep regular minutes of its meetings and report them to the Board when required.
- iv. Unless otherwise required by the By-Laws, a majority of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.
- v. To the extent provided in the resolution of the Board, any committee that consists solely of one or more members shall have and may exercise all the powers and authority of the Board in the management of the business of the Company. Such committee or committees shall have such name or names as may be determined from a resolution adopted by the Board. In the absence or disqualification of a member of a committee composed of Directors, the member or members thereof present at any meeting and not disqualified from voting, if such members constitute a quorum, may unanimously appoint another member of the Board to act in the place of any such absent or disqualified member.

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

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

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

#### Section 10. Officers.

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

(b) Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise by the action of the Board not inconsistent with this Agreement, are agents of the Company for the purpose of the

business, and the actions of the Officers taken in accordance with such powers shall bind the Company.

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

#### Section 11. Limited Liability.

Except as otherwise expressly provided by the LLC Act, the debts, obligations and liabilities of the Company in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Company nor any Director shall be obligated personally for any such debt, obligation or liability of the Company solely in its capacity as a Member or Director of the Company.

#### Section 12. Capital Contributions.

The Member has contributed to the Company the amounts set forth in the books and records of the Company.

#### Section 13. Additional Contributions.

The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time upon the consent of such Member. To the extent the Member makes an additional capital contribution to the Company, the Member shall revise the books and records of the Company. The provisions of this Agreement, including this Section 13, are intended to benefit the Member and, to the extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (including any creditor of the Company shall be a third-party beneficiary of this Agreement), and the Member shall not have any obligation to any creditor of the Company to make any contribution to the Company or to issue any call for contributions to this Agreement.

#### Section 14. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

#### Section 15. Distributions.

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

#### Section 16. Books and Records.

The Board shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Board. The Member and its duly authorized representatives shall have the right to examine the Company books, records and documents during normal business hours. The Company, and the Board on behalf of the Company, shall not have the right to keep confidential from the Member any information that the Board would otherwise be permitted to keep confidential from the Member pursuant to Section 17(c) of the LLC Act. The Company's books of account shall be kept using the method of accounting determined by the Board. The Company's independent auditor shall be an independent public accounting firm selected by the Board.

#### Section 17. Reports.

The Board shall, after the end of each fiscal year, use reasonable efforts to cause the Company's independent auditor to prepare an annual audit report.

any, to prepare and transmit to the Member as promptly as possible any such tax information as may be necessary to enable the Member to prepare its federal, state and local income tax returns relating to such f

#### Section 18. Other Business.

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

#### Section 19. Exculpation and Indemnification.

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

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

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

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

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

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

#### Section 20. Assignments.

The Member may not transfer or assign in whole or in part its limited liability company interest in the Company or Affiliate of such Member.

## Section 21. Dissolution.

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

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member shall not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue its operations until dissolution.

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

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

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

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or any creditor of the Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than the Company and the Member) or in any Persons and, to the extent provided in Article II of the By-Laws, Nasdaq Members) not a party hereto, and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (other than the Company and the Member) or in any Covered Persons and, to the extent provided in Article II of the By-Laws, Nasdaq Members).

## Section 23. Severability of Provisions.

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

## Section 24. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

## Section 25. Binding Agreement.

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

## Section 26. Governing Law.

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

## Section 27. Amendments.

This Agreement may be modified, altered, supplemented or amended by a resolution adopted by the Board of Directors and executed and delivered by the Member.



## Section 28. Notices.

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Section 28 Limited Liability Company Agreement as of the 9th day of July, 2009.

MEMBER:

THE NASDAQ OMX GROUP, INC.

By:

-----

Name: Joan C. Conley

Title: Senior Vice President and Corporate Secretary

\_\_\_\_\_

## SCHEDULE A Definitions

## A. Definitions

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

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

"Affiliate" has the meaning ascribed to that term in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on the date of this Agreement.

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

"Bankruptcy" means, with respect to any Person, if (A) such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it a judgment of bankruptcy or insolvency, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files a petition or answer admitting or failing to contest the material allegations of a petition filed against it in any such proceeding, or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or any substantial part of its properties; or (B) (i) 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or (ii) within 90 days after the appointment without the consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated or stayed.

vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the "Bankruptcy" set forth in Sections 18-101 (1) and 18-304 of the LLC Act.

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

"By-Laws" has the meaning set forth in Section 9.

"Certificate of Formation" means the Certificate of Formation of the Company filed with the Secretary of State of Delaware on December 15, 2005, as amended or amended and restated from time to time.

"Company" means The NASDAQ Stock Market LLC, a Delaware limited liability company.

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

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

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

"Member" means The NASDAQ OMX Group, Inc., as the sole member of the Company.

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

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

"Officer" means an officer of the Company described in Section 10.

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

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

## B. Rules of Construction

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

-----

SCHEDULE B Member

Name	Mailing Address	Limited Liability Company Interest
The Nasdaq OMX Group, Inc.	One Liberty Plaza New York, New York 10006	100%

Adopted Dec. 10, 2005; amended Nov. 30, 2007 (SR-NASDAQ-2007-068); amended July 9, 2009 (SR-NAS

## NASDAQ Options Market LLC

### DELEGATION AGREEMENT

This DELEGATION AGREEMENT, (the "Agreement"), is by and among The NASDAQ Stock Market LLC ("Nasdaq LLC", a Delaware limited liability company), and NASDAQ Options Market LLC, a Delaware limited liability company

WHEREAS, Nasdaq LLC is a registered national securities exchange pursuant to Section 6 of the Securities Exchange Act of 1934, as amended (the "Exchange Act");

WHEREAS, NOMM is a wholly owned subsidiary of Nasdaq LLC; and

WHEREAS, Nasdaq LLC desires to delegate to NOM, and NOM desires to assume, certain limited responsibilities and obligations of Nasdaq LLC solely with respect to the operation of an options trading facility, on the terms and conditions set forth in this Agreement. The delegation set forth below is limited to operation of the options market and does not include operation of the equities market or other functions not specifically set forth in this Agreement.

NOW, THEREFORE, in consideration of the agreements contained herein, the parties hereto agree as follows:

#### I. Nasdaq LLC

Nasdaq LLC shall have ultimate responsibility for the operations, rules and regulations developed by NOM, and for the enforcement of the rules and regulations. Actions taken by NOM pursuant to delegated authority remain subject to review, approval or disapproval by the board of directors of Nasdaq LLC in accordance with procedures established by that board of directors. In addition, Nasdaq LLC will expressly retain the following authority and functions (together, the "Retained Functions"):

1. To exercise overall responsibility for ensuring that statutory and self-regulatory obligations and functions are fulfilled and to perform any duties and functions not delegated.
2. To delegate authority to NOM to take actions on behalf of Nasdaq LLC.
3. To direct NOM to take action necessary to effectuate the purposes and functions of Nasdaq LLC, consistent with the independence of Nasdaq LLC's regulatory functions, exchange rules, policies and procedures and the federal securities laws.

#### II. NOM

##### A. Functions and Responsibilities

Subject to the retention of the Retained Functions, Nasdaq LLC shall delegate to NOM, and NOM shall assume the responsibilities and functions of Nasdaq LLC, as a registered national securities exchange (each, a "Delegated Market Responsibility" and together the "Delegated Market Responsibilities"):

1. To operate NOM, including automated systems supporting it.
2. To provide and maintain a communications network infrastructure linking market participants for the efficient handling of quotations, orders, transaction reports and comparisons of transactions in options.
3. To act as a Securities Information Processor for quotations and transaction information related to securities listed on NOM and any trading facilities operated by NOM.
4. To administer the participation of Nasdaq LLC in the National Market System plans governing the listing, and regulation of options and Commission regulations related thereto.
5. To collect, process, consolidate and provide to Nasdaq LLC accurate information requisite to operation of an audit trail for the quoting and trading of options.
6. To develop and adopt rules governing listing standards applicable to options listed on NOM in consultation with Nasdaq LLC.
7. To establish and assess listing fees, access fees, transaction fees, market data fees and other fees for the services offered by NOM.
8. To develop, adopt and administer rules governing participation in NOM.
9. To refer to Nasdaq any complaints of a regulatory nature involving potential rule violations by member or employees.
10. To establish the annual budget for NOM.
11. To determine allocation of NOM resources.
12. To manage external relations on matters related to trading on and the operation and functions of NOM with the Commission, state regulators, other self-regulatory organizations, business groups, and the public.

*B. Covenants Relating to NOM*

For so long as NOM has any Delegated Market Responsibility pursuant to this Agreement, NOM agrees that

1. To the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory functions of Nasdaq LLC or any Delegated Market Responsibility (including but not limited to disciplinary matters, trading practices and audit information) contained in the books and records of Nasdaq LLC that shall come into the possession of NOM shall: (a) not be made available to any person (other than as provided in the next sentence) other than the officers, directors, employees and agents of the NOM who have a reasonable need to know the contents thereof; (b) not be disclosed in confidence by NOM and the officers, directors, employees and agents of NOM; and (c) not be used for any commercial purposes; provided, that nothing in this sentence shall be interpreted so as to limit or impede the ability of the Commission or Nasdaq LLC to access and examine such confidential information pursuant to the federal securities laws, the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of NOM to disclose such confidential information to the Commission or Nasdaq LLC.
2. NOM's books and records shall be subject at all times to inspection and copying by (a) the Commission and (b) Nasdaq LLC.
3. NOM's books and records shall be maintained within the United States.

4. The books, records, premises, officers, and employees of NOM shall be deemed to be the books, records, officers, directors and employees of Nasdaq LLC for purposes of and subject to oversight pursuant to the Act.

5. NOM shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and Nasdaq LLC pursuant to and to the extent of its regulatory authority, and shall take reasonable steps necessary to cause its agents to cooperate, with the Commission and, where applicable, Nasdaq LLC pursuant to the Commission's regulatory authority.

6. NOM, its officers and employees shall give due regard to the preservation of the independence of the self-governing function of Nasdaq LLC and to obligations to investors and the general public and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of Nasdaq LLC relating to its regulatory functions (including disciplinary matters) or that would interfere with the ability of Nasdaq LLC to perform its responsibilities under the Act.

7. NOM, its officers, and those of its employees whose principal place of business and residence is outside the United States shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts and the United States federal securities laws and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of NOM or any delegated market responsibility (and shall be deemed to agree that NOM may serve as the U.S. agent for service of process in such suit, action or proceeding), and NOM and each such officer or employee, in the capacity of officer or employee by virtue of his acceptance of any such position, shall be deemed to waive, and agree to defend, on any motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not subject to the jurisdiction of the Commission, that such suit, action or proceeding is an inconvenient forum, that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or through any court or agency.

For so long as NOM has any Delegated Market Responsibility pursuant to this Agreement, Nasdaq LLC agrees to defend NOM.

1. Nasdaq LLC may not transfer or assign any of its ownership of NOM.

### III. Amendments

This Agreement may not be modified except pursuant to a written agreement among Nasdaq LLC and NOM. Any such amendment shall be filed with, and approved by, the Commission pursuant to Section 19 of the Exchange Act and the rules promulgated thereunder.

#### **LIMITED LIABILITY COMPANY AGREEMENT OF THE NASDAQ OPTIONS MARKET LLC**

This Limited Liability Company Agreement (together with the exhibit and the schedules attached hereto, this "Agreement") of The NASDAQ Options Market LLC (the "Company") is entered into by The NASDAQ Stock Market LLC, a limited liability company ("NASDAQ" or "the Member"), as sole member. Capitalized terms used and not otherwise defined herein shall have the meanings set forth on *Schedule A* hereto.

WHEREAS, NASDAQ desires to form a limited liability company pursuant to the Delaware Limited Liability Company Act, *Del. C. § 18-101, et seq.*, as amended from time to time (the "*LLC Act*"), by filing a Certificate of Formation with the office of the Secretary of State of the State of Delaware and entering into this Agreement.

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

#### Section 1. *Name.*

The name of the limited liability company formed hereby is The NASDAQ Options Market LLC.

Section 2. *Principal Business Office.*

The principal business office of the Company shall be located at One Liberty Plaza, New York, New York 100 location as may hereafter be determined by the Member.

Section 3. *Registered Office.*

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

Section 4. *Registered Agent.*

The name and address of the registered agent of the Company for service of process on the Company in th Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, C Castle, Delaware 19801.

Section 5. *Member.*

NASDAQ shall be the sole member of the Company. The mailing address of the Member is set forth on *Sch* hereto. The Member was admitted to the Company as a member of the Company upon its execution of a cc signature page to this Agreement.

Section 6. *Certificates.*

[NASDAQ Officer], as an "authorized person" within the meaning of the LLC Act, has executed, delivered ar Certificate of Formation of the Company with the Secretary of State of the State of Delaware (such filing be approved and ratified in all respects). Upon the filing of the Certificate of Formation with the Secretary of S of Delaware, her powers as an "authorized person" ceased, and the Member and each Officer thereupon be designated "authorized person" and shall continue as the designated "authorized person" within the meanir The Member or any Officer, as an authorized person within the meaning of the LLC Act, shall execute, deliv cause the execution, delivery and filing of, all certificates (and any amendments and/or restatements there permitted by the LLC Act to be filed with the Secretary of State of the State of Delaware. The Member or ar execute, deliver and file, or cause the execution, delivery and filing of, any certificates (and any amendmer restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until the cancellation of the Certifica as provided in the LLC Act. Upon the cancellation of the Certificate of Formation in accordance with the LLC Agreement and the Company shall terminate.

Section 7. *Purposes.*

The Company is formed for the object and purpose of, and the nature of the business to be conducted and Company is, engaging in any lawful act or activity for which limited liability companies may be formed unde engaging in any and all activities necessary or incidental to the foregoing. Without limiting the generality of the nature of the business or purposes to be conducted and promoted shall include (i) supporting the opera and surveillance of an options exchange operated by the Company, (ii) preventing fraudulent and manipula practices, promoting just and equitable principles of trade, fostering cooperation and coordination with pers regulating, clearing, settling, processing information with respect to, and facilitating transactions in stock o impediments to and perfecting the mechanisms of a free and open market and a national market system, a protecting investors and the public interest, (iii) supporting the various elements of the national market sys Section 11A of the Exchange Act and the rules thereunder, (iv) fulfilling the self-regulatory responsibilities i and the Member as set forth in the Exchange Act, and (v) supporting such other initiatives as the Member i

appropriate.

#### Section 8. *Powers.*

The Company, and the Member and the Officers of the Company on behalf of the Company, (i) shall have a powers necessary, convenient or incidental to accomplish its purposes as set forth in *Section 7* and (ii) shall exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the LLC

#### Section 9. *Management.*

(a) *Member.* In accordance with Section 18-402 of the LLC Act, management of the Company shall be vested in the Member. The Member shall have the power to do any and all acts necessary, convenient or incidental to or for the fulfillment of the purposes described herein, including all powers, statutory or otherwise, possessed by members of a limited liability company under the laws of the State of Delaware. The Member has the authority to bind the Company. The Member shall exercise its powers as permitted by the LLC Act. Notwithstanding any other provision of this Agreement (but subject to (b)), the Member is authorized to execute and deliver any document on behalf of the Company without any approval of any other Person.

(b) *Member Conduct.* The Company, and to the extent that it relates to the Company, the Member, shall comply with the federal securities laws and the rules and regulations thereunder; shall cooperate with the Commission and the SEC pursuant to its regulatory authority and the provisions of this Agreement; and shall engage in conduct that does not interfere with the Company's ability: to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

#### Section 10. *Officers.*

(a) Except as provided herein, the Member may, from time to time as it deems advisable, select natural persons to be officers of the Member and designate them as officers of the Company (the "Officers") and assign titles (in no event in excess of three, President, Vice President, Secretary and Treasurer) to any such person. Officers of the Company shall be officers of the Member. Any number of offices may be held by the same person. The Member may appoint or designate as such officers such persons as shall be determined from time to time by the Member. The salaries of all Officers of the Company shall be fixed by or in the manner prescribed by the Member. The Officers of the Company shall hold office until they are removed or replaced, chosen and qualified. Any vacancy occurring in any office of the Company shall be filled by the Member. Upon the expiration of the term determined by the Member, any officer of the Member upon designation by the Member shall automatically be reappointed as an Officer of the Company with the same title and powers with respect to the Member as such Officer has with respect to the Member.

(b) *Officers as Agents.* The Officers, to the extent of their powers set forth in this Agreement or otherwise, shall be agents of the Member not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business, and the actions of the Officers taken in accordance with such powers shall bind the Company.

(c) *Duties and Conduct of Officers.* Except to the extent otherwise modified herein, each Officer shall have the same duties and care similar to that of officers of business corporations organized under the General Corporation Law of Delaware. Each Officer shall comply with the federal securities laws of the United States and the rules and regulations thereunder; shall cooperate with the Commission pursuant to its regulatory authority and the provisions of this Agreement; and shall engage in conduct that fosters and does not interfere with the Company's ability: to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

and, in general, to protect investors and the public interest.

Section 11. *Limited Liability.*

Except as otherwise expressly provided by the LLC Act, the debts, obligations and liabilities of the Company in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and the Member shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a member of the Company.

Section 12. *Capital Contributions.*

The Member has contributed to the Company the amounts set forth in the books and records of the Company.

Section 13. *Additional Contributions.*

The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time upon the consent of such Member. To the extent the Member makes an additional capital contribution to the Company, the Secretary of the Company shall revise the books and records of the Company. The provisions of this Agreement, including this *Section 13*, are intended to benefit the Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third-party beneficiary of this Agreement), and the Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to the Company's capital pursuant to this Agreement.

Section 14. *Allocation of Profits and Losses.*

The Company's profits and losses shall be allocated to the Member.

Section 15. *Distributions.*

Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Member on account of its interest in the Company if such distribution would violate the law or any other applicable law.

Section 16. *Books and Records.*

The Member shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Secretary. The Company's books and records shall be kept using the method of accounting determined by the Member. The Company may engage an independent public accounting firm selected by the Member.

Section 17. *Other Business.*

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

Section 18. *Exculpation and Indemnification.*

(a) Neither the Member nor any Officer, employee or agent of the Company nor any employee, representative



Affiliate of the Member (collectively, the "Covered Persons") shall be liable to the Company or any other Person bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any loss, damage or claim incurred by reason of such Covered Person's willful misconduct.

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

(c) To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of a written agreement or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person shall not be indemnified as authorized in this *Section 18*.

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

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

(f) The foregoing provisions of this *Section 18* shall survive any termination of this Agreement.

#### Section 19. *Assignments*

(a) The Member may not transfer or assign in whole or in part its limited liability company interest in the Company.

#### Section 20. *Dissolution*

(a) The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the Member or the occurrence of any other event which terminates the continued membership of the Member in the Company unless the Company is continued in a manner permitted by this Agreement or the LLC Act or (iii) the entry of a decree of judicial dissolution under Section 802 of the LLC Act.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member shall not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue its operations until dissolution.

(c) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up the Company (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be distributed to the Members in accordance with the terms of this Agreement.

the manner, and in the order of priority, set forth in Section 18-804 of the LLC Act.

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

*Section 21. Benefits of Agreement; No Third-Party Rights.*

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or creditor of the Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than the Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (other than the Covered Persons).

*Section 22. Severability of Provisions.*

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

*Section 23. Entire Agreement.*

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

*Section 24. Binding Agreement.*

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

*Section 25. Governing Law.*

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

*Section 26. Amendments.*

This Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member.

*Section 27. Notices.*

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

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement as of the 31<sup>st</sup> day of October, 2007.

MEMBER:

THE NASDAQ STOCK MARKET LLC

By: -- /s/ --

Name: Jeffrey S. Davis

Office: Vice President and Deputy General Counsel

### ***SCHEDULE A Definitions***

#### *A. Definitions*

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

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

" *Affiliate*" has the meaning ascribed to that term in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on the date of this Agreement.

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

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

" *Certificate of Formation*" means the Certificate of Formation of the Company filed with the Secretary of State of Delaware on \_\_\_\_\_, 2007, as amended or amended and restated from time to time.

" *Company*" means The NASDAQ Options Market LLC, a Delaware limited liability company.

" *Commission*" means the United States Securities and Exchange Commission.

" *Covered Persons*" has the meaning set forth in *Section 18*.

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

" *Member*" means The NASDAQ Stock Market LLC, as the initial member of the Company, and includes any person who becomes an additional member of the Company or a substitute member of the Company pursuant to the provisions of the Agreement, each in its capacity as a member of the Company.

" *Officer*" means an officer of the Company described in *Section 10*.

" *Person*" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, trust, or other legal entity.

association, joint stock company, trust, unincorporated organization or other organization, whether or not a governmental authority.

*B. Rules of Construction*

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

***SCHEDULE B Member***

<b>Name</b>	<b>Mailing Address</b>	<b>Limited Liability Company Interest</b>
The NASDAQ Stock Market LLC	One Liberty Plaza New York, New York 10006	100%

**The NASDAQ OMX Group, Inc.**

**Restated Certificate of Incorporation of The NASDAQ OMX Group, Inc.**

Article First

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

Article Second

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

Article Third

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

Article Fourth

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

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of Nasdaq ("Board") is hereby authorized to provide for the issuance of shares of Preferred Stock in one or more series pursuant to the applicable law of the State of Delaware (hereinafter referred to as "Preferred Stock") to establish from time to time the number of shares to be included in each such series, and to fix the designations, preferences and rights of the shares of each such series and the qualifications, limitations and restrictions thereon. The authority of the Board with respect to each series shall include, but not limited to, determination of the follo

- (1) The designation of the series, which may be by distinguishing number, letter or title.
- (2) The number of shares of the series, which number the Board may thereafter (except where other the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof t
- (3) The amounts payable on, and the preferences, if any, of shares of the series in respect of divider such dividends, if any, shall be cumulative or noncumulative.
- (4) Dates at which dividends, if any, shall be payable.
- (5) The redemption rights and price or prices, if any, for shares of the series.
- (6) The terms and amount of any sinking fund provided for the purchase or redemption of shares of
- (7) The amounts payable on, and the preferences, if any, of shares of the series in the event of any involuntary liquidation, dissolution or winding up of the affairs of Nasdaq.
- (8) Whether the shares of the series shall be convertible into or exchangeable for shares of any othe or any other security, of Nasdaq or any other corporation, and, if so, the specification of such other c such other security, the conversion or exchange price or prices or rate or rates, any adjustments the dates at which such shares shall be convertible or exchangeable and all other terms and conditions u conversion or exchange may be made.
- (9) Restrictions on the issuance of shares of the same series or of any other class or series.
- (10) The voting rights, if any, of the holders of shares of the series.

C. 1 (a) Except as may otherwise be provided in this Restated Certificate of Incorporation (including any Pr Designation) or by applicable law, each holder of Common Stock, as such, shall be entitled to one vote for Common Stock held of record by such holder on all matters on which stockholders generally are entitled to holder of any series of Preferred Stock, as such, shall be entitled to any voting powers in respect thereof.

(b) Except as may otherwise be provided in this Restated Certificate of Incorporation or by applicable law, 1 3.75% Series A Convertible Notes due 2012 (as may be amended, supplemented or otherwise modified from the "Series A Notes") and the 3.75% Series B Convertible Notes due 2012 (as may be amended, suppleme modified from time to time, the "Series B Notes" and, together with the Series A Notes, the "Notes") which from time to time by Nasdaq shall be entitled to vote on all matters submitted to a vote of the stockholders voting together with the holders of the Common Stock (and of any other shares of capital stock of Nasdaq a meeting of stockholders) as one class. Each principal amount of Notes shall be entitled to a number of vo number of votes represented by the Common Stock of Nasdaq that could then be acquired upon conversior amount of Notes into Common Stock, subject to adjustments as provided in the Notes and the Indenture d 22, 2005 between Nasdaq and Law Debenture Trust Company of New York, as trustee, as such Indenture r supplemented or otherwise modified from time to time. Holders of the Notes shall be deemed to be stockhc and the Notes shall be deemed to be shares of stock, solely for the purpose of any provision of the General of the State of Delaware or this Restated Certificate of Incorporation that requires the vote of stockholders to any corporate action.

2. Notwithstanding any other provision of this Restated Certificate of Incorporation, but subject to subpara paragraph C. of this Article Fourth, in no event shall (i) any record owner of any outstanding Common Stoc Stock which is beneficially owned, directly or indirectly, as of any record date for the determination of stock holders of Notes entitled to vote on any matter, or (ii) any holder of any Notes which are beneficially owne indirectly, as of any record date for the determination of stockholders and/or holders of Notes entitled to v by a person (other than an Exempt Person) who beneficially owns shares of Common Stock, Preferred Stoc

excess of five percent (5%) of the then-outstanding shares of stock generally entitled to vote as of the record date of such matter ("Excess Shares and/or Notes"), be entitled or permitted to vote any Excess Shares and/or Notes. For all purposes hereof, any calculation of the number of shares of stock outstanding at any particular date, including for purposes of determining the particular percentage of such outstanding shares of stock of which the beneficial owner, shall be made in accordance with the last sentence of Rule 13d-3(d)(1)(i) of the General Regulations under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as in effect on the date of this Restated Certificate of Incorporation.

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

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

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

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

(ii) which such person or any of such person's Affiliates has (A) the right to acquire (whether such right arises immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, including customary agreements with and between underwriters and selling group members with respect to a public offering of securities), or upon the exercise of conversion rights, exchange rights, rights, warrants or options or otherwise; provided, however, that a person shall not be deemed the beneficial owner of, or to beneficially own, any securities tendered pursuant to a tender or exchange offer made by or on behalf of such person or a person's Affiliates until such tendered securities are accepted for purchase; or (B) the right to vote pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the beneficial owner of, or to beneficially own, any security by reason of such agreement, arrangement or understanding if (1) such agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given to such person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations promulgated under the Exchange Act and (2) is not also then required to be disclosed in a Schedule 13D under the Exchange Act (or any comparable or successor report); or

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

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

(d) "Exempt Person" shall mean Nasdaq or any Subsidiary of Nasdaq, in each case including, without limitation, in a fiduciary capacity, or any employee benefit plan of Nasdaq or of any Subsidiary of Nasdaq, or any entity or person who holds or is entitled to receive stock for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding any such plan.

benefits for employees of Nasdaq or of any Subsidiary of Nasdaq.

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

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

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

5. Any constructions, applications, or determinations made by the Board, pursuant to this paragraph C. of this Article Fourth shall be in good faith and on the basis of such information and assistance as was then reasonably available for such purposes and shall be conclusive and binding upon Nasdaq, its stockholders and the holders of the Notes.

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

7. In the event any provision (or portion thereof) of this paragraph C. of this Article Fourth shall be found to be prohibited or unenforceable for any reason, the remaining provisions (or portions thereof) of this paragraph C. of this Article Fourth shall remain in full force and effect, and shall be construed as if such invalid, prohibited or unenforceable provision (or portion thereof) had never been part of this Article Fourth.

(or portion hereof) had been stricken herefrom or otherwise rendered inapplicable, it being the intent of Nasdaq stockholders and the holders of the Notes that each such remaining provision (or portion thereof) of this Certificate of Amendment remains, to the fullest extent permitted by law, applicable and enforceable as to all stockholders of Notes, including stockholders and holders of Notes that beneficially own Excess Shares and/or Notes, notwithstanding any such finding.

#### Article Fifth

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

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

C. Subject to the rights of the holders of any one or more series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause shall only be filled by the holders of the Voting Stock. The decrease in the number of directors shall shorten the term of any incumbent director.

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

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

#### Article Sixth

A. A director of Nasdaq shall not be liable to Nasdaq or its stockholders for monetary damages for breach of duty as a director, except to the extent that such exemption from liability or limitation thereof is not permitted under applicable law.



Corporation Law of the State of Delaware as the same exists or may hereafter be amended.

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

#### Article Seventh

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

#### Article Eighth

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

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

#### Article Ninth

A. Nasdaq reserves the right to amend, alter, change, or repeal any provisions contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred herein are granted subject to this reservation; provided, however, that the affirmative vote of the holders of at least 66 2/3% of the total outstanding Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with paragraph C. of Article Fourth, Article Fifth, Article Seventh, Article Eighth or this Article Ninth; further, however, the affirmative vote of at least 66 2/3% of the voting power of the holders of the outstanding Voting Stock also be required to (i) amend paragraph C. of Article Fourth in a manner that would adversely affect the rights of the Notes thereunder without similarly affecting the rights of the holders of the Common Stock thereunder, and (ii) amend this clause.

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

#### Article Tenth

Nasdaq shall have perpetual existence.

#### Article Eleventh

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

#### **CERTIFICATE OF DESIGNATION OF SERIES A CONVERTIBLE PREFERRED STOCK OF THE NASDAQ INC.**

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

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

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

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

##### *Section 1. Number; Designation; Rank.*

(a) This series of convertible Preferred Stock is designated as the "Series A Convertible Preferred Stock" with a par value of \$0.01 per share (the "*Series A Preferred Stock*"). The number of shares constituting the Series A Preferred Stock shall be 2,000,000 shares.

(b) The Series A Preferred Stock ranks, with respect to dividend rights and rights upon liquidation, dissolution or winding up of the Company:

(i) senior in preference and priority to the common stock of the Company, par value \$0.01 per share ("*Common Stock*" or the "*Junior Securities*"); and

(ii) on parity, without preference and priority, with each other class or series of preferred stock of the Company.

(collectively, the " *Parity Securities*").

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

*Section 3. Liquidation Preference.*

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Company, each share of Series A Preferred Stock entitles the holder thereof to receive and to be paid out of the assets of the Company available for distribution, before any distribution or payment may be made to a holder of any Junior Securities, an amount equal to ten Dollars (\$10.00) plus any accrued and unpaid dividends thereon in funds consisting of cash or cash equivalents (the " *Liquidation Preference*").

(b) If upon any such liquidation, dissolution or winding up of the Company, the assets of the Company available for distribution are insufficient to pay in full the holders of Series A Preferred Stock the amount to which they are entitled pursuant to *Section 3(a)* above and the holders of all Parity Securities the full liquidation preferences to which they are entitled, the holders of Series A Preferred Stock and such Parity Securities will share ratably in any such distribution of assets of the Company in proportion to the full respective amounts to which they are entitled.

(c) For the purposes of this *Section 3*, a Fundamental Change (in and of itself) shall be deemed not to be a dissolution or winding-up of the Company subject to this *Section 3* (it being understood that an actual liquidation or winding up of the Company in connection with a Fundamental Change will be subject to this *Section 3*).

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

*Section 5. Conversion.*

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

(a) *Mandatory Conversion.* The Company shall seek such approval of the holders of the Company's Common Stock as may be required under law or the primary exchange listing standards applicable to the Company to permit the conversion of Series A Preferred Stock into shares of Common Stock at the regularly scheduled 2010 annual meeting of the Company or at such earlier date as the Company and a majority of the holders of the Series A Preferred Stock agree (such approval, the " *Shareholder Approval*" and such meeting, the " *Annual Meeting*"). On the date that such *Shareholder Approval* is obtained (the " *Conversion Date*"), each of the Series A Preferred Stock will automatically convert into shares of Common Stock on a one-for-one basis.

without any further action required by any holder, be converted into a number of duly authorized, validly issued and nonassessable shares of Common Stock determined by dividing the Liquidation Preference by the Reference Price (the "Settlement Rate"); provided that, for purposes of this Section 5(a), (i) if the Reference Price is less than the Settlement Rate, then the Settlement Rate will be the Liquidation Preference divided by the Floor Price, and (ii) if the Reference Price is greater than the Ceiling Price, then the Settlement Rate will be the Liquidation Preference divided by the Ceiling Price, with the Floor Price and the Ceiling Price being subject to appropriate adjustments set forth in Section 5(d).

(b) *Fractional Shares.* No fractional shares of Common Stock will be issued upon conversion of the Series A Preferred Stock. In lieu of fractional shares, the Company shall, with respect to each fractional share otherwise deliverable (as defined in the next sentence), deliver a whole share of Common Stock or pay cash (subject to compliance with all law and regulations applicable to the Company (and including, for the avoidance of doubt, any Exchange listing requirements applicable to the Company) and any debt instruments the Company is then party to, including the Credit Agreement, as of February 27, 2008, among the Company, as borrower, the lenders party thereto, JP Morgan Chase, N.A., as syndication agent, and Bank of America, N.A., as administrative agent, collateral agent, swingline lender and as in effect on the date of this Certificate of Designation (the "Credit Agreement"). If more than one share of Series A Preferred Stock is being converted at one time by the same holder, then the number of full shares issuable will be calculated on the basis of the aggregate number of shares of Series A Preferred Stock converted by such time.

(c) *Mechanics of Conversion.*

(i) In the event of mandatory conversion pursuant to Section 5(a), the Company shall deliver as soon as practicable (but in no event later than three (3) Business Days after the Conversion Date) written notice to the holder of the Series A Preferred Stock specifying: (A) the Conversion Date; (B) the number of shares of Common Stock to be issued in respect of each share of Series A Preferred Stock that is converted; and (C) the date and location where the shares are to be surrendered for issuance of shares of Common Stock, which date shall be as soon as practicable following the Conversion Date.

(ii) As promptly as practicable (but in no event later than three (3) Business Days) following the Conversion Date and the delivery by a holder thereof of the Series A Preferred Stock to the Company, the Company shall issue and deliver to such holder a number of shares of Common Stock to which such holder is entitled, either with a check or cash for payment of fractional shares, if any, in exchange for the shares of Series A Preferred Stock. Such conversion will be deemed to have been made on the Conversion Date, and the person (as defined in the next sentence) entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such Conversion Date. The Company shall pay any stamp or similar issue or transfer tax due on the issue of Common Stock upon conversion.

(iii) The Company shall take any corporate action which may, in the opinion of its counsel, be necessary to carry out the conversion of the Series A Preferred Stock. The Company may validly and legally issue fully paid and nonassessable shares of Common Stock issuable upon conversion as set forth in this Section 5, which shares of Common Stock shall be issued free of any taxes, liens and charges arising under law or contract and free from all taxes, liens and charges with respect to the issuance of such shares.

(iv) From and after the Conversion Date, the shares of Series A Preferred Stock converted as of such date will no longer be deemed to be outstanding, dividends will cease to accrue on the Series A Preferred Stock, and the rights of the holders of the Series A Preferred Stock will terminate except for the right to receive the shares of Common Stock issuable upon conversion thereof at the Settlement Rate then in effect and the right to receive shares in lieu of any fractional shares of Common Stock. Any shares of Series A Preferred Stock that were converted will, after such conversion, be deemed cancelled and retired.

(v) The Company shall comply with all federal and state laws, rules and regulations and applicable rules and regulations of the Exchange on which shares of the Common Stock are then listed. So long as the Common Stock, which the shares of Series A Preferred Stock are then convertible is then listed on an Exchange, the Company shall keep listed on such Exchange, upon official notice of issuance, all shares of such Common Stock issuable upon conversion.

(vi) Issuances of shares of Common Stock upon conversion of the Series A Preferred Stock shall be free and clear of any charge to any holder of shares of Series A Preferred Stock for any issue or transfer tax (other than the tax imposed by any transfer occurring contemporaneously therewith or as a result of the holder being a non-U.S. person) and any incidental expense in respect of the issuance of such shares, all of which taxes and expenses shall be paid by the Company; *provided, however*, that the Company shall not be required to pay any tax which may be imposed by any transfer involved in the issuance or delivery of shares of Common Stock in a name other than the name of the Series A Preferred Stock to be converted, and no such issuance or delivery shall be made unless the person requesting such issuance or delivery has paid to the Company the amount of any such tax or other charge to the reasonable satisfaction of the Company, that such tax has been paid.

(d) *Adjustments to Floor Price and Ceiling Price.* The Floor Price and the Ceiling Price shall be adjusted from time to time by the Company, without duplication with *Section 7(g)*, as follows (each event resulting in such adjustment pursuant to *Section 5(d)*, an "Adjustment Event"):

(i) *Stock Splits, Subdivisions, Reclassifications or Combinations.* If the Company shall (A) declare a cash dividend or distribution on its Common Stock in shares of Common Stock, (B) subdivide or reclassify the outstanding Common Stock into a greater number of shares or (C) combine or reclassify the outstanding Common Stock into a smaller number of shares, each of the Floor Price and the Ceiling Price in effect at the time of the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification shall be adjusted to the number obtained by multiplying each of the Floor Price and the Ceiling Price in effect at the time of the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification by a *fraction*, the *numerator* of which shall be the number of shares of Common Stock outstanding immediately before such action, and the *denominator* of which shall be the number of shares of Common Stock outstanding immediately after following such action.

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

#### Section 6. *Redemption.*

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

##### (a) *Mandatory Redemption.*

(i) On the fourth (4th) anniversary of the Initial Issuance Date, or, if not a Business Day, the first Business Day thereafter (the "Mandatory Redemption Date"), the Company shall redeem, by payment in cash on or before the Mandatory Redemption Date (to the extent of the legal availability of funds therefor), all, but not less than all, of the outstanding shares of Series A Preferred Stock at a redemption price per share equal to the Liquidation Preference (the "Mandatory Redemption Price").

(ii) The Company shall deliver a notice of redemption not less than 10 nor more than 60 days prior to the Mandatory Redemption Date, addressed to the holders of record of the Series A Preferred Stock as they appear on the books and records of the Company as of the date of such notice. Each notice shall state the following: (A) the Mandatory Redemption Date; (B) the Mandatory Redemption Price; (C) the name of the redemption agent to whom, and the address at which, the shares of Series A Preferred Stock are to be surrendered for payment of the Mandatory Redemption Price; and (D) that dividends on the shares of Series A Preferred Stock to be redeemed will cease to accrue on the Mandatory Redemption Date, *provided* that the Mandatory Redemption Price and the dividends accrued on the shares of Series A Preferred Stock, including, the day immediately preceding the Mandatory Redemption Date, shall have been paid on or before the Mandatory Redemption Date.

(b) *Optional Redemption.*

(i) If Shareholder Approval at the Annual Meeting is not obtained, all, but not less than all of the shares of Series A Preferred Stock will become redeemable by the Company, by payment in cash on such applicable date or by payment in kind following applicable " *Optional Redemption Price*":

(1) 110% of the Liquidation Preference for redemption occurring prior to the first anniversary of the Annual Meeting;

(2) 105% of the Liquidation Preference for redemption occurring on or after the first anniversary of the Annual Meeting and prior to the second anniversary of the Annual Meeting; or

(3) 100% of the Liquidation Preference for redemption occurring on or after the second anniversary of the Annual Meeting.

(ii) If the Company elects to redeem the Series A Preferred Stock pursuant to *Section 6(b)(i)*, the Company shall designate the date on which Optional Redemption Date shall occur by delivering a notice of redemption to the holders of Series A Preferred Stock as they appear in the records of the Company as of the date of such notice. The notice shall state the following: (A) the Optional Redemption Date; (B) the Optional Redemption Price; (C) the name of the redemption agent to whom, and the address of the place to where, the Series A Preferred Stock are to be redeemed for payment of the Optional Redemption Price; and (D) that dividends, if any, on the shares of Series A Preferred Stock to be redeemed will cease to accrue on such Optional Redemption Date; *provided* that the Optional Redemption Price and dividends accrued through, and including, the day immediately preceding the Optional Redemption Date shall have been paid on the Optional Redemption Date.

(c) *Redemption Upon a Fundamental Change.*

(i) No later than fifteen (15) Business Days after the occurrence of a Fundamental Change, the Company shall deliver a notice (such notice, the " *Fundamental Change Notice*") of such occurrence each of the holders of record of Series A Preferred Stock as they appear in the records of the Company as of the date of the Fundamental Change. Following the occurrence of a Fundamental Change, any holder of the Series A Preferred Stock may elect to redeem the Series A Preferred Stock held by such holder at an amount per share of Series A Preferred Stock equal to 101% of the Liquidation Preference (the " *Fundamental Change Redemption Amount*") by delivering a notice of redemption to the Company no later than 10 nor more than 30 Business Days (subject to extension to comply with applicable law) following the date of the Fundamental Change Notice to such holder; *provided* that, subject to the limitations below, the Company shall, at its option, to pay the Fundamental Change Redemption Amount in cash or, to the extent permitted by the Exchange listing requirements then applicable to the Company, in shares of Common Stock (or, in lieu thereof, Reference Property in lieu thereof). To the extent that the Company elects to pay the Fundamental Change Redemption Amount in shares of Common Stock, the Company shall, per each share of Series A Preferred Stock, deliver a number of shares of Common Stock equal to (or, if applicable and subject to the limitations below, in lieu thereof, Reference Property received by holders of the Common Stock with respect to shares of Common Stock in the Fundamental Change transaction with Fair Market Value equivalent to) 101% of the Settlement Rate (determined pursuant to this *Section 6(c)(i)* (x) by substituting the date of consummation of the Fundamental Change transaction for the Conversion Date and (y) without regard to any Floor Price or Ceiling Price). In lieu of fractional shares of Common Stock, the Company shall, with respect to each fractional share otherwise deliverable (and subject to the next sentence), deliver one whole share of Common Stock or pay cash (subject to compliance with all laws, rules and regulations applicable to the Company (and including, for avoidance of doubt, any Exchange listing requirements then applicable to the Company and any debt instruments the Company is then party to, including the Credit Agreement)). As promptly as practicable (but in no event later than two (2) Business Days) following the delivery of the notice of redemption by a holder, the Company shall redeem such holder's shares of Series A Preferred Stock requested to be redeemed (the " *Fundamental Change Redemption Date*").

(ii) Each Fundamental Change Notice shall state the following: (A) the events causing the Fundamental Change; (B) the date of the Fundamental Change; (C) the last date on which a holder may exercise the redemption right; (D) the Fundamental Change Redemption Amount; (E) the name of the redemption agent to whom, and the place to where, the Series A Preferred Stock are to be surrendered for payment of the Fundamental Change Redemption Amount; and (F) that dividends on the shares of Series A Preferred Stock to be redeemed shall accrue on such Fundamental Change Redemption Date, *provided* that the Fundamental Change Redemption Amount and the dividends accrued through, and including, the day immediately preceding the Fundamental Change Redemption Date, shall have been paid on the Fundamental Change Redemption Date.

(iii) If the holders of the Series A Preferred Stock elect to redeem the Series A Preferred Stock pursuant to *Section 6(c)(i)*, the consummation of the redemption and the payment of the Optional Redemption Price shall occur on the date of the occurrence of the Fundamental Change.

(iv) In the case of any Fundamental Change in connection with which holders of less than all of the Series A Preferred Stock then outstanding elect to be redeemed pursuant to this *Section 6(c)*, the Company or any successor formed by the consolidation or resulting from the merger or which acquires such assets or which acquires the Company's shares, as the case may be, shall make provisions in its certificate or articles of incorporation or other constituent documents to establish such rights and to ensure that the dividend, voting and other rights of Series A Preferred Stock established herein are unchanged, except as required by applicable law. If the certificate of incorporation or other constituent documents shall provide for adjustments, which, for events occurring after the effective date of the certificate or articles of incorporation or other constituent documents, shall be equivalent as may be practicable to the adjustments provided for in this *Section 6(c)*. Lawful provisions shall be made as part of the terms of such Fundamental Change to effect the foregoing.

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

(a) "*Business Day*" means any day except a Saturday, Sunday or other day on which commercial banks in New York are authorized or obligated to close.

(b) "*Ceiling Price*" means 120% of the Fair Market Value of Common Stock as of the Initial Issuance Date.

(c) "*Daily VWAP*" for (i) the Common Stock means the per share volume-weighted average price on The NASDAQ Select Market as displayed under the heading "Bloomberg VWAP" on Bloomberg page "NASDAQ.UQ <equity>" (or any successor page thereto) in respect of the period from the scheduled open of trading until the scheduled close of the primary trading session on such Trading Day and (ii) other security traded or quoted on an Exchange means the per share volume-weighted average price on such Exchange; *provided* that, in each case, (A) if such volume-weighted average price is unavailable, the market value of one share of the Common Stock or such other security on such Trading Day shall be determined in a commercially reasonable manner by the Board using a volume-weighted method and (B) if such market value is determined without regard to after hours trading or any other trading outside of the regular trading session on such Trading Day.

(d) "*Deemed Conversion Ratio*" means, with respect to any particular date of determination, a ratio determined by dividing the Liquidation Preference as of the date as of which such determination is made by the Fair Market Value of the Common Stock on the date as of which such determination is made.

(e) "*Exchange*" means, with respect to the Common Stock, The NASDAQ Stock Market or any successor thereto or other national securities exchange on which the Common Stock is listed and, with respect to other securities, any national securities exchange, such exchange.

(f) "*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

(g) "*Fair Market Value*" of any asset on any date of determination means the fair market value thereof as of

good faith by the Company assuming a willing buyer and a willing seller in an arms'-length transaction; *price* respect to any Common Stock or other security traded or quoted on an Exchange, the Fair Market Value shall be the Daily VWAP of such security on such Exchange over a ten (10) consecutive Trading Day period, ending on the last Trading Day immediately prior to the date of determination (appropriately adjusted for any Adjustment Event effect) over a ten (10) consecutive Trading Day period).

(h) "*Floor Price*" means 80% of the Fair Market Value of Common Stock as of the Initial Issuance Date.

(i) "*Fundamental Change*" means the occurrence of any of the following:

(i) any person or group, other than the Company, its subsidiaries or the employee benefit plans of the Company or of any such subsidiary, acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) directly or indirectly, through purchase, merger or other acquisition transaction, of (A) 50% or more of the outstanding shares of the Company's capital stock or (B) shares of the Company's capital stock entitling such person or group to exercise 50% or more of the voting power of all shares of the Company's capital stock that are entitled to vote generally in the election of directors;

(ii) consummation of any share exchange, exchange offer, tender offer, consolidation, merger or similar combination of the Company pursuant to which the Common Stock will be converted into cash, securities, real 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 the Company or its subsidiaries; or

(iii) the directors who were members of the Board on the date of this Certificate of Designation (the "*Directors*"), or who become directors subsequent to such date and whose election, appointment or re-election by the shareholders of the Company is duly approved by a majority of the Continuing 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 in which such directors are named as nominees for directors, cease to constitute a majority of the Board.

(j) "*group*" has the meaning assigned to such term in Section 13(d)(3) of the Exchange Act.

(k) "*hereof*," "*herein*" and "*hereunder*" and words of similar import refer to this Certificate of Designation and not merely to any particular clause, provision, section or subsection.

(l) "*Initial Issuance Date*" means the date on which the first share of Series A Preferred Stock was issued.

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

(n) "*Nasdaq*" means The NASDAQ Stock Market or any successor thereto.

(o) "*person*" means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, any agency or political subdivision thereof or other "person" as contemplated by Section 13(d) of the Exchange Act.

(p) "*Reference Price*" means, with respect to the Conversion Date, the Fair Market Value of Common Stock as of the Conversion Date.

(q) "*Reference Property*" means cash, cash equivalents or publicly traded securities.



(r) " *Shareholder Vote Date*" means the date on which the results of the shareholder vote occurring pursuant to the terms of the Certificate of Designation are determined.

(s) " *Trading Day*" means a day during which trading in the Common Stock generally occurs and there is no Disruption Event.

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

(a) *Status of Cancelled Shares.* No share or shares of Series A Preferred Stock acquired by the Company by redemption, purchase, conversion or otherwise shall be reissued, and all of such shares shall be cancelled, eliminated from the shares that the Company is authorized to issue.

(b) *Severability.* If any right, preference or limitation of the Series A Preferred Stock set forth in this Certificate of Designation (as such Certificate of Designation may be amended from time to time) is invalid, unlawful or unenforceable by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designation (as so amended) which can be given effect without the invalid, unlawful or unenforceable right or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

(c) *Impairment of Series A Preferred Stock.* The Company shall not, by amendment of the Certificate of Designation or through any reorganization, transfer of assets, consolidation, merger, dissolution or any other voluntary action avoid or seek to avoid the observance or performance of any of the provisions of this Certificate of Designation or any other provisions observed or performed hereunder by the Company but shall at all times in good faith assist in the carrying out of the provisions of this Certificate of Designation and in taking of all such action as may be necessary or appropriate to protect the rights of the holders of the Series A Preferred Stock against impairment.

(d) *Headings.* The headings of the various subdivisions hereof are for convenience of reference only and shall not be construed to affect the interpretation of any of the provisions hereof.

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

THE NASDAQ OMX GROUP, INC.

By: /s/ Joan C. Conley

Name: Joan C. Conley

Title: Corporate Secretary

#### **BY-LAWS OF THE NASDAQ OMX GROUP, INC.**

##### **Article I Definitions**

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

- (a) "Act" means the Securities Exchange Act of 1934, as amended;
- (b) "Board" means the Board of Directors of the Corporation;
- (c) "broker" shall have the same meaning as in Section 3(a)(4) of the Act;
- (d) "Commission" means the Securities and Exchange Commission;

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

[Amended Jan. 15, 1998 (SR-NASD-97-71); amended Oct. 30, 1998 (SR-NASD-98-56); amended Dec. 1, 1999 (SR-NASD-99-35); amended June 26, 2000 (SR-NASD-00-27); amended Apr. 11, 2001 (SR-NASD-00-78); amended Jan. 13, 2001 (SR-NASD-2001-18); amended Jan. 13, 2006 (SEC Release 34-53128); amended July 17, 2008 (SR-NASD-2008-043); amended July 21, 2008 (SR-NASDAQ-2008-043); amended June 26, 2009 (SR-NASDAQ-2009-039); amended Jan. 13, 2011 (SR-NASDAQ-2011-025).]

## Article II Offices

**Sec. 2.1 Location**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SEC Release 34-53128 (Jan. 13, 2006).]

**Sec. 2.2 Change of Location**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SEC Release 34-53128 (Jan. 13, 2006).]

**Article III Meetings of Stockholders****Sec. 3.1 Annual Meetings of Stockholders**

(a) Nominations of persons for election to the Board and the proposal of other business to be considered at a meeting of stockholders may be made at an annual meeting of stockholders only (i) pursuant to the Corporation's bylaws (or any supplement thereto), (ii) by or at the direction of the Board or the Nominating & Governance Committee or (iii) by any stockholder of the Corporation who was a stockholder of record of the Corporation at the time the notice provided for in this Section 3.1 is delivered to the Secretary of the Corporation, who is the person at the meeting and who complies with the notice procedures set forth in this Section 3.1.

(b) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 3.1(a)(iii), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such proposed business other than the nominations of persons for election to the Board shall constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day prior to the first anniversary of the year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than 60 days before or more than seventy days after such anniversary date, notice by the stockholder must be delivered to the Secretary earlier than the close of business on the one hundred twentieth day prior to such annual meeting and not later than the close of business on the later of the ninetieth day prior to such annual meeting or the tenth day following the date on which public announcement of the date of such meeting is first made by the Corporation). In no event shall any public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (i) as to each person whom the stockholder proposes to nominate for election as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in a contested election, or is otherwise required, in each case pursuant to Regulation 14 under the Act and the rules and regulations of the SEC; (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including resolutions proposed for consideration and in the event that such business includes a proposal to amend the Corporation's bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and the beneficial owner on whose behalf the nomination or proposal is made (A) the name and address of such stockholder, as they appear in the Corporation's books, and of such beneficial owner, (B) the class or series and number of shares of capital stock of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (C) a description of any agreement, arrangement or understanding with respect to the nomination or proposal among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, acting in concert with any of the foregoing, (D) a description of any agreement, arrangement or understanding with respect to the proposal.

(including any derivative or short positions, profit interests, options, warrants, convertible securities, appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been exercised on the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, (E) a representation that the stockholder is a holder of record of stock of the Corporation at such meeting and intends to appear in person or by proxy at the meeting to propose such business; (F) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (2) to solicit proxies from stockholders in support of such proposal or nomination, and (G) any other information that the stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election or election contest pursuant to and in accordance with Section 14(a) of the Act and the rules and regulations thereunder. The foregoing notice requirements of this Article III shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its present or intended proposal at an annual meeting in compliance with applicable rules and regulations promulgated by the Act and such stockholder's proposal has been included in a proxy statement that has been prepared to solicit proxies for such annual meeting. The Corporation may require any proposed nominee to furnish such information as it may reasonably require to determine the eligibility of such proposed nominee to serve on the Board of the Corporation.

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

[Amended Jan. 15, 1998 (SR-NASD-97-71); amended June 26, 2000 (SR-NASD-00-27); amended Apr. 11, 2000 (SR-NASD-00-78); amended Jan. 13, 2006 (SEC Release 34-53128); amended June 26, 2009 (SR-NASDAQ-2009-39); amended Jan. 14, 2011 (SR-NASDAQ-2011-025).]

### **Sec. 3.2 Special Meetings of Stockholders**

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

[Amended June 26, 2000 (SR-NASD-00-27); amended Apr. 11, 2001 (SR-NASD-00-78); amended Jan. 13, Release 34-53128); amended Apr. 14, 2011 (SR-NASDAQ-2011-025).]

### Sec. 3.3 General

(a) Only such persons who are nominated in accordance with the procedures set forth in this Article III shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors. All such business shall be conducted at a meeting of stockholders as shall have been brought before the Corporation in accordance with the procedures set forth in this Article III. Except as otherwise provided by law, the meeting shall have the power and duty (i) to determine whether a nomination or any business proposed before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Article III (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination was made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in respect of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by Section 3.1(b)(iii)(F)) and (ii) if any proposed nomination or business was not made or proposed in compliance with the procedures set forth in this Article III, to declare that such nomination shall be disregarded or that such proposed business shall not be considered. Notwithstanding the foregoing provisions of this Article III, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to propose a nomination or business, such nomination shall be disregarded and such proposed business shall not be considered notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of Section 3.3, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or by electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of such writing or electronic transmission, at the meeting of stockholders.

(b) For purposes of this Article III, "public announcement" shall include disclosure in a press release in the Dow Jones News Service, Associated Press or comparable national news service or in a document filed with the Corporation with the Commission pursuant to Section 13, 14, or 15(d) of the Act.

(c) Notwithstanding the foregoing provisions of this Article III, a stockholder shall also comply with the requirements of the Act and the rules and regulations thereunder with respect to the matters set forth in this Article III; provided however, that any references in these By-Laws to the Act or the rules and regulations thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals for other business to be considered pursuant to this Article III (including Section 3.1(a)(iii) and (b) hereof). Compliance with Section 3.1(a)(iii) and (b) of this Article III shall be the exclusive means for a stockholder to propose nominations or submit other business (other than, as provided in the penultimate sentence of Section 3.1(a)(iii), business brought properly under and in compliance with Rule 14a-8 of the Act, as may be amended from time to time). Any reference in Article III shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals for other business in the Corporation's proxy statement pursuant to Rule 14a-8 under the Act or (ii) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Restated Certificate of Incorporation.

[Amended by SR-NASD-00-27 eff. June 26, 2000; amended by SR-NASD-00-78 eff. April 11, 2001; amended by SR-NASDAQ-2009-039 (Jan. 13, 2006); amended by SR-NASDAQ-2009-039 (June 26, 2009).]

### Sec. 3.4 Conduct of Meetings

The date and time of the opening and the closing of the polls for each matter upon which the stockholders are to vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. To the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over the meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to propose amendments to the rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or the presiding officer of the meeting, may include, without limitation, the following: (a) the establishment of the order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the

present; (c) limitations on attendance at or participation in the meeting to stockholders of record or their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall impose; and (e) limitations on entry to the meeting after the time fixed for the commencement thereof; and (f) limitations on questions or comments by participants. Unless and to the extent determined by the Board or the presiding officer of the meeting, meetings of stockholders shall not be required to be held in accordance with parliamentary procedure.

[Amended by SR-NASD-00-27 eff. June 26, 2000; amended by SEC Release 34-53128 (Jan. 13, 2006).]

## **Article IV Board of Directors**

### **Sec. 4.1 General Powers**

The property, business, and affairs of the Corporation shall be managed by or under the direct supervision of the Board. The Board may exercise all such powers of the Corporation and have the authority to perform all such acts and things as may be permitted by law, the Restated Certificate of Incorporation, or these By-Laws. To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the Board may delegate a portion of its powers to a committee appointed pursuant to Section 4.13 or to the Corporation staff.

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SEC Release 34-53128 (Jan. 13, 2006).]

### **Sec. 4.2 Number of Directors**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-99-10 eff. Feb. 8, 1999; amended by SEC Release 34-53128 (Jan. 13, 2006).]

### **Sec. 4.3 Qualifications**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-99-10 eff. Feb. 8, 1999; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SR-NASD-00-78 eff. April 11, 2001; amended by SEC Release 34-53128 (Jan. 13, 2006).]

### **Sec. 4.4 Election**

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

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

In order for any incumbent Director to become a nominee of the Board for further service on the Board, the Director must submit an irrevocable resignation, contingent on (i) that person not receiving a majority of the votes cast for that Director's election.

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

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

[Amended Jan. 15, 1998 (SR-NASD-97-71); amended June 26, 2000 (SR-NASD-00-27); amended Jan. 13, 2006 (SEC Release 34-53128); amended Apr. 16, 2010 (SR-NASDAQ-2010-025); amended Apr. 14, 2011 (SR-NASDAQ-2011-0078).]

#### **Sec. 4.5 Resignation**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SR-NASD-00-78 eff. April 11, 2001; amended by SEC Release 34-53128 (Jan. 13, 2006).]

#### **Sec. 4.6 Removal**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SR-NASD-00-78 eff. April 11, 2001; amended by SEC Release 34-53128 (Jan. 13, 2006).]

#### **Sec. 4.7 Disqualification**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-98-56 eff. Oct. 30, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SEC Release 34-53128 (Jan. 13, 2006).]

#### **Sec. 4.8 Filling of Vacancies**

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

[Amended Jan. 15, 1998 (SR-NASD-97-71); amended June 26, 2000 (SR-NASD-00-27); amended April 11 00-78); amended Jan. 13, 2006 (SEC Release 34-53128); amended Apr. 14, 2011 (SR-NASDAQ-2011-025

#### **Sec. 4.9 Quorum and Voting**

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

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended 34-53128 (Jan. 13, 2006).]

#### **Sec. 4.10 Regulation**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SEC Release 34-53128 (Jan. 13, 2006).]

#### **Sec. 4.11 Meetings**

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

(b) Regular meetings of the Board may be held at such time and place, within or without the State of New York, as determined from time to time by the Board. After such determination has been made, notice shall be given in accordance with Section 4.12.

(c) Special meetings of the Board may be called by the Chair of the Board, by the Chief Executive Officer, or by at least one-third of the Directors then in office. Notice of any special meeting of the Board shall be given to each Director in accordance with Section 4.12.

(d) Directors or members of any committee appointed by the Board may participate in a meeting of such committee through the use of a conference telephone or other communications equipment by which all persons participating in the meeting may hear one another, and such participation in a meeting shall be deemed to be in person at such meeting for all purposes.

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended 00-78 eff. April 11, 2001; amended by SEC Release 34-53128 (Jan. 13, 2006).]

#### **Sec. 4.12 Notice of Meetings; Waiver of Notice**

(a) Notice of any meeting of the Board shall be deemed to be duly given to a Director if: (i) mailed to the Director at least seven days before the day on which such meeting is to be held; (ii) sent to the Director at such meeting by telegraph, telefax, cable, radio, or wireless, not later than the day before the day on which such meeting is to be held; or (iii) delivered to the Director personally or orally, by telephone or otherwise, not later than the day on which such meeting is to be held. Each notice shall state the time and place of the meeting and the business to be transacted.



thereof.

**(b)** Notice of any meeting of the Board need not be given to any Director if waived by that Director by electronic transmission (or by telegram, telefax, cable, radio, or wireless and subsequently confirmed electronic transmission) whether before or after the holding of such meeting, or if such Director is present at the meeting, subject to Article X, Section 10.3(b).

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SR-NASD-00-78 eff. April 11, 2001; amended by SEC Release 34-53128 (Jan. 13, 2006).]

#### **Sec. 4.13 Committees**

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

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

**(c)** Except as otherwise provided by applicable law, no committee shall have the power or authority to act with regard to: amending the Restated Certificate of Incorporation or the By-Laws of the Corporation; recommending to the stockholders the sale, lease, or exchange of substantially all the Corporation's property and assets; or recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution. Unless the resolution of the Board expressly so provides, no committee shall have the power or authority to authorize the issuance of stock.

**(d)** The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation between meetings of the Board, and which shall have the seal of the Corporation to be affixed to all papers that may require it. The number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors on the Executive Committee. The percentage of Public Directors on the Executive Committee shall be at least as great as the percentage of Public Directors on the whole Board. An Executive Committee member shall hold office for a term of one year.

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

**(f)** The Board shall appoint a Management Compensation Committee. The Management Compensation Committee shall consider and recommend compensation policies, programs, and practices for employees of the Corporation.

majority of Management Compensation Committee members shall be Non-Industry Directors. A Management Compensation Committee member shall hold office for a term of one year. Each member of the Management Compensation Committee shall be an independent director within the meaning of the rules of the NASDAQ Stock Market.

**(g)** The Board shall appoint an Audit Committee.

**(i)** The Audit Committee shall consist of three or more Directors, each of whom shall be an independent director within the meaning of the rules of the NASDAQ Stock Market and Section 10A of the Act. All Audit Committee members shall be Non-Industry Directors. The Audit Committee shall include two Non-Industry Directors. A Public Director shall serve as Chair of the Committee. An Audit Committee member shall hold office for a term of one year.

**(h)** The Board may appoint a Nominating & Governance Committee. The Nominating & Governance Committee shall nominate Directors for each vacant or new Director position on the Board.

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

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

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

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

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

[Amended Jan. 15, 1998 (SR-NASD-97-71); amended June 26, 2000 (SR-NASD-00-27); amended Apr. 11, 2000 (SR-NASD-00-78); amended Jan. 13, 2006 (SEC Release 34-53128); amended June 26, 2009 (SR-NASDAQ-2009-039); amended Dec. 14, 2011 (SR-NASDAQ-2011-025); amended Dec. 5, 2011 (SR-NASDAQ-2011-143).]

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

**(a)** A Director shall not directly or indirectly participate in any adjudication of the interests of any person if the Director has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness in the transaction reasonably be questioned. In any such case, the Director shall recuse himself or herself or shall be disqualified from participating in the transaction.

**(b)** No contract or transaction between the Corporation and one or more of its Directors or officers or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely because of the existence of such financial interest if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith

contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though disinterested Directors be less than a quorum; (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though disinterested Directors be less than a quorum; or (iii) the material facts pertaining to the Director's relationship or interest and the contract or transaction are disclosed or are known to the stockholders thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders.

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-98-56 eff. Oct. 30, 1998; amended by SEC Release 34-53128 (Jan. 13, 2006).]

#### **Sec. 4.15 Action Without Meeting**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-78 eff. April 11, 2001; amended by SEC Release 34-53128 (Jan. 13, 2006).]

### **Article V Reserved**

### **Article VI Compensation**

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

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SEC Release 34-53128 (Jan. 13, 2006).]

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

#### **Sec. 7.1 Principal Officers**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SR-NASD-00-78 eff. April 11, 2001; amended by SEC Release 34-53128 (Jan. 13, 2006).]

#### **Sec. 7.2 Election of Principal Officers; Term of Office**

(a) The principal officers of the Corporation shall be elected annually by the Board at the annual meeting of the Board convened pursuant to Section 4.11(a). Failure to elect any principal officer annually shall not constitute a breach of the Charter of the Corporation.

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

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SEC Release 34-53128 (Jan. 13, 2006).]

**Sec. 7.3 Subordinate Officers, Agents, or Employees**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SEC Release 34-53128 (Jan. 13, 2006).]

**Sec. 7.4 Delegation of Duties of Officers**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SEC Release 34-53128 (Jan. 13, 2006).]

**Sec. 7.5 Resignation and Removal of Officers**

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

(b) Any officer of the Corporation may be removed, with or without cause, by resolution adopted by the Board or the Directors then in office at any regular or special meeting of the Board or by a written consent signed by a majority of the Directors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer with the Corporation.

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-78 eff. April 11, 2001; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SEC Release 34-53128 (Jan. 13, 2006).]

**Sec. 7.6 Bond**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SEC Release 34-53128 (Jan. 13, 2006).]

**Sec. 7.7 Chair of the Board**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SEC Release 34-53128 (Jan. 13, 2006).]

**Sec. 7.8 Chief Executive Officer**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SEC Release 34-53128 (Jan. 13, 2006).]

34-53128 (Jan. 13, 2006).]

**Sec. 7.9 President**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; Amended by SR-NASD-00-27 eff. June 26, 2000; amended by SR-NASD-06-07 eff. Jan. 13, 2006; Release 34-53128 (Jan. 13, 2006).]

**Sec. 7.10 Vice President**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SR-NASD-06-07 eff. Jan. 13, 2006; Release 34-53128 (Jan. 13, 2006).]

**Sec. 7.11 Secretary**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SR-NASD-06-07 eff. Jan. 13, 2006; Release 34-53128 (Jan. 13, 2006).]

**Sec. 7.12 Assistant Secretary**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SR-NASD-06-07 eff. Jan. 13, 2006; Release 34-53128 (Jan. 13, 2006).]

**Sec. 7.13 Treasurer**

The Treasurer shall have general supervision over the care and custody of the funds and over the receipt and disbursements of the Corporation and shall cause the funds of the Corporation to be deposited in the name of the Corporation in such banks or other depositories as the Board may designate. The Treasurer shall have all powers and duties usually incident to the office of Treasurer, except as specifically limited by a resolution of the Board. The Treasurer shall have all powers and duties usually incident to the office of Treasurer, except as specifically limited by a resolution of the Board. The Treasurer shall have all powers and duties usually incident to the office of Treasurer, except as specifically limited by a resolution of the Board.

incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to the Treasurer from time to time by the Board, the Chief Executive Officer or the President.

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SR-NASD-04-53128 (Jan. 13, 2006).]

#### **Sec. 7.14 Assistant Treasurer**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SR-NASD-04-53128 (Jan. 13, 2006).]

### **Article VIII Indemnification**

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

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

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

(ii) any threatened, pending, or completed action or suit by or in the right of the Corporation or any wholly owned subsidiary of the Corporation or any wholly owned subsidiary of the Corporation for or in connection with the defense or settlement of such action or suit, including reasonable attorneys' fees and disbursements, judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

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

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

(d) The Corporation may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition to persons described in subsection (a).

disposition; provided, however, that the payment of expenses incurred by such person in advance of disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay the amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified by this Section or otherwise.

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by the Corporation to an agent or non-officer employee if a determination is reasonably and promptly made by a majority vote of those Directors who have not been named parties to the action, even though less than a majority if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based on the facts known to the Board or such counsel at the time such determination is made: (1) The person seeking the advance of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in the best interests of the Corporation; (2) with respect to any criminal proceeding, such person had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately violated his or her duty to the Corporation.

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

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

(h) The Corporation's obligation, if any, to indemnify or advance expenses to any person who is indemnified by this Section in his or her capacity as a director, officer, employee, or agent of another corporation, partnership, joint venture, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) Any repeal or modification of the foregoing provisions of this Section shall not adversely affect the protection hereunder of any person in respect of any proceeding (regardless of when such proceeding was threatened, commenced or completed) arising out of, or related to any act or omission occurring prior to the date of such repeal or modification.

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2009-039 (June 26, 2009).]

## **Sec. 8.2 Indemnification Insurance**

The Corporation shall have power to purchase and maintain insurance on behalf of any person who is a director, officer, employee, or agent of the Corporation or any wholly owned subsidiary of the Corporation serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person arising out of such person's status as such, whether or not the Corporation has the power to indemnify such person against such liability hereunder.

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2009-039 (June 26, 2009).]

NASDAQ-2009-039 (June 26, 2009).]

## Article IX Capital Stock

### Sec. 9.1 Certificates

The shares of capital stock of the Corporation shall be represented by certificates, provided that the E by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificate such resolution shall not apply to shares represented by a certificate until such certificate is surrendere Corporation. Each holder of capital stock in the Corporation represented by certificates shall be entitled certificates in such form as shall be approved by the Board, certifying the number of shares of capital s Corporation owned by such stockholder.

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amend 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2009-039 (June 26, 2009).]

### Sec. 9.2 Signatures

(a) Shares of capital stock of the Corporation represented by certificates shall be signed in the n: Corporation by two officers with one being the Chair of the Board, the Chief Executive Officer, the Pre President, and the other being the Secretary, the Treasurer, or such other officer that may be author Such certificates may be sealed with the corporate seal of the Corporation or a facsimile thereof.

(b) Any or all signatures on such certificates may be a facsimile. In the event that any officer, tr registrar who has signed or whose facsimile signature has been placed upon a certificate shall cease 1 transfer agent, or registrar before such certificate is issued, such certificate may be issued by the Cor same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amend 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2009-039 (June 26, 2009).]

### Sec. 9.3 Stock Ledger

(a) A record of all certificates for capital stock or uncertificated shares issued by the Corporation the Secretary or any other officer, employee, or agent designated by the Board. Such record shall sh address of the person, firm, or corporation in which certificates for capital stock or uncertificated shar the number of shares represented by each such certificate, the date of each such certificate, and in tl certificates which have been canceled, the date of cancellation thereof.

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amend 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2009-039 (June 26, 2009).]

### Sec. 9.4 Transfers of Stock

(a) The Board may make such rules and regulations as it may deem expedient, not inconsistent 1 Restated Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and regist certificates for shares of capital stock or uncertificated shares of the Corporation. The Board may app any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one o and may require all certificates for capital stock to bear the signature or signatures of any of them.

(b) Transfers of capital stock shall be made on the books of the Corporation only upon delivery to or its transfer agent of: (i) a written direction of the registered holder named in the certificate or such



attorney lawfully constituted in writing; (ii) the certificate for the shares of capital stock being transferred by a written assignment of the shares of capital stock evidenced thereby; or, with respect to uncertificated shares, by delivery of duly executed instructions or in any other manner permitted by applicable law.

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2009-039 (June 26, 2009).]

#### **Sec. 9.5 Cancellation**

Each certificate for capital stock surrendered to the Corporation for exchange or transfer shall be canceled. A new certificate or certificates or uncertificated shares shall be issued in exchange for any existing certificate pursuant to Section 9.6 until such existing certificate shall have been canceled.

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2009-039 (June 26, 2009).]

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

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2009-039 (June 26, 2009).]

#### **Sec. 9.7 Fixing of Record Date**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SEC Release 34-53128 (Jan. 13, 2006).]

### **Article X Miscellaneous Provisions**

#### **Sec. 10.1 Corporate Seal**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SEC Release 34-53128 (Jan. 13, 2006).]

#### **Sec. 10.2 Fiscal Year**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SEC Release 34-53128 (Jan. 13, 2006).]

**Sec. 10.3 Waiver of Notice**

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

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SR-NASD-00-78 eff. April 11, 2001; amended by SEC Release 34-53128 (Jan. 13, 2006).]

**Sec. 10.4 Execution of Instruments, Contracts, Etc.**

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

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SEC Release 34-53128 (Jan. 13, 2006).]

**Sec. 10.5 Form of Records**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SEC Release 34-53128 (Jan. 13, 2006).]

**Article XI Amendments; Emergency By-Laws****Sec. 11.1 By Stockholders**

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

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SEC Release 34-53128 (Jan. 13, 2006).]

**Sec. 11.2 By Directors**

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

repealed, or new By-Laws may be adopted, at any regular or special meeting of the Board by a resolution of a majority of the whole Board.

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SEC Release 34-53128 (Jan. 13, 2006).]

#### **Sec. 11.3 Review by Self-Regulatory Subsidiaries**

For so long as the Corporation shall control, directly or indirectly, any Self-Regulatory Subsidiary, any adoption, alteration, amendment, change or repeal (an "amendment") of any By-Law shall be submitted to the Directors of each Self-Regulatory Subsidiary, and if any such proposed amendment must, under Section 11.2 and the rules promulgated thereunder, be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

[Amended by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2008-035 (July 17, 2008)]

#### **Sec. 11.4 Emergency By-Laws**

The Board may adopt emergency By-Laws subject to repeal or change by action of the stockholders notwithstanding any different provision of law, the Restated Certificate of Incorporation, or these By-Laws during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or other catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof is unable to meet, or which the Corporation conducts its business or customarily holds meetings of the Board or the stockholders, or other emergency condition, as a result of which a quorum of the Board or a committee thereof is unable to meet, or other emergency condition, as a result of which a quorum of the Board or a committee thereof is unable to meet, or other emergency condition, as a result of which a quorum of the Board or a committee thereof is unable to meet, or other emergency condition, as a result of which a quorum of the Board or a committee thereof is unable to meet. Such emergency By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency.

[Amended by SR-NASD-97-71 eff. Jan. 15, 1998; amended by SR-NASD-00-27 eff. June 26, 2000; amended by SEC Release 34-53128 (Jan. 13, 2006).]

### **Article XII The Self-Regulatory Subsidiaries**

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

(a) For so long as the Corporation shall control any Self-Regulatory Subsidiary, the Board of Directors and employees of the Corporation shall give due regard to the preservation of the independence of the function of each such Self-Regulatory Subsidiary and to its obligations to investors and the general public. The Board of Directors shall not take any actions which would interfere with the effectuation of any decisions by the Board of Directors of any Self-Regulatory Subsidiary relating to its regulatory functions (including disciplinary matters) or the market clearing systems which it regulates or which would interfere with the ability of any Self-Regulatory Subsidiary to carry out its responsibilities under the Act.

(b) All books and records of each Self-Regulatory Subsidiary reflecting confidential information pertaining to the self-regulatory function of such Self-Regulatory Subsidiary (including but not limited to disciplinary matters, trading practices and audit information) which shall come into the possession of the Corporation or its officers, employees and agents of the Corporation and shall be retained in confidence by the Corporation. These By-Laws shall be interpreted as to limit or impede the rights of the Commission to access and use confidential information pursuant to the federal securities laws and the rules and regulations thereunder. The Corporation shall not impede the ability of any officers, directors, employees or agents of the Corporation to disclose such information to the Commission. The Corporation's books and records shall be subject at all times to inspection and copying by the Commission. The Corporation's books and records relating to each Self-Regulatory Subsidiary shall be maintained in the United States.

(c) To the extent they are related to the activities of a Self-Regulatory Subsidiary, the books, records, reports, memoranda, correspondence, and other documents, and the books, records, reports, memoranda, correspondence, and other documents of such Self-Regulatory Subsidiary for the purposes of, and subject to oversight by the Commission under the Act.

[Amended by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2008-035); amended by S 039 (June 26, 2009).]

### **Sec. 12.2 Cooperation with the Commission**

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

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

[Amended by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2008-035); amended by S 039 (June 26, 2009)]

### **Sec. 12.3 Consent to Jurisdiction**

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

[Amended by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2008-035); amended by S 039 (June 26, 2009)].

### **Sec. 12.4 Further Assurances**

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

[Amended by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2008-035 (July 17, 2008); amended by NASDAQ-2009-039 (June 26, 2009)].

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

For so long as the Corporation shall control, directly or indirectly, any Self-Regulatory Subsidiary, a resolution of the Board to approve an exemption for any person under Article Fourth, Section C.6(b) of the Restated Certificate of Incorporation (the "Certificate") shall not be permitted to become effective until such resolution has been approved by the Commission under Section 19 of the Act. The Board may not approve an exemption under Article Fourth, Section C.6(b) of the Certificate: (i) for a registered broker or dealer or an Affiliate thereof (the "Entity") (provided that, for these purposes, an Affiliate shall not be deemed to include an entity that owns ten percent or less of the equity of a broker or dealer, or the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity); or (ii) an individual or entity that is subject to a state

disqualification under Section 3(a)(39) of the Exchange Act. The Board may approve an exemption under Section C.6(b) if the Board determines that granting such exemption would (A) not reasonably diminish the quality of, or public confidence in, the Corporation or the Self-Regulatory Subsidiaries or their operations of the Corporation and its subsidiaries, on the ability to prevent fraudulent and manipulative practices and on investors and the public, (B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to securities transactions or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system, and (C) would promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), would assure the safeguarding of securities and funds in the custody or control of the Self-Regulatory Subsidiaries that are clearing agencies or securities and funds for which they are responsible, would foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

[Amended by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2008-035 (July 17, 2008)]

### **Sec. 12.6 Amendments to the Certificate of Incorporation**

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

[Adopted by SR-NASDAQ-2008-035 (July 17, 2008)].

### **Sec. 12.7 Self-Regulatory Subsidiaries**

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

[Adopted by SR-NASDAQ-2008-035 (July 17, 2008)].