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Page 1 of * 208

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2016 - * 10
Amendment No. (req. for Amendments *)

Filing by ISE Mercury, LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☑ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

- 19b-4(f)(1)
- 19b-4(f)(2)
- 19b-4(f)(3)
- 19b-4(f)(4)
- 19b-4(f)(5)
- 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed acquisition by Nasdaq, Inc.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Sun Last Name * Kim

Title * Assistant General Counsel

E-mail * SKim@ise.com

Telephone * (212) 897-0238 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 04/28/2016

By Michael Simon

(Name *)

(Title *)

Secretary and General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Persona Not Validated - 1436897254872,

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) ISE Mercury, LLC (the "Exchange" or "ISE Mercury") is hereby filing with the U.S. Securities and Exchange Commission ("Commission") a proposed rule change (the "Proposed Rule Change") in connection with a proposed business transaction (the "Transaction") involving the Exchange's ultimate, indirect, non-U.S. upstream owners, Deutsche Börse AG ("Deutsche Börse") and Eurex Frankfurt AG ("Eurex Frankfurt"), and Nasdaq, Inc. ("Nasdaq"). Nasdaq is the parent company of The NASDAQ Stock Market LLC ("NASDAQ Exchange"), NASDAQ PHLX LLC ("Phlx Exchange"), NASDAQ BX, Inc. ("BX Exchange"), Boston Stock Exchange Clearing Corporation ("BSECC") and Stock Clearing Corporation of Philadelphia ("SCCP").[1] Upon completion of the Transaction (the "Closing"), the Exchange's indirect parent company, U.S. Exchange Holdings, Inc. ("U.S. Exchange Holdings"), will become a direct subsidiary of Nasdaq. The Exchange will therefore become an indirect subsidiary of Nasdaq and, in addition to the Exchange's current affiliation with ISE Gemini, LLC ("ISE Gemini") and International Securities Exchange, LLC ("ISE"), an affiliate of NASDAQ Exchange, Phlx Exchange, BX Exchange, BSECC and SCCP through common, ultimate ownership by Nasdaq. Nasdaq will become the ultimate parent of the Exchange.[2]

In order to effect the Transaction, the Exchange hereby seeks the Commission's approval of the following: (i) that certain corporate resolutions that were previously established by entities that will cease to be non-U.S. upstream owners of the Exchange after the Transaction will cease to be considered rules of the Exchange upon Closing; (ii) that certain governing documents of Nasdaq will be considered rules of the Exchange upon Closing; (iii) that the Third Amended and Restated Trust Agreement (the "Trust Agreement") that currently exists among International Securities Exchange Holdings, Inc. ("ISE Holdings"), U.S. Exchange Holdings, and the Trustees (as defined therein) with respect to the "ISE Trust" will cease to be considered rules of the Exchange upon Closing and, thereafter, that the parties to the Trust Agreement would be permitted to take the corporate steps necessary to repeal the Trust Agreement and dissolve the ISE Trust; (iv) to amend and restate the Second Amended and Restated Certificate of Incorporation of ISE Holdings ("ISE Holdings COI") to eliminate provisions relating to the Trust Agreement and the ISE Trust and, in this respect, to reinstate certain text of the ISE Holdings COI that existed prior to Deutsche Börse's ownership of ISE Holdings; (v) to amend and restate the Second Amended and Restated Bylaws of ISE Holdings (the "ISE Holdings Bylaws") to waive certain voting and ownership restrictions in the ISE Holdings COI to permit Nasdaq to indirectly own 100% of the outstanding common

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[1] See Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR-Phlx-2008-31); 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01).

[2] The Exchange's current affiliates, ISE Gemini and ISE, have submitted nearly identical proposed rule changes. See SR-ISEGemini-2016-05 and SR-ISE-2016-11.

stock of ISE Holdings as of and after Closing of the Transaction; and (vi) to amend and restate the Third Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings ("U.S. Exchange Holdings COI") to eliminate references therein to the Trust Agreement.

The Exchange requests that the Proposed Rule Change become operative at the Closing of the Transaction. The text of the Proposed Rule Change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved this Proposed Rule Change on March 28, 2016. This action constitutes the requisite approval under the Exchange's Certificate of Formation, Operating Agreement and Constitution.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose –

The Exchange submits this Proposed Rule Change to seek the Commission's approval of various changes to the organizational and governance documents of the Exchange's current owners and related actions that are necessary in connection with the Closing of the Transaction, as described below. The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. The Exchange is not proposing any amendments to its trading or regulatory rules at this time relating to the Transaction.[3] The Exchange would continue to be registered as a national securities exchange, with separate rules, membership rosters, and listings, distinct from the rules, membership rosters, and listings of NASDAQ Exchange, Phlx Exchange and BX Exchange as well as from its current affiliates, ISE Gemini and ISE. Neither the Exchange nor its current affiliates engage in clearing securities transactions, nor would they do so after the Transaction. Additionally, the Exchange would continue to be a separate self-regulatory organization ("SRO").

1. Current Ownership Structure of the Exchange

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[3] If the Exchange determines to make any such changes, it will seek the approval of the Commission only after the approval of this Proposed Rule Change to the extent required by the Securities Exchange Act of 1934, as amended ("Act"), the Commission's rules thereunder, or the Exchange's rules.

On December 17, 2007, ISE Holdings, the sole, direct parent of the Exchange, became a direct, wholly-owned subsidiary of U.S. Exchange Holdings.[4] U.S. Exchange Holdings is 85% directly owned by Eurex Frankfurt and 15% directly owned by Deutsche Börse. Eurex Frankfurt is a wholly-owned, direct subsidiary of Deutsche Börse.[5] Deutsche Börse therefore owns 100% of U.S. Exchange Holdings through its aggregate direct and indirect ownership.

2. The Transaction

On March 9, 2016, a Stock Purchase Agreement (the "Agreement") was entered into among Deutsche Börse, Eurex Frankfurt and Nasdaq. Pursuant to and subject to the terms of the Agreement, at the Closing, Deutsche Börse and Eurex Frankfurt will sell, transfer and deliver to Nasdaq, and Nasdaq will purchase, the capital stock of U.S. Exchange Holdings.

3. Post-Closing Ownership Structure of the Exchange

As a result of the Transaction, Nasdaq will directly own 100% of the equity interest of U.S. Exchange Holdings. U.S. Exchange Holdings will remain the sole, direct owner of ISE Holdings. ISE Holdings will remain the sole, direct owner of the Exchange. The Exchange will therefore become an indirect subsidiary of Nasdaq and Nasdaq will become the ultimate parent of the Exchange. The Exchange will become an affiliate of NASDAQ Exchange, Phlx Exchange, BX Exchange, BSECC and SCCP through common, ultimate ownership by Nasdaq. As a result of the Transaction, Deutsche Börse and Eurex Frankfurt will cease to be owners of the Exchange. The Exchange will therefore cease to have any Non-U.S. Upstream Owners. The Transaction will not have any effect on ISE Holdings' direct ownership of the Exchange. However, consummation of the Transaction is subject to approval of this Proposed Rule Change by the Commission, as described below.

4. Non-U.S. Upstream Owner Resolutions

Deutsche Börse and Eurex Frankfurt, as the Non-U.S. Upstream Owners of the Exchange, have previously taken appropriate steps to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to their control of the Exchange. Specifically, each of such Non-U.S. Upstream Owners has adopted resolutions ("Non-U.S. Upstream Owner Resolutions"), which were previously approved

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[4] See Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (SR-ISE-2007-101).

[5] See Securities Exchange Act Release No. 66834 (April 19, 2012), 77 FR 24752 (April 25, 2012) (SR-ISE-2012-21). Each of Deutsche Börse and Eurex Frankfurt is referred to as a "Non-U.S. Upstream Owner" and collectively as the "Non-U.S. Upstream Owners."

by the Commission, to incorporate these concepts with respect to itself, as well as its board members, officers, employees, and agents (as applicable), to the extent that they are involved in the activities of the Exchange.[6] For example, the resolution of each of such Non-U.S. Upstream Owners provides that it shall comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and with the Exchange. In addition, the resolution of each of such Non-U.S. Upstream Owners provides that the board members, including each person who becomes a board member, would so consent to comply and cooperate and the particular Non-U.S. Upstream Owner would take reasonable steps to cause its officers, employees, and agents to also comply and cooperate, to the extent that he or she is involved in the activities of the Exchange.

Section 19(b) of the Act,[7] and Rule 19b-4 thereunder,[8] require an SRO to file proposed rule changes with the Commission. Although the Non-U.S. Upstream Owners are not SROs, the Non-U.S. Upstream Owner Resolutions have previously been filed with the Commission as stated policies, practices, or interpretations of the Exchange and therefore are considered rules of the Exchange.[9] As Deutsche Börse and Eurex Frankfurt will both cease to be Non-U.S. Upstream Owners of the Exchange after the Transaction, the Exchange proposes that the resolutions of Deutsche Börse and Eurex Frankfurt will cease to be stated policies, practices, or interpretations of the Exchange and, therefore, will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.[10]

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[6] See Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (File No. 10-221) (Order Approving ISE Mercury, LLC for Registration as a National Securities Exchange).

[7] 15 U.S.C. 78s(b).

[8] 17 CFR 240.19b-4.

[9] See File No. 10-221, supra note 6.

[10] The "Form of German Parent Corporate Resolutions" is attached hereto as Exhibit 5A. As referenced above, resolutions in relation to board members, officers, employees, and agents (as applicable) of Deutsche Börse and Eurex Frankfurt also would cease accordingly. Resolution 11 provides that, notwithstanding any provision of the resolutions, before: (a) any amendment to or repeal of any provision of this or any of the resolutions; or (b) any action that would have the effect of amending or repealing any provision of the resolutions shall be effective, the same shall be submitted to the board of directors of the Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. In addition, Deutsche Börse, Eurex Frankfurt, U.S. Exchange Holdings, ISE Holdings, and ISE previously became parties to an agreement to provide for adequate funding for the Exchange's regulatory responsibilities. The Exchange subsequently became a party to the agreement

5. Nasdaq Governing Documents

Nasdaq will become the ultimate parent of the Exchange upon the Closing of the Transaction. As described above, Section 19(b) of the Act and Rule 19b-4 thereunder require an SRO to file proposed rule changes with the Commission. Although the Exchange's existing U.S. upstream owners are not SROs, their governing documents have previously been filed with the Commission as stated policies, practices, or interpretations of the Exchange and therefore are considered rules of the Exchange.[11] The Exchange proposes that the Nasdaq Amended and Restated Certificate of Incorporation ("Nasdaq COI") and the Nasdaq Bylaws ("Nasdaq Bylaws, and together with the Nasdaq COI, the "Nasdaq governing documents") will become stated policies, practices, or interpretations of the Exchange as of the Closing and, therefore, will be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.[12]

The Nasdaq Bylaws contain certain provisions regarding ownership, jurisdiction, books and records, and other issues, with respect to Nasdaq, as well as its board members, officers, employees, and agents (as applicable), relating to Nasdaq's control of any "Self-Regulatory Subsidiary" (i.e., any subsidiary of Nasdaq that is an SRO as defined under Section 3(a)(26) of the Act).[13] The Exchange would be a "Self-Regulatory Subsidiary" of Nasdaq upon the Closing of the Transaction. The provisions in the Nasdaq Bylaws are comparable to the provisions of the Non-U.S. Upstream Owners Resolutions, including in the following manner:

- Giving due regard to the preservation of the independence of the self-regulatory function of each of Nasdaq's Self-Regulatory Subsidiaries.[14]
- Maintaining the confidentiality of all books and records of each Self-Regulatory Subsidiary reflecting confidential information pertaining to the self-regulatory function of such Self-Regulatory Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) that comes into Nasdaq's possession, which shall not be used for any non-regulatory

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along with ISE Gemini. This agreement will be terminated upon the Closing of the Transaction.

[11] See File No. 10-221, supra note 6.

[12] The Nasdaq COI dated January 24, 2014 is attached hereto as Exhibit 5B along with subsequent amendments thereto dated November 17, 2014 and September 8, 2015 and the Certificate of Elimination of the Series A Convertible Preferred Stock dated January 27, 2014. The Nasdaq Bylaws are attached hereto as Exhibit 5C.

[13] 15 U.S.C. 78c(a)(26).

[14] Nasdaq Bylaws Section 12.1(a) (Self-Regulatory Organization Functions of the Self-Regulatory Subsidiaries).

purposes; making such books and records available for inspection and copying by the Commission; and maintaining such books and records relating to each Self-Regulatory Subsidiary in the United States.[15]

- To the extent they are related to the activities of a Self-Regulatory Subsidiary, the books, records, premises, officers, Directors, and employees of Nasdaq shall be deemed to be the books, records, premises, officers, directors, and employees of such Self-Regulatory Subsidiary for the purposes of, and subject to oversight pursuant to, the Act.[16]
- Compliance by Nasdaq with the U.S. federal securities laws and the rules and regulations thereunder, cooperation by Nasdaq with the Commission and Nasdaq's Self-Regulatory Subsidiaries, and reasonable steps by Nasdaq necessary to cause its agents to cooperate with the Commission and, where applicable, the Self-Regulatory Subsidiaries pursuant to their regulatory authority.[17]
- Consent by Nasdaq and its officers, Directors, and employees to the jurisdiction of the United States federal courts, the Commission, and each Self-Regulatory Subsidiary for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of any Self-Regulatory Subsidiary.[18]
- Reasonable steps by Nasdaq necessary to cause its current and future officers, Directors, and employees, to consent in writing to the applicability to them of certain provisions of the Nasdaq Bylaws, as applicable, with respect to their activities related to any Self-Regulatory Subsidiary.[19]
- Approval by the Commission under Section 19 of the Act prior to any resolution of the Nasdaq Board to approve an exemption for any person from the ownership limitations of the Nasdaq COI.[20]

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[15] Nasdaq Bylaws Section 12.1(b).

[16] Nasdaq Bylaws Section 12.1(c).

[17] Nasdaq Bylaws Section 12.2(a) (Cooperation with the Commission). The officers, Directors, and employees of Nasdaq, by virtue of their acceptance of such position, shall be deemed to agree to cooperate with the Commission and each Self-Regulatory Subsidiary in respect of the Commission's oversight responsibilities regarding the Self-Regulatory Subsidiaries and the self-regulatory functions and responsibilities of the Self-Regulatory Subsidiaries. Nasdaq Bylaws Section 12.2(b).

[18] Nasdaq Bylaws Section 12.3 (Consent to Jurisdiction).

[19] Nasdaq Bylaws Section 12.4 (Further Assurances).

[20] Nasdaq Bylaws Section 12.5 (Board Action with Respect to Voting Limitations of the Certificate of Incorporation).

- Filing with, or filing with and approval by, the Commission (as the case may be) under Section 19 of the Act prior to amending the Nasdaq COI or the Nasdaq Bylaws.[21]

The Exchange believes that the provisions in the Nasdaq Bylaws should minimize the potential that a person could improperly interfere with, or restrict the ability of, the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act.[22]

Additionally, and similar to the ISE Holdings COI, the Nasdaq COI imposes limits on direct and indirect changes in control, which are designed to prevent any shareholder from exercising undue control over the operation of its SRO subsidiaries and to ensure that its SRO subsidiaries and the Commission are able to carry out their regulatory obligations under the Act. Specifically, no person who beneficially owns shares of common stock, preferred stock, or notes of Nasdaq in excess of 5% of the securities generally entitled to vote may vote the shares in excess of 5%.[23] This limitation would mitigate the potential for any Nasdaq shareholder to exercise undue control over the operations of the Exchange, and it facilitates the Exchange's and the Commission's ability to carry out their regulatory obligations under the Act. The Nasdaq Board may approve exemptions from the 5% voting limitation for any person that is not a broker-dealer, an affiliate of a broker-dealer, or a person subject to a statutory disqualification under Section 3(a)(39) of the Act,[24] provided that the Nasdaq Board also determines that granting such exemption would be consistent with the self-regulatory obligations of its SRO subsidiary.[25] Further, any such exemption from the 5% voting

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[21] Nasdaq Bylaws Section 12.6 (Amendments to the Certificate of Incorporation); Nasdaq Bylaws Section 11.3 (Review by Self-Regulatory Subsidiaries).

[22] The U.S. Exchange Holdings COI also includes similar provisions, including that U.S. Exchange Holdings will take reasonable steps necessary to cause ISE Holdings to be in compliance with the "Ownership Limit" and the "Voting Limit." See U.S. Exchange Holdings COI, Articles TENTH through SIXTEENTH. The U.S. Exchange Holdings COI provides that U.S. Exchange Holdings will notify the Exchange's Board if any "Person," either alone or together with its "Related Persons," at any time owns (whether by acquisition or by a change in the number of shares outstanding) of record or beneficially, whether directly or indirectly, 10%, 15%, 20%, 25%, 30%, 35%, or 40% or more of the then outstanding shares of U.S. Exchange Holdings. See SR-ISE-2007-101, supra note 4, at 71981.

[23] See Article FOURTH, Section C of the Nasdaq COI.

[24] 15 U.S.C. 78c(a)(39).

[25] See Article FOURTH, Section C.6. of the Nasdaq COI. Specifically, the Nasdaq Board must determine that granting such exemption would (1) not reasonably be expected to diminish the quality of, or public confidence in, Nasdaq or the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and

limitation would not be effective until approved by the Commission pursuant to Section 19 of the Act.[26]

6. Trust Agreement[27]

The ISE Holdings COI currently contains certain ownership limits ("Ownership Limits") and voting limits ("Voting Limits") with respect to the outstanding capital stock of ISE Holdings.[28] The Trust Agreement was entered into in 2007 to provide for an automatic transfer of ISE Holdings shares to a trust (the "ISE Trust") if a Person[29] were to obtain an ownership or voting interest in ISE Holdings in excess of these Ownership Limits and Voting Limits, through ownership of one of the Non-U.S. Upstream Owners, without obtaining the approval of the Commission. In this regard, the Trust Agreement serves four general purposes: (i) to accept, hold and dispose of Trust Shares[30] on the

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practices and on investors and the public, and (2) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to an 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.

[26] See Section 12.5 of the Nasdaq Bylaws.

[27] The Trust Agreement exists among ISE Holdings, U.S. Exchange Holdings, and the Trustees (as defined therein). By its terms, the Trust Agreement originally related solely to ISE Holdings' ownership of ISE, and not to any other national securities exchange that ISE Holdings might control, directly or indirectly. In 2010, the Commission approved proposed rule changes that revised the Trust Agreement to replace references to ISE with references to any Controlled National Securities Exchange. See Securities Exchange Act Release Nos. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2008-85) and 61498 (February 4, 2010), 75 FR 7299 (February 18, 2010) (SR-ISE-2009-90); see also ISE Trust Agreement, Articles I and II, Sections 1.1 and 2.6. Thus, the ISE Trust Agreement also applies to ISE Gemini and ISE Mercury.

[28] See Article FOURTH, Section III of the ISE Holdings COI.

[29] See SR-ISE-2007-101, supra note 4. Under the Trust Agreement, the term "Person" means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, government or any agency or political subdivision thereof, or any other entity of any kind or nature.

[30] Under the Trust Agreement, the term "Trust Shares" means either Excess Shares or Deposited Shares, or both, as the case may be. The term "Excess Shares" means that a Person obtained an ownership or voting interest in ISE Holdings in excess of certain ownership and voting restrictions pursuant to Article FOURTH of the ISE Holdings COI, through, for example, ownership of one of the Non-U.S. Upstream Owners or U.S. Exchange Holdings, without obtaining the approval of the Commission. The term

terms and subject to the conditions set forth therein; (ii) to determine whether a Material Compliance Event[31] has occurred or is continuing; (iii) to determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option;[32] and (iv) to transfer Deposited Shares from the Trust to the Trust Beneficiary[33] as provided in Section 4.2(h) therein. The ISE Trust, and corresponding Trust Agreement, is the mechanism by which the Ownership Limits and Voting Limits in the ISE Holdings COI currently would be protected in the event that a Non-US Upstream Owner purportedly transfers any related ownership or voting rights other than in accordance with the ISE Holdings COI.

As described above, Section 19(b) of the Act and Rule 19b-4 thereunder require an SRO to file proposed rule changes with the Commission. Although the ISE Trust is not an SRO, the Trust Agreement has previously been filed with the Commission as stated policies, practices, or interpretations of the Exchange and therefore is considered rules of the Exchange.[34] The purpose for which the ISE Trust was formed will not be relevant after the Closing of the Transaction, given that the Exchange will no longer have Non-U.S. Upstream Owners and that the Exchange's current and resulting U.S. upstream owners' governing documents provide for similar protections (e.g., U.S. Exchange Holdings COI Article THIRTEENTH and Nasdaq Bylaws Section 12.5). Accordingly, the Exchange proposes that the Trust Agreement will cease to be stated policies, practices, or interpretations of the Exchange and, therefore, will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.[35] The Exchange also proposes that, as of the Closing of the Transaction, the

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"Deposited Shares" means shares that are transferred to the Trust pursuant to the Trust's exercise of the Call Option.

[31] Under the Trust Agreement, the term "Material Compliance Event" means, with respect to a Non-U.S. Upstream Owner, any state of facts, development, event, circumstance, condition, occurrence or effect that results in the failure of any of the Non-U.S. Upstream Owners to adhere to their respective commitments under the resolutions (i.e., as referenced in note 5) in any material respect.

[32] Under the Trust Agreement, the term "Call Option" means the option granted by the Trust Beneficiary to the Trust to call the Voting Shares as set forth in Section 4.2 therein.

[33] Under the Trust Agreement, the term "Trust Beneficiary" means U.S. Exchange Holdings.

[34] See File No. 10-221, supra note 6.

[35] The current Trust Agreement is attached hereto as Exhibit 5D. Section 8.2 of the Trust Agreement provides, in part, that, for so long as ISE Holdings controls, directly or indirectly, the Exchange, before any amendment or repeal of any provision of the Trust Agreement shall be effective, such amendment or repeal shall be submitted to the board of directors of the Exchange, as applicable, and if such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder before such amendment or repeal may be effectuated,

parties to the Trust Agreement would be permitted to take the corporate steps necessary to repeal the Trust Agreement and dissolve the ISE Trust.

7. ISE Holdings COI

The ISE Holdings COI was amended in 2007 in relation to the ownership of ISE by Deutsche Börse.[36] At that time, provisions were added to the ISE Holdings COI relating to the ISE Trust to provide for an automatic transfer of ISE Holdings' shares to the ISE Trust if a Person were to obtain an ownership or voting interest in ISE Holdings in excess of Voting Limits and Ownership Limits, without obtaining the approval of the Commission.

As described above, the Exchange is proposing that the Trust Agreement will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction. Accordingly, the Exchange proposes to remove provisions relating to the Trust Agreement and the ISE Trust from the ISE Holdings COI.[37] The Exchange proposes to reinstate certain provisions of the ISE Holdings COI that existed prior to Deutsche Börse's ownership of ISE Holdings that were removed upon introduction of the provisions relating to the ISE Trust and the Trust Agreement.[38]

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then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be. The Exchange notes that, according to the terms of the Trust Agreement, Sections 6.1 and 6.2 thereof, which relate to limits on disclosure of confidential information and certain permitted disclosure, will survive the termination of the Trust Agreement for a period of ten years.

[36] See SR-ISE-2007-101, supra note 4.

[37] The proposed, amended ISE Holdings COI is attached hereto as Exhibit 5E. Capitalized terms used to describe the ISE Holdings COI that are not otherwise defined herein shall have the meanings prescribed in the ISE Holdings COI. Article FOURTEENTH of the ISE Holdings COI provides that, for so long as U.S. Exchange Holdings shall control, directly or indirectly, the Exchange, or facility thereof, before any amendment to or repeal of any provision of the ISE Holdings COI shall be effective, the same shall be submitted to the board of directors of the Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

[38] See, e.g., Exhibit 5A to SR-ISE-2007-101, supra note 4. See also Securities Exchange Act Release No. 51029 (January 12, 2005), 70 FR 3233 (January 21, 2005) (SR-ISE-2004-29), through which ISE, which was organized as a corporation at that time (i.e., "ISE, Inc."), amended its Certificate of Incorporation and Constitution at that time in connection with ISE's then-contemplated initial public offering. ISE subsequently reorganized into a holding company structure, whereby it became a limited liability company, as it is so organized currently, and whereby ISE Holdings became the sole

The changes to the ISE Holdings COI proposed herein would describe the corrective treatment of "Excess Shares" (i.e., any sale, transfer, assignment or pledge that, if effective would result in any Person, either alone or together with its Related Persons, owning shares in excess of any of the Ownership Limits). The proposed changes would apply corrective procedures if any Person, alone or together with its Related Persons, purports to sell, transfer, assign or pledge any shares of ISE Holdings stock in in violation of the Ownership Limits. Specifically, any such sale, transfer, assignment or pledge would be void, and that number of shares in excess of the Ownership Limits would be deemed to have been transferred to ISE Holdings, as "Special Trustee" of a "Charitable Trust" for the exclusive benefit of a "Charitable Beneficiary" to be determined by ISE Holdings.[39] These corrective procedures also would apply if there is any other event causing any holder of ISE Holdings stock to exceed the Ownership Limits, such as a repurchase of shares by ISE Holdings. The automatic transfer would be deemed to be effective as of the close of business on the business day prior to the date of the violative transfer or other event. The Special Trustee of the Charitable Trust would be required to sell the Excess Shares to a person whose ownership of shares is not expected to violate the Ownership Limits, subject to the right of ISE Holdings to repurchase those shares. The proposed changes to the ISE Holdings COI are as follows:[40]

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owner of ISE. See Securities Exchange Act Release No. 53705 (April 21, 2006), 71 FR 25260 (April 28, 2006) (SR-ISE-2006-04). As a result, and at the time of the reorganization, ISE eliminated the "ISE, Inc." Certificate of Incorporation and Constitution. The ISE Holdings COI and ISE Holdings Bylaws were introduced at that time and included substantially the same ownership and voting limitations that had been contained in the ISE, Inc. Certificate of Incorporation and Constitution.

[39] ISE Holdings may also determine to appoint as "Special Trustee" any entity that is unaffiliated with ISE Holdings and any Person or its Related Persons owning Excess Shares, and any successor trustee appointed by ISE Holdings. Currently, the ISE Trust would hold capital stock of ISE Holdings in the event that a person obtains ownership or voting interest in ISE Holdings in excess of the Ownership Limits or Voting Limits or in the event of a Material Compliance Event. See SR-ISE-2007-101, supra note 4, for a discussion of the ISE Trust, including the operation thereof.

[40] The Exchange is not proposing any changes to the actual Ownership Limits or Voting Limits specified in the current ISE Holdings COI. See Article FOURTH, Sections III(a) and III(b) of the ISE Holdings COI. The Exchange proposes to delete certain defined terms from the ISE Holdings COI, such as "ISE Trust," "Trust Beneficiary" and "Trustee," and replace them with new defined terms within the ISE Holdings COI, such as "Charitable Trust," "Charitable Beneficiary" and "Special Trustee." The Exchange also proposes to renumber certain sections of the ISE Holdings COI to account for proposed new and deleted sections therein.

- The Exchange proposes to delete the current provisions in Article Fourth, Sections III(a)(ii), III(a)(iii) and III(b)(i) of the ISE Holdings COI that provide that the ISE Holdings Board of Directors shall deliver to the ISE Trust copies of certain written notice and updates thereto currently required under Sections III(a)(ii) and III(a)(iii) of Article FOURTH (i.e., if any Person at any time owns, of record or beneficially, whether directly or indirectly, five percent (5%) or more of the then outstanding Voting Shares).
- The Exchange proposes to adopt new Article FOURTH, Section III(b)(iii) of the ISE Holdings COI, which would provide that, notwithstanding any other provisions contained in the ISE Holdings COI, to the fullest extent permitted by applicable law, any shares of capital stock of ISE Holdings (whether such shares are common stock or preferred stock) not entitled to be voted due to the restrictions set forth in Section III(b)(i) of Article FOURTH of the ISE Holdings COI (and not waived by the ISE Holdings Board of Directors and approved by the Commission pursuant to Section III(b)(i) of Article FOURTH of the ISE Holdings COI), shall not be deemed to be outstanding for purposes of determining a quorum or a minimum vote required for the transaction of any business at any meeting of stockholders of ISE Holdings, including, without limitation, when specified business is to be voted on by a class or a series voting as a class.
- As a result of the addition of new Article FOURTH, Section III(b)(iii) of the ISE Holdings COI, the Exchange proposes to renumber current Article FOURTH, Section III(b)(iii) as resulting Article FOURTH, Section III(b)(iv).
- The Exchange proposes several changes to Article FOURTH, Section III(c) of the ISE Holdings COI, which relates to violations of any Ownership Limits or Voting Limits and the treatment of Excess Shares, including the following:
    - Addition of new text relating to the designation as "Excess Shares" for any shares held in excess of the relevant Ownership Limits; such designation and treatment being effective as of the close of business on the business day prior to the date of the purported transfer or other event leading to such Excess Shares.[41]
    - Deletion of current text requiring notification to the ISE Trust upon the occurrence of certain events and the transfer of Voting Shares to the ISE Trust.[42]
    - Addition of new text describing the treatment of "Excess Shares" upon any sale, transfer, assignment or pledge that, if effective would result in any Person, either alone or together with its Related Persons, owning shares in excess of any of the Ownership Limits. Specifically, the Exchange proposes within new Article FOURTH, Section III(c)(i) of the ISE Holdings COI that any such purported event shall be void ab initio as

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[41] See resulting Article FOURTH, Section III(c).

[42] Id.

to such Excess Shares, and the intended transferee shall acquire no rights in such Excess Shares. Such Excess Shares shall be deemed to have been transferred to ISE Holdings (or to an entity appointed by ISE Holdings that is unaffiliated with ISE Holdings and any Person or its Related Persons owning such Excess Shares), as Special Trustee of the Charitable Trust for the exclusive benefit of the Charitable Beneficiary or Beneficiaries.[43]

- Addition of new text describing the treatment of dividends or other distributions paid with respect to Excess Shares.[44]
- Addition of new text describing the handling of any distribution of assets received in respect of the Excess Shares in any liquidation, dissolution or winding up of, or any distribution of the assets of ISE Holdings.[45]
- Addition of new text describing the authority of the Special Trustee with respect to rescinding as void any votes cast by a purported transferee or holder of Excess Shares as well as recasting of votes in accordance with the desires of the Special Trustee acting for the benefit of ISE Holdings.[46]
- Addition of new text describing the sale by the Special Trustee, to a Person or Persons designated by the Special Trustee whose ownership of Voting Shares will not violate any Ownership Limit or Voting Limit, of Excess Shares transferred to the Charitable Trust, within 20 days of receiving notice from ISE Holdings that Excess Shares have been so transferred.[47] Existing text would be deleted that requires the Trustees of the ISE Trust to use their commercially reasonable efforts to sell the Excess Shares upon receipt of written instructions from the ISE Trust Beneficiary. New text also would be added describing the handling of any proceeds of such a sale.

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[43] See proposed Article FOURTH, Section III(c)(ii). The "Charitable Beneficiary" would be one or more organizations described in Sections 170(b)(1)(A) or 170(c) of the Internal Revenue Code of 1986, as amended from time to time. The "Charitable Trust" would be the trust established for the benefit of the Charitable Beneficiary for which ISE Holdings is the trustee. The "Special Trustee" would be ISE Holdings, in its capacity as trustee for the Charitable Trust, any entity appointed by ISE Holdings that is unaffiliated with ISE Holdings and any Person or its Related Persons owning Excess Shares, and any successor trustee appointed by ISE Holdings.

[44] See proposed Article FOURTH, Section III(c)(iii).

[45] See proposed Article FOURTH, Section III(c)(iv).

[46] See proposed Article FOURTH, Section III(c)(v).

[47] See proposed Article FOURTH, Section III(c)(vi).

- Addition of new text describing that Excess Shares shall be deemed to have been offered for sale to ISE Holdings on the date of the transaction or event resulting in such Excess Shares.[48]
- Deletion of current Article FOURTH, Section III(c)(v), which currently relates to the ISE Trust Beneficiary's right to reacquire Excess Shares from the ISE Trust under certain circumstances.

The Exchange is not proposing to reinstate all of the ISE Holdings COI text that existed prior to Deutsche Börse's ownership of ISE Holdings, as certain of such text would continue to not be applicable, even after the Transaction, given the Exchange's resulting ownership. For example, prior to Deutsche Börse's ownership of ISE Holdings, the ISE Holdings COI contained certain provisions that dealt with the publicly-traded nature of ISE Holdings' stock. This text was removed from the ISE Holdings COI upon Deutsche Börse's ownership of ISE Holdings, as ISE Holdings' stock ceased to be publicly-traded.[49] Therefore, the Exchange is not proposing to reinstate the following provisions of the ISE Holdings COI that existed prior to Deutsche Börse's ownership of ISE Holdings relating to:

- Regulation 14A under the Act (pertaining to solicitations of proxies).
- the treatment of transactions of ISE Holdings stock on or through the facilities of any national securities exchange or national securities association.
- inspection of the ISE Holdings accounts and records by ISE Holdings stockholders.
- stockholder voting to amend, repeal or adopt provisions of the ISE Holdings COI or the ISE Holdings Bylaws.
- stockholder action called at annual or special meetings of stockholders.
- nominations for directors and the election thereof.

The Exchange also is not proposing to reinstate the ISE Holdings COI text that existed prior to Deutsche Börse's ownership of ISE Holdings that related to changes in terminology used throughout the ISE Holdings COI.[50] Additionally, provisions of the ISE Holdings COI that authorize shares of capital stock of ISE Holdings have been amended since Deutsche Börse acquired ownership of ISE Holdings.[51] The Exchange does not propose to amend the text of the ISE Holdings COI relating to share authorization. The Exchange also does not propose to reinstate the location or specific

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[48] See proposed Article FOURTH, Section III(c)(vii).

[49] See Exhibit 5A to SR-ISE-2007-101, supra note 4.

[50] For example, the ISE Holdings COI currently refers to Delaware General Corporation Law as "DGCL." The Exchange would not reinstate the prior "GCL" term that was used in the ISE Holdings COI.

[51] See, e.g., Securities Exchange Act Release No 73860 (December 17, 2014), 79 FR 77066 (December 23, 2014) (SR-ISE-2014-44).

wording of text of the ISE Holdings COI that was adjusted or relocated upon Deutsche Börse's ownership of ISE Holdings, but that otherwise has the same practical effect and meaning as it did prior to Deutsche Börse's ownership of ISE Holdings.

7. U.S. Exchange Holdings COI

The Exchange proposes to remove the reference to the Trust Agreement in Article THIRTEENTH of the U.S. Exchange Holdings COI. As proposed herein, the Trust Agreement will cease to be considered rules of the Exchange as of the Closing of the Transaction and would be repealed in connection with the Transaction. The Exchange also proposes to retitle the document as the "Fourth" Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings and update the effective date thereof.[52]

8. ISE Holdings Bylaws

The ISE Holdings COI Voting Limits restrict any person, either alone or together with its related persons, from having voting control, either directly or indirectly, over more than 20% of the outstanding capital stock of ISE Holdings. The ISE Holdings COI Ownership Limits restrict any person, either alone or together with its related persons, from directly or indirectly owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings (or in the case of any Exchange member, acting alone or together with its related persons, from directly or indirectly owning of record or beneficially more than 20% of the outstanding capital stock of ISE Holdings).[53]

The ISE Holdings COI and the ISE Holdings Bylaws provide that the board of directors of ISE Holdings may waive these voting and ownership restrictions in an amendment to the ISE Holdings Bylaws if the board makes the following three findings: (1) the waiver will not impair the ability of the Exchange to carry out its functions and responsibilities as an exchange under the Act and the rules thereunder; (2) the waiver is otherwise in the best interests of ISE Holdings, its stockholders, and the Exchange; and (3) the waiver will not impair the ability of the Commission to enforce the Act.

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[52] The proposed, amended U.S. Exchange Holdings COI is attached hereto as Exhibit 5F. Article SIXTEENTH of the U.S. Exchange Holdings COI provides that, for so long as U.S. Exchange Holdings shall control, directly or indirectly, the Exchange, or facility thereof, before any amendment to or repeal of any provision of the U.S. Exchange Holdings COI shall be effective, the same shall be submitted to the board of directors of the Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. The Exchange also proposes to amend the U.S. Exchange Holdings COI to consistently refer to such document as the "Restated Certificate," which is a defined term therein.

[53] See ISE Holdings COI, Article FOURTH, Section III.

However, the board of directors may not waive these voting and ownership restrictions as they apply to Exchange members. In addition, the board of directors may not waive these voting and ownership restrictions if such waiver would result in a person subject to a "statutory disqualification" owning or voting shares above the stated thresholds. Any waiver of these voting and ownership restrictions must be by way of an amendment to the Bylaws approved by the board of directors, which amendment must be approved by the Commission.[54]

Acting pursuant to this waiver provision, the board of directors of ISE Holdings has approved the amendment to the ISE Holdings Bylaws to waive the Ownership Limits and Voting Limits in order to permit Nasdaq to indirectly own 100% of the outstanding common stock of ISE Holdings as of and after Closing of the Transaction.[55] In adopting such amendment, the board of directors of ISE Holdings made the necessary determinations and approved the submission of the Proposed Rule Change to the Commission. In so waiving the applicable voting and ownership restrictions, the board of directors of ISE Holdings has determined, with respect to Nasdaq, that: (i) such waiver will not impair the ability of ISE Holdings and each Controlled National Securities Exchange, or facility thereof, to carry out its respective functions and responsibilities under the Act and the rules promulgated thereunder;[56] (ii) such waiver is otherwise in the

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[54] See ISE Holdings COI, Article FOURTH, Sections III(a)(i) and III(b)(i). Such amendment to Holdings Bylaws must be filed with and approved by the Commission under Section 19(b) of the Act and become effective thereunder. In this regard, Section 10.1 of the Bylaws provides that the Bylaws may be amended, added to, rescinded or repealed at any meeting of the Board of Directors of ISE Holdings or meeting of the stockholders. With respect to each national securities exchange controlled, directly or indirectly, by ISE Holdings (the "Controlled National Securities Exchanges"), or facility thereof, before any amendment to or repeal of any provision of the Bylaws of ISE Holdings shall be effective, the same shall be submitted to the board of directors of each Controlled National Securities Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

[55] The proposed, amended ISE Holdings Bylaws are attached hereto as Exhibit 5G. The proposed amendment to the ISE Holdings Bylaws would also clarify that Eurex Global Derivatives AG or "EGD," which is referenced in Section 11.2 of the ISE Holdings Bylaws, ceased to be an Upstream Owner of the Exchange as a result of a prior transaction that did not require an amendment to the ISE Holdings Bylaws. See Securities Exchange Act Release No. 73530 (November 5, 2014), 79 FR 77066 (December 17, 2014) (SR-ISE-2014-44).

[56] The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. The Exchange

best interests of ISE Holdings, its stockholders, and each Controlled National Securities Exchange, or facility thereof;[57] (iii) such waiver will not impair the ability of the Commission to enforce the Act;[58] (iv) neither Nasdaq nor any of its Related Persons (as that term is defined in the ISE Holdings COI) are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act); and (v) neither Nasdaq nor any of its Related Persons is a member (as such term is defined in Section 3(a)(3)(A) of the Act) of such Controlled National Securities Exchange.

The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. In addition, the Transaction will not impair the ability of the Exchange's, or any facility thereof, to carry out their respective functions and responsibilities under the Act and will not impair the ability of the Commission to enforce the Act. The Exchange therefore seeks approval of the waiver described herein with respect to the Ownership Limits and Voting Limits in order to permit Nasdaq to indirectly own 100% of the outstanding common stock of ISE Holdings as of and after Closing of the Transaction.

Summary

The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. The Transaction will not impair the ability of ISE Holdings, the Exchange, or any facility thereof, to carry out their respective functions and responsibilities under the Act. Moreover, the Transaction will not impair the ability of the Commission to enforce the Act with respect to the Exchange. As such, the Commission's plenary regulatory authority over the Exchange will not be affected by the approval of this Proposed Rule Change. The Exchange is requesting approval by the Commission of changes proposed herein in order to allow the Transaction to take place.

(b) Statutory Basis – The Exchange believes that this proposal is consistent

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is not proposing any amendments to its trading or regulatory rules at this time relating to the Transaction.

[57] For example, the Transaction will produce a stronger and more efficient infrastructure that will have an improved ability to provide innovative products and services.

[58] The Commission will continue to have plenary regulatory authority over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect owners with respect to activities related to the Exchange. The Commission will continue to have appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect owners and their directors (where applicable), officers, employees and agents to the extent they are involved in the activities of the Exchange.

with Section 6(b)of the Act,[59] in general, and furthers the objectives of Section 6(b)(1) of the Act,[60] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Proposed Rule Change is designed to enable the Exchange to continue to have the authority and ability to effectively fulfill its self-regulatory duties pursuant to the Act and the rules promulgated thereunder. The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect owners with respect to activities related to the Exchange. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will continue to provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect owners and their directors (where applicable), officers, employees and agents to the extent they are involved in the activities of the Exchange.

The Exchange also believes that this Proposed Rule Change furthers the objectives of Section 6(b)(5)[61] of the Act because the Proposed Rule Change would be consistent with and facilitate a governance and regulatory structure that is designed 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. Specifically, the Exchange believes that the Proposed Rule Change will continue to provide the Commission and the Exchange with access to necessary information that will allow the Exchange to efficiently and effectively enforce compliance with the Act, as well as allow the Commission to provide proper oversight, which will ultimately promote just and equitable principles of trade and protect investors.

Approval of this Proposed Rule Change will enable ISE Holdings to continue its operations and the Exchange to continue its orderly discharge of regulatory duties 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

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[59] 15 U.S.C. 78s(b).

[60] 15 U.S.C. 78s(b)(1).

[61] 15 U.S.C. 78f(b)(5).

the public interest.

In addition, the Exchange expects that the Transaction will facilitate efficiencies and innovation for clients and efficient, transparent and well-regulated markets for issuers and clients, thus removing impediments to, and perfecting the mechanism of a free and open market and a national market system. The Transaction will benefit investors, the market as a whole, and shareholders by, among other things, enhancing competition among securities venues and reducing costs. In particular, the Transaction will contribute to streamlined and efficient operations, thereby intensifying competition for transaction order flow with other exchange and non-exchange trading centers, as well as potentially in other areas, such as proprietary market data products and listings. This enhanced level of competition among trading centers will benefit investors through new or more competitive product offerings and, ultimately, lower costs.

Furthermore, the Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. Therefore, the Exchange believes that it will continue to satisfy the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.

The Exchange believes it is consistent with the Act to allow Nasdaq to become the ultimate parent of the Exchange. Neither Nasdaq nor any of its related persons is subject to any statutory disqualification or is a Member of the Exchange. Moreover, the Nasdaq governing documents include certain provisions designed to maintain the independence of the Exchange's self-regulatory functions. Accordingly, the Exchange believes that Nasdaq's acquisition of ultimate ownership and exercise of voting control of the Exchange will not impair the ability of the Commission or the Exchange to discharge their respective responsibilities under the Act.

Although Nasdaq will not carry out regulatory functions, its activities with respect to the operation of the Exchange must be consistent with, and not interfere with, the Exchange's self-regulatory obligations. Nasdaq's governing documents include certain provisions that are designed to maintain the independence of the Exchange's self-regulatory functions, enable the Exchange to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of Sections 6(b) and 19(g) of the Act,[62] and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act. For example, the Nasdaq governing documents provide that Nasdaq will comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and the Exchange. Also, each board member, officer, and employee of Nasdaq, in discharging his or her responsibilities, shall comply with the U.S. federal securities laws and the rules and regulations thereunder, cooperate with the Commission, and cooperate

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[62] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

with the Exchange. In discharging his or her responsibilities as a board member of Nasdaq, each such member must, to the fullest extent permitted by applicable law, take into consideration the effect that Nasdaq's actions would have on the ability of the Exchange to carry out its responsibilities under the Act. In addition, Nasdaq, its board members, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange.

Further, Nasdaq (along with its respective board members, officers, and employees) and U.S. Exchange Holdings agree to keep confidential, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the Exchange, including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices, and audit information, contained in the books and records of the Exchange and not use such information for any non-regulatory purposes.

In addition, Nasdaq's books and records relating to the activities of the Exchange will at all times be made available for, and books and records of U.S. Exchange Holdings will be subject at all times to, inspection and copying by the Commission and the Exchange. Books and records of U.S. Exchange Holdings related to the activities of the Exchange also will continue to be maintained within the U.S. Moreover, for so long as Nasdaq directly or indirectly controls the Exchange, the books, records, officers, directors (or equivalent), and employees of Nasdaq shall be deemed to be the books, records, officers, directors, and employees of the Exchange.

To the extent involved in the activities of the Exchange, Nasdaq, its board members, officers, and employees irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of the Exchange. Likewise, U.S. Exchange Holdings, its officers and directors, and employees whose principal place of business and residence is outside of the U.S., to the extent such directors, officers, or employees are involved in the activities of the Exchange, irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of the Exchange.

The Nasdaq governing documents, the U.S. Exchange Holdings COI, and the U.S. Exchange Holdings Bylaws require that any change thereto must be submitted to the Exchange's Board. If such change must be filed with, or filed with and approved by, the Commission under Section 19 of the Act and the rules thereunder, then such change shall not be effective until filed with, or filed with and approved by, the Commission. This requirement to submit changes to the Exchange's Board continues for so long as Nasdaq or U.S. Exchange Holdings, as applicable, directly or indirectly, control the Exchange.

As Deutsche Börse and Eurex Frankfurt will both cease to be Non-U.S. Upstream Owners of the Exchange upon the Closing of the Transaction, the Exchange believes that its proposal that the resolutions of Deutsche Börse and Eurex Frankfurt will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction is consistent with the Act.

The purpose for which the ISE Trust was formed will not be relevant after the Closing of the Transaction, given that the Exchange will no longer have Non-U.S. Upstream Owners and that the Exchange's current and resulting U.S. upstream owners' governing documents provide for similar protections (e.g., U.S. Exchange Holdings COI Article THIRTEENTH and Nasdaq Bylaws Section 12.5). Accordingly, the Exchange believes that its proposal that the Trust Agreement will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction is consistent with the Act.

Given the Exchange's proposal to repeal the Trust Agreement and dissolve the ISE Trust, the Exchange believes that the proposed changes to the ISE Holdings COI are consistent with the Act. The proposed changes would delete provisions of the ISE Holdings COI that will no longer be relevant and would reinstate certain provisions of the ISE Holdings COI that were removed upon introduction of the provisions relating to the ISE Trust and the Trust Agreement.

4. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[63] the Exchange believes that the Proposed Rule Change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange believes that the Proposed Rule Change will enhance competition among intermarket trading venues, as the Exchange believes that the Transaction will produce a stronger and more efficient infrastructure that will have an improved ability to provide innovative products and services. Moreover, the Exchange will continue to conduct regulated activities (including operating and regulating its market and Members) of the type it currently conducts, but will be able to do so in a more efficient manner to the benefit of its Members.

The Exchange's conclusion that the Proposed Rule Change would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act is consistent with the Commission's prior conclusions about similar combinations involving multiple exchanges in a single corporate family.[64] In this regard,

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[63] 15 U.S.C. 78f(b)(8).

[64] See, e.g., Securities Exchange Act Release No. 66071 (Dec. 29, 2011), 77 FR 521 (Jan. 05, 2012) (SR-CBOE-2011-107 and SR-NSX-2011-14); Securities Exchange Act Release No. 58324 (Aug. 7, 2008), 73 FR 46936 (Aug. 12, 2008) (SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01); Securities Exchange Act Release No. 53382 (Feb. 27, 2006), 71 FR 11251 (Mar. 06, 2006) (SR-NYSE-2005-77); Securities Exchange Act Release No. 71449 (Jan. 30, 2014), 79 FR 6961 (Feb. 05, 2014) (SR-EDGA-2013-34; SR-EDGX-2013-43); Securities Exchange Act Release No. 66171 (January 17, 2012), 77 FR 3297 (January 23, 2012) (File Nos. SR-EDGA-2011-34; SR-

the Exchange notes that the Exchange, and its affiliates ISE Gemini and ISE, function only as options trading markets – they do not function as equity trading markets or as clearing agencies, as do certain of Nasdaq's existing subsidiaries.

The Exchange believes that there is considerable support for a finding that the Transaction is consistent with the Act with respect to competition. 14 exchanges currently compete for options trading business. Exchanges compete on technology, market model, trading venue, fees and fee structure. Additionally, low switching costs allow customers to easily move to another exchange, which customers do regularly, as reflected in constantly varying market shares among the existing exchange operators. In addition, the Commission has approved several, new registered options exchanges in recent history, which highlights an increase in competition in the market for listed options trading.[65]

The Exchange believes that the Transaction will not change the competitive landscape for listed options trading and the changes proposed herein are consistent with other recent Commission approvals. For example, a similar proposed combination of Deutsche Börse and NYSE Euronext in 2011 received Commission approval and would have resulted in a combined greater than 40% market share of listed options volume among its three, respective options exchanges (based on 2010 data).[66] Similarly, as a result of the Transaction, the options exchanges owned by Nasdaq would account for approximately 41% aggregate market share of listed options volume.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

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EDGX-2011-33; SR-ISE-2011-69; SR-NYSE-2011-51; SR-NYSEAmex-2011-78; SR-NYSEArca-2011-72).

[65] See, e.g., Securities Exchange Act Release Nos. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (Order approving application for exchange registration of ISE Mercury, LLC); 75650 (August 7, 2015), 80 FR 48600 (August 13, 2015) (Order approving rules governing the trading of options on the EDGX Options Market); 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (Order approving application for exchange registration of Topaz Exchange, LLC (n/k/a ISE Gemini, LLC)); 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (Order approving application for exchange registration of Miami International Securities Exchange, LLC); 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (Order approving rules governing the trading of options on the BATS Options Exchange).

[66] See Securities Exchange Act Release No. 66171 (January 17, 2012), 77 FR 3297 (January 23, 2012) (File Nos. SR-EDGA-2011-34; SR-EDGX-2011-33; SR-ISE-2011-69; SR-NYSE-2011-51; SR-NYSEAmex-2011-78; SR-NYSEArca-2011-72).

The Exchange has not solicited, and does not intend to solicit, comments on this Proposed Rule Change. The Exchange has not received any unsolicited written comments from members or other interested parties.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.[67]

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register.

Exhibit 5 – Text of the proposed rule change.

A. Form of German Parent Corporate Resolutions.
B. Nasdaq Amended and Restated Certificate of Incorporation and Related Certificates of Amendment.
C. Nasdaq Bylaws.
D. Third Amended and Restated Trust Agreement.
E. Third Amended and Restated Certificate of Incorporation of ISE Holdings.

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[67] 15 U.S.C. 78s(b)(2).

F. Fourth Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings.
G. Third Amended and Restated ISE Holdings Bylaws.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-ISEMercury-2016-10)

[Date]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction Involving Its Indirect Parent

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 28, 2016 ISE Mercury, LLC (the "Exchange" or "ISE Mercury") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is hereby filing with the U.S. Securities and Exchange Commission ("Commission") a proposed rule change (the "Proposed Rule Change") in connection with a proposed business transaction (the "Transaction") involving the Exchange's ultimate, indirect, non-U.S. upstream owners, Deutsche Börse AG ("Deutsche Börse") and Eurex Frankfurt AG ("Eurex Frankfurt"), and Nasdaq, Inc. ("Nasdaq"). Nasdaq is the parent company of The NASDAQ Stock Market LLC ("NASDAQ Exchange"), NASDAQ PHLX LLC ("Phlx Exchange"), NASDAQ BX, Inc. ("BX Exchange"), Boston Stock Exchange Clearing Corporation ("BSECC") and Stock Clearing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

Corporation of Philadelphia ("SCCP").[3] Upon completion of the Transaction (the "Closing"), the Exchange's indirect parent company, U.S. Exchange Holdings, Inc. ("U.S. Exchange Holdings"), will become a direct subsidiary of Nasdaq. The Exchange will therefore become an indirect subsidiary of Nasdaq and, in addition to the Exchange's current affiliation with ISE Gemini, LLC ("ISE Gemini") and International Securities Exchange, LLC ("ISE"), an affiliate of NASDAQ Exchange, Phlx Exchange, BX Exchange, BSECC and SCCP through common, ultimate ownership by Nasdaq. Nasdaq will become the ultimate parent of the Exchange.[4]

In order to effect the Transaction, the Exchange hereby seeks the Commission's approval of the following: (i) that certain corporate resolutions that were previously established by entities that will cease to be non-U.S. upstream owners of the Exchange after the Transaction will cease to be considered rules of the Exchange upon Closing; (ii) that certain governing documents of Nasdaq will be considered rules of the Exchange upon Closing; (iii) that the Third Amended and Restated Trust Agreement (the "Trust Agreement") that currently exists among International Securities Exchange Holdings, Inc. ("ISE Holdings"), U.S. Exchange Holdings, and the Trustees (as defined therein) with respect to the "ISE Trust" will cease to be considered rules of the Exchange upon Closing and, thereafter, that the parties to the Trust Agreement would be permitted to take the corporate steps necessary to repeal the Trust Agreement and dissolve the ISE Trust; (iv) to amend and restate the Second Amended and Restated Certificate of Incorporation of ISE Holdings ("ISE Holdings COI") to eliminate provisions relating to

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[3] See Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR-Phlx-2008-31); 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01).

[4] The Exchange's current affiliates, ISE Gemini and ISE, have submitted nearly identical proposed rule changes. See SR-ISEGemini-2016-05 and SR-ISE-2016-11.

the Trust Agreement and the ISE Trust and, in this respect, to reinstate certain text of the ISE Holdings COI that existed prior to Deutsche Börse's ownership of ISE Holdings; (v) to amend and restate the Second Amended and Restated Bylaws of ISE Holdings (the "ISE Holdings Bylaws") to waive certain voting and ownership restrictions in the ISE Holdings COI to permit Nasdaq to indirectly own 100% of the outstanding common stock of ISE Holdings as of and after Closing of the Transaction; and (vi) to amend and restate the Third Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings ("U.S. Exchange Holdings COI") to eliminate references therein to the Trust Agreement.

The Exchange requests that the Proposed Rule Change become operative at the Closing of the Transaction. The text of the proposed rule change is available at the Commission's Public Reference Room and on the Exchange's Internet website at http://www.ise.com.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange submits this Proposed Rule Change to seek the Commission's

approval of various changes to the organizational and governance documents of the Exchange's current owners and related actions that are necessary in connection with the Closing of the Transaction, as described below. The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. The Exchange is not proposing any amendments to its trading or regulatory rules at this time relating to the Transaction.[5] The Exchange would continue to be registered as a national securities exchange, with separate rules, membership rosters, and listings, distinct from the rules, membership rosters, and listings of NASDAQ Exchange, Phlx Exchange and BX Exchange as well as from its current affiliates, ISE Gemini and ISE. Neither the Exchange nor its current affiliates engage in clearing securities transactions, nor would they do so after the Transaction. Additionally, the Exchange would continue to be a separate self-regulatory organization ("SRO").

1. Current Ownership Structure of the Exchange

On December 17, 2007, ISE Holdings, the sole, direct parent of the Exchange, became a direct, wholly-owned subsidiary of U.S. Exchange Holdings.[6] U.S. Exchange Holdings is 85% directly owned by Eurex Frankfurt and 15% directly owned by Deutsche Börse. Eurex Frankfurt is a wholly-owned, direct subsidiary of Deutsche

[5] If the Exchange determines to make any such changes, it will seek the approval of the Commission only after the approval of this Proposed Rule Change to the extent required by the Securities Exchange Act of 1934, as amended ("Act"), the Commission's rules thereunder, or the Exchange's rules.

[6] See Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (SR-ISE-2007-101).

Börse.[7] Deutsche Börse therefore owns 100% of U.S. Exchange Holdings through its aggregate direct and indirect ownership.

2. The Transaction

On March 9, 2016, a Stock Purchase Agreement (the "Agreement") was entered into among Deutsche Börse, Eurex Frankfurt and Nasdaq. Pursuant to and subject to the terms of the Agreement, at the Closing, Deutsche Börse and Eurex Frankfurt will sell, transfer and deliver to Nasdaq, and Nasdaq will purchase, the capital stock of U.S. Exchange Holdings.

3. Post-Closing Ownership Structure of the Exchange

As a result of the Transaction, Nasdaq will directly own 100% of the equity interest of U.S. Exchange Holdings. U.S. Exchange Holdings will remain the sole, direct owner of ISE Holdings. ISE Holdings will remain the sole, direct owner of the Exchange. The Exchange will therefore become an indirect subsidiary of Nasdaq and Nasdaq will become the ultimate parent of the Exchange. The Exchange will become an affiliate of NASDAQ Exchange, Phlx Exchange, BX Exchange, BSECC and SCCP through common, ultimate ownership by Nasdaq. As a result of the Transaction, Deutsche Börse and Eurex Frankfurt will cease to be owners of the Exchange. The Exchange will therefore cease to have any Non-U.S. Upstream Owners. The Transaction will not have any effect on ISE Holdings' direct ownership of the Exchange. However, consummation of the Transaction is subject to approval of this Proposed Rule Change by the Commission, as described below.

4. Non-U.S. Upstream Owner Resolutions

[7] See Securities Exchange Act Release No. 66834 (April 19, 2012), 77 FR 24752 (April 25, 2012) (SR-ISE-2012-21). Each of Deutsche Börse and Eurex Frankfurt is referred to as a "Non-U.S. Upstream Owner" and collectively as the "Non-U.S. Upstream Owners."

Deutsche Börse and Eurex Frankfurt, as the Non-U.S. Upstream Owners of the Exchange, have previously taken appropriate steps to incorporate provisions regarding ownership, jurisdiction, books and records, and other issues related to their control of the Exchange. Specifically, each of such Non-U.S. Upstream Owners has adopted resolutions ("Non-U.S. Upstream Owner Resolutions"), which were previously approved by the Commission, to incorporate these concepts with respect to itself, as well as its board members, officers, employees, and agents (as applicable), to the extent that they are involved in the activities of the Exchange.[8] For example, the resolution of each of such Non-U.S. Upstream Owners provides that it shall comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and with the Exchange. In addition, the resolution of each of such Non-U.S. Upstream Owners provides that the board members, including each person who becomes a board member, would so consent to comply and cooperate and the particular Non-U.S. Upstream Owner would take reasonable steps to cause its officers, employees, and agents to also comply and cooperate, to the extent that he or she is involved in the activities of the Exchange.

Section 19(b) of the Act,[9] and Rule 19b-4 thereunder,[10] require an SRO to file proposed rule changes with the Commission. Although the Non-U.S. Upstream Owners are not SROs, the Non-U.S. Upstream Owner Resolutions have previously been filed with the Commission as stated policies, practices, or interpretations of the Exchange and

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[8] See Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (File No. 10-221) (Order Approving ISE Mercury, LLC for Registration as a National Securities Exchange).

[9] 15 U.S.C. 78s(b).

[10] 17 CFR 240.19b-4.

therefore are considered rules of the Exchange.[11] As Deutsche Börse and Eurex Frankfurt will both cease to be Non-U.S. Upstream Owners of the Exchange after the Transaction, the Exchange proposes that the resolutions of Deutsche Börse and Eurex Frankfurt will cease to be stated policies, practices, or interpretations of the Exchange and, therefore, will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.[12]

5. Nasdaq Governing Documents

Nasdaq will become the ultimate parent of the Exchange upon the Closing of the Transaction. As described above, Section 19(b) of the Act and Rule 19b-4 thereunder require an SRO to file proposed rule changes with the Commission. Although the Exchange's existing U.S. upstream owners are not SROs, their governing documents have previously been filed with the Commission as stated policies, practices, or interpretations of the Exchange and therefore are considered rules of the Exchange.[13] The Exchange proposes that the Nasdaq Amended and Restated Certificate of

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[11] See File No. 10-221, supra note 8.

[12] The "Form of German Parent Corporate Resolutions" is attached hereto as Exhibit 5A. As referenced above, resolutions in relation to board members, officers, employees, and agents (as applicable) of Deutsche Börse and Eurex Frankfurt also would cease accordingly. Resolution 11 provides that, notwithstanding any provision of the resolutions, before: (a) any amendment to or repeal of any provision of this or any of the resolutions; or (b) any action that would have the effect of amending or repealing any provision of the resolutions shall be effective, the same shall be submitted to the board of directors of the Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. In addition, Deutsche Börse, Eurex Frankfurt, U.S. Exchange Holdings, ISE Holdings, and ISE previously became parties to an agreement to provide for adequate funding for the Exchange's regulatory responsibilities. The Exchange subsequently became a party to the agreement along with ISE Gemini. This agreement will be terminated upon the Closing of the Transaction.

[13] See File No. 10-221, supra note 8.

Incorporation ("Nasdaq COI") and the Nasdaq Bylaws ("Nasdaq Bylaws, and together with the Nasdaq COI, the "Nasdaq governing documents") will become stated policies, practices, or interpretations of the Exchange as of the Closing and, therefore, will be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.[14]

The Nasdaq Bylaws contain certain provisions regarding ownership, jurisdiction, books and records, and other issues, with respect to Nasdaq, as well as its board members, officers, employees, and agents (as applicable), relating to Nasdaq's control of any "Self-Regulatory Subsidiary" (i.e., any subsidiary of Nasdaq that is an SRO as defined under Section 3(a)(26) of the Act).[15] The Exchange would be a "Self-Regulatory Subsidiary" of Nasdaq upon the Closing of the Transaction. The provisions in the Nasdaq Bylaws are comparable to the provisions of the Non-U.S. Upstream Owners Resolutions, including in the following manner:

- Giving due regard to the preservation of the independence of the self-regulatory function of each of Nasdaq's Self-Regulatory Subsidiaries.[16]
- Maintaining the confidentiality of all books and records of each Self-Regulatory Subsidiary reflecting confidential information pertaining to the self-regulatory function of such Self-Regulatory Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) that comes into Nasdaq's possession, which shall not be used for any non-regulatory

[14] The Nasdaq COI dated January 24, 2014 is attached hereto as Exhibit 5B along with subsequent amendments thereto dated November 17, 2014 and September 8, 2015 and the Certificate of Elimination of the Series A Convertible Preferred Stock dated January 27, 2014. The Nasdaq Bylaws are attached hereto as Exhibit 5C.

[15] 15 U.S.C. 78c(a)(26).

[16] Nasdaq Bylaws Section 12.1(a) (Self-Regulatory Organization Functions of the Self-Regulatory Subsidiaries).

purposes; making such books and records available for inspection and copying by the Commission; and maintaining such books and records relating to each Self-Regulatory Subsidiary in the United States.[17]

- To the extent they are related to the activities of a Self-Regulatory Subsidiary, the books, records, premises, officers, Directors, and employees of Nasdaq shall be deemed to be the books, records, premises, officers, directors, and employees of such Self-Regulatory Subsidiary for the purposes of, and subject to oversight pursuant to, the Act.[18]
- Compliance by Nasdaq with the U.S. federal securities laws and the rules and regulations thereunder, cooperation by Nasdaq with the Commission and Nasdaq's Self-Regulatory Subsidiaries, and reasonable steps by Nasdaq necessary to cause its agents to cooperate with the Commission and, where applicable, the Self-Regulatory Subsidiaries pursuant to their regulatory authority.[19]
- Consent by Nasdaq and its officers, Directors, and employees to the jurisdiction of the United States federal courts, the Commission, and each Self-Regulatory Subsidiary for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of any Self-Regulatory Subsidiary.[20]

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[17] Nasdaq Bylaws Section 12.1(b).

[18] Nasdaq Bylaws Section 12.1(c).

[19] Nasdaq Bylaws Section 12.2(a) (Cooperation with the Commission). The officers, Directors, and employees of Nasdaq, by virtue of their acceptance of such position, shall be deemed to agree to cooperate with the Commission and each Self-Regulatory Subsidiary in respect of the Commission's oversight responsibilities regarding the Self-Regulatory Subsidiaries and the self-regulatory functions and responsibilities of the Self-Regulatory Subsidiaries. Nasdaq Bylaws Section 12.2(b).

[20] Nasdaq Bylaws Section 12.3 (Consent to Jurisdiction).

- Reasonable steps by Nasdaq necessary to cause its current and future officers, Directors, and employees, to consent in writing to the applicability to them of certain provisions of the Nasdaq Bylaws, as applicable, with respect to their activities related to any Self-Regulatory Subsidiary.[21]
- Approval by the Commission under Section 19 of the Act prior to any resolution of the Nasdaq Board to approve an exemption for any person from the ownership limitations of the Nasdaq COI.[22]
- Filing with, or filing with and approval by, the Commission (as the case may be) under Section 19 of the Act prior to amending the Nasdaq COI or the Nasdaq Bylaws.[23]

The Exchange believes that the provisions in the Nasdaq Bylaws should minimize the potential that a person could improperly interfere with, or restrict the ability of, the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act.[24]

Additionally, and similar to the ISE Holdings COI, the Nasdaq COI imposes

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[21] Nasdaq Bylaws Section 12.4 (Further Assurances).

[22] Nasdaq Bylaws Section 12.5 (Board Action with Respect to Voting Limitations of the Certificate of Incorporation).

[23] Nasdaq Bylaws Section 12.6 (Amendments to the Certificate of Incorporation); Nasdaq Bylaws Section 11.3 (Review by Self-Regulatory Subsidiaries).

[24] The U.S. Exchange Holdings COI also includes similar provisions, including that U.S. Exchange Holdings will take reasonable steps necessary to cause ISE Holdings to be in compliance with the "Ownership Limit" and the "Voting Limit." See U.S. Exchange Holdings COI, Articles TENTH through SIXTEENTH. The U.S. Exchange Holdings COI provides that U.S. Exchange Holdings will notify the Exchange's Board if any "Person," either alone or together with its "Related Persons," at any time owns (whether by acquisition or by a change in the number of shares outstanding) of record or beneficially, whether directly or indirectly, 10%, 15%, 20%, 25%, 30%, 35%, or 40% or more of the then outstanding shares of U.S. Exchange Holdings. See SR-ISE-2007-101, supra note 6, at 71981.

limits on direct and indirect changes in control, which are designed to prevent any shareholder from exercising undue control over the operation of its SRO subsidiaries and to ensure that its SRO subsidiaries and the Commission are able to carry out their regulatory obligations under the Act. Specifically, no person who beneficially owns shares of common stock, preferred stock, or notes of Nasdaq in excess of 5% of the securities generally entitled to vote may vote the shares in excess of 5%.[25] This limitation would mitigate the potential for any Nasdaq shareholder to exercise undue control over the operations of the Exchange, and it facilitates the Exchange's and the Commission's ability to carry out their regulatory obligations under the Act. The Nasdaq Board may approve exemptions from the 5% voting limitation for any person that is not a broker-dealer, an affiliate of a broker-dealer, or a person subject to a statutory disqualification under Section 3(a)(39) of the Act,[26] provided that the Nasdaq Board also determines that granting such exemption would be consistent with the self-regulatory obligations of its SRO subsidiary.[27] Further, any such exemption from the 5% voting limitation would not be effective until approved by the Commission pursuant to Section 19 of the Act.[28]

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[25] See Article FOURTH, Section C of the Nasdaq COI.

[26] 15 U.S.C. 78c(a)(39).

[27] See Article FOURTH, Section C.6. of the Nasdaq COI. Specifically, the Nasdaq Board must determine that granting such exemption would (1) not reasonably be expected to diminish the quality of, or public confidence in, Nasdaq or the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (2) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to an 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.

[28] See Section 12.5 of the Nasdaq Bylaws.

6. Trust Agreement[29]

The ISE Holdings COI currently contains certain ownership limits ("Ownership Limits") and voting limits ("Voting Limits") with respect to the outstanding capital stock of ISE Holdings.[30] The Trust Agreement was entered into in 2007 to provide for an automatic transfer of ISE Holdings shares to a trust (the "ISE Trust") if a Person[31] were to obtain an ownership or voting interest in ISE Holdings in excess of these Ownership Limits and Voting Limits, through ownership of one of the Non-U.S. Upstream Owners, without obtaining the approval of the Commission. In this regard, the Trust Agreement serves four general purposes: (i) to accept, hold and dispose of Trust Shares[32] on the terms and subject to the conditions set forth therein; (ii) to determine whether a Material

[29] The Trust Agreement exists among ISE Holdings, U.S. Exchange Holdings, and the Trustees (as defined therein). By its terms, the Trust Agreement originally related solely to ISE Holdings' ownership of ISE, and not to any other national securities exchange that ISE Holdings might control, directly or indirectly. In 2010, the Commission approved proposed rule changes that revised the Trust Agreement to replace references to ISE with references to any Controlled National Securities Exchange. See Securities Exchange Act Release Nos. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2008-85) and 61498 (February 4, 2010), 75 FR 7299 (February 18, 2010) (SR-ISE-2009-90); see also ISE Trust Agreement, Articles I and II, Sections 1.1 and 2.6. Thus, the ISE Trust Agreement also applies to ISE Gemini and ISE Mercury.

[30] See Article FOURTH, Section III of the ISE Holdings COI.

[31] See SR-ISE-2007-101, supra note 6. Under the Trust Agreement, the term "Person" means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, government or any agency or political subdivision thereof, or any other entity of any kind or nature.

[32] Under the Trust Agreement, the term "Trust Shares" means either Excess Shares or Deposited Shares, or both, as the case may be. The term "Excess Shares" means that a Person obtained an ownership or voting interest in ISE Holdings in excess of certain ownership and voting restrictions pursuant to Article FOURTH of the ISE Holdings COI, through, for example, ownership of one of the Non-U.S. Upstream Owners or U.S. Exchange Holdings, without obtaining the approval of the Commission. The term "Deposited Shares" means shares that are transferred to the Trust pursuant to the Trust's exercise of the Call Option.

Compliance Event[33] has occurred or is continuing; (iii) to determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option;[34] and (iv) to transfer Deposited Shares from the Trust to the Trust Beneficiary[35] as provided in Section 4.2(h) therein. The ISE Trust, and corresponding Trust Agreement, is the mechanism by which the Ownership Limits and Voting Limits in the ISE Holdings COI currently would be protected in the event that a Non-US Upstream Owner purportedly transfers any related ownership or voting rights other than in accordance with the ISE Holdings COI.

As described above, Section 19(b) of the Act and Rule 19b-4 thereunder require an SRO to file proposed rule changes with the Commission. Although the ISE Trust is not an SRO, the Trust Agreement has previously been filed with the Commission as stated policies, practices, or interpretations of the Exchange and therefore is considered rules of the Exchange.[36] The purpose for which the ISE Trust was formed will not be relevant after the Closing of the Transaction, given that the Exchange will no longer have Non-U.S. Upstream Owners and that the Exchange's current and resulting U.S. upstream owners' governing documents provide for similar protections (e.g., U.S. Exchange Holdings COI Article THIRTEENTH and Nasdaq Bylaws Section 12.5). Accordingly, the Exchange proposes that the Trust Agreement will cease to be stated policies,

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[33] Under the Trust Agreement, the term "Material Compliance Event" means, with respect to a Non-U.S. Upstream Owner, any state of facts, development, event, circumstance, condition, occurrence or effect that results in the failure of any of the Non-U.S. Upstream Owners to adhere to their respective commitments under the resolutions (i.e., as referenced in note 7) in any material respect.

[34] Under the Trust Agreement, the term "Call Option" means the option granted by the Trust Beneficiary to the Trust to call the Voting Shares as set forth in Section 4.2 therein.

[35] Under the Trust Agreement, the term "Trust Beneficiary" means U.S. Exchange Holdings.

[36] See File No. 10-221, supra note 8.

practices, or interpretations of the Exchange and, therefore, will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction.[37] The Exchange also proposes that, as of the Closing of the Transaction, the parties to the Trust Agreement would be permitted to take the corporate steps necessary to repeal the Trust Agreement and dissolve the ISE Trust.

7. ISE Holdings COI

The ISE Holdings COI was amended in 2007 in relation to the ownership of ISE by Deutsche Börse.[38] At that time, provisions were added to the ISE Holdings COI relating to the ISE Trust to provide for an automatic transfer of ISE Holdings' shares to the ISE Trust if a Person were to obtain an ownership or voting interest in ISE Holdings in excess of Voting Limits and Ownership Limits, without obtaining the approval of the Commission.

As described above, the Exchange is proposing that the Trust Agreement will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction. Accordingly, the Exchange proposes to remove provisions

[37] The current Trust Agreement is attached hereto as Exhibit 5D. Section 8.2 of the Trust Agreement provides, in part, that, for so long as ISE Holdings controls, directly or indirectly, the Exchange, before any amendment or repeal of any provision of the Trust Agreement shall be effective, such amendment or repeal shall be submitted to the board of directors of the Exchange, as applicable, and if such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be. The Exchange notes that, according to the terms of the Trust Agreement, Sections 6.1 and 6.2 thereof, which relate to limits on disclosure of confidential information and certain permitted disclosure, will survive the termination of the Trust Agreement for a period of ten years.

[38] See SR-ISE-2007-101, supra note 6.

relating to the Trust Agreement and the ISE Trust from the ISE Holdings COI.[39] The Exchange proposes to reinstate certain provisions of the ISE Holdings COI that existed prior to Deutsche Börse's ownership of ISE Holdings that were removed upon introduction of the provisions relating to the ISE Trust and the Trust Agreement.[40]

The changes to the ISE Holdings COI proposed herein would describe the corrective treatment of "Excess Shares" (i.e., any sale, transfer, assignment or pledge that, if effective would result in any Person, either alone or together with its Related Persons, owning shares in excess of any of the Ownership Limits). The proposed changes would apply corrective procedures if any Person, alone or together with its Related Persons, purports to sell, transfer, assign or pledge any shares of ISE Holdings stock in in violation of the Ownership Limits. Specifically, any such sale, transfer,

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[39] The proposed, amended ISE Holdings COI is attached hereto as Exhibit 5E. Capitalized terms used to describe the ISE Holdings COI that are not otherwise defined herein shall have the meanings prescribed in the ISE Holdings COI. Article FOURTEENTH of the ISE Holdings COI provides that, for so long as U.S. Exchange Holdings shall control, directly or indirectly, the Exchange, or facility thereof, before any amendment to or repeal of any provision of the ISE Holdings COI shall be effective, the same shall be submitted to the board of directors of the Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

[40] See, e.g., Exhibit 5A to SR-ISE-2007-101, supra note 6. See also Securities Exchange Act Release No. 51029 (January 12, 2005), 70 FR 3233 (January 21, 2005) (SR-ISE-2004-29), through which ISE, which was organized as a corporation at that time (i.e., "ISE, Inc."), amended its Certificate of Incorporation and Constitution at that time in connection with ISE's then-contemplated initial public offering. ISE subsequently reorganized into a holding company structure, whereby it became a limited liability company, as it is so organized currently, and whereby ISE Holdings became the sole owner of ISE. See Securities Exchange Act Release No. 53705 (April 21, 2006), 71 FR 25260 (April 28, 2006) (SR-ISE-2006-04). As a result, and at the time of the reorganization, ISE eliminated the "ISE, Inc." Certificate of Incorporation and Constitution. The ISE Holdings COI and ISE Holdings Bylaws were introduced at that time and included substantially the same ownership and voting limitations that had been contained in the ISE, Inc. Certificate of Incorporation and Constitution.

assignment or pledge would be void, and that number of shares in excess of the Ownership Limits would be deemed to have been transferred to ISE Holdings, as "Special Trustee" of a "Charitable Trust" for the exclusive benefit of a "Charitable Beneficiary" to be determined by ISE Holdings.[41] These corrective procedures also would apply if there is any other event causing any holder of ISE Holdings stock to exceed the Ownership Limits, such as a repurchase of shares by ISE Holdings. The automatic transfer would be deemed to be effective as of the close of business on the business day prior to the date of the violative transfer or other event. The Special Trustee of the Charitable Trust would be required to sell the Excess Shares to a person whose ownership of shares is not expected to violate the Ownership Limits, subject to the right of ISE Holdings to repurchase those shares. The proposed changes to the ISE Holdings COI are as follows:[42]

- The Exchange proposes to delete the current provisions in Article Fourth, Sections III(a)(ii), III(a)(iii) and III(b)(i) of the ISE Holdings COI that provide that the ISE Holdings Board of Directors shall deliver to the ISE Trust copies of certain written notice and updates thereto currently required under Sections

[41] ISE Holdings may also determine to appoint as "Special Trustee" any entity that is unaffiliated with ISE Holdings and any Person or its Related Persons owning Excess Shares, and any successor trustee appointed by ISE Holdings. Currently, the ISE Trust would hold capital stock of ISE Holdings in the event that a person obtains ownership or voting interest in ISE Holdings in excess of the Ownership Limits or Voting Limits or in the event of a Material Compliance Event. See SR-ISE-2007-101, supra note 6, for a discussion of the ISE Trust, including the operation thereof.

[42] The Exchange is not proposing any changes to the actual Ownership Limits or Voting Limits specified in the current ISE Holdings COI. See Article FOURTH, Sections III(a) and III(b) of the ISE Holdings COI. The Exchange proposes to delete certain defined terms from the ISE Holdings COI, such as "ISE Trust," "Trust Beneficiary" and "Trustee," and replace them with new defined terms within the ISE Holdings COI, such as "Charitable Trust," "Charitable Beneficiary" and "Special Trustee." The Exchange also proposes to renumber certain sections of the ISE Holdings COI to account for proposed new and deleted sections therein.

III(a)(ii) and III(a)(iii) of Article FOURTH (i.e., if any Person at any time owns, of record or beneficially, whether directly or indirectly, five percent (5%) or more of the then outstanding Voting Shares).

- The Exchange proposes to adopt new Article FOURTH, Section III(b)(iii) of the ISE Holdings COI, which would provide that, notwithstanding any other provisions contained in the ISE Holdings COI, to the fullest extent permitted by applicable law, any shares of capital stock of ISE Holdings (whether such shares are common stock or preferred stock) not entitled to be voted due to the restrictions set forth in Section III(b)(i) of Article FOURTH of the ISE Holdings COI (and not waived by the ISE Holdings Board of Directors and approved by the Commission pursuant to Section III(b)(i) of Article FOURTH of the ISE Holdings COI), shall not be deemed to be outstanding for purposes of determining a quorum or a minimum vote required for the transaction of any business at any meeting of stockholders of ISE Holdings, including, without limitation, when specified business is to be voted on by a class or a series voting as a class.
- As a result of the addition of new Article FOURTH, Section III(b)(iii) of the ISE Holdings COI, the Exchange proposes to renumber current Article FOURTH, Section III(b)(iii) as resulting Article FOURTH, Section III(b)(iv).
- The Exchange proposes several changes to Article FOURTH, Section III(c) of the ISE Holdings COI, which relates to violations of any Ownership Limits or Voting Limits and the treatment of Excess Shares, including the following:
    - Addition of new text relating to the designation as "Excess Shares" for any shares held in excess of the relevant Ownership Limits; such designation and treatment being effective as of the close of business on the business

day prior to the date of the purported transfer or other event leading to such Excess Shares.[43]

- Deletion of current text requiring notification to the ISE Trust upon the occurrence of certain events and the transfer of Voting Shares to the ISE Trust.[44]
- Addition of new text describing the treatment of "Excess Shares" upon any sale, transfer, assignment or pledge that, if effective would result in any Person, either alone or together with its Related Persons, owning shares in excess of any of the Ownership Limits. Specifically, the Exchange proposes within new Article FOURTH, Section III(c)(i) of the ISE Holdings COI that any such purported event shall be void ab initio as to such Excess Shares, and the intended transferee shall acquire no rights in such Excess Shares. Such Excess Shares shall be deemed to have been transferred to ISE Holdings (or to an entity appointed by ISE Holdings that is unaffiliated with ISE Holdings and any Person or its Related Persons owning such Excess Shares), as Special Trustee of the Charitable Trust for the exclusive benefit of the Charitable Beneficiary or Beneficiaries.[45]

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[43] See resulting Article FOURTH, Section III(c).

[44] Id.

[45] See proposed Article FOURTH, Section III(c)(ii). The "Charitable Beneficiary" would be one or more organizations described in Sections 170(b)(1)(A) or 170(c) of the Internal Revenue Code of 1986, as amended from time to time. The "Charitable Trust" would be the trust established for the benefit of the Charitable Beneficiary for which ISE Holdings is the trustee. The "Special Trustee" would be ISE Holdings, in its capacity as trustee for the Charitable Trust, any entity appointed by ISE Holdings that is unaffiliated with ISE Holdings and any Person or its Related Persons owning Excess Shares, and any successor trustee appointed by ISE Holdings.

- Addition of new text describing the treatment of dividends or other distributions paid with respect to Excess Shares.[46]
- Addition of new text describing the handling of any distribution of assets received in respect of the Excess Shares in any liquidation, dissolution or winding up of, or any distribution of the assets of ISE Holdings.[47]
- Addition of new text describing the authority of the Special Trustee with respect to rescinding as void any votes cast by a purported transferee or holder of Excess Shares as well as recasting of votes in accordance with the desires of the Special Trustee acting for the benefit of ISE Holdings.[48]
- Addition of new text describing the sale by the Special Trustee, to a Person or Persons designated by the Special Trustee whose ownership of Voting Shares will not violate any Ownership Limit or Voting Limit, of Excess Shares transferred to the Charitable Trust, within 20 days of receiving notice from ISE Holdings that Excess Shares have been so transferred.[49] Existing text would be deleted that requires the Trustees of the ISE Trust to use their commercially reasonable efforts to sell the Excess Shares upon receipt of written instructions from the ISE Trust Beneficiary. New text also would be added describing the handling of any proceeds of such a sale.
- Addition of new text describing that Excess Shares shall be deemed to have been offered for sale to ISE Holdings on the date of the transaction or

[46] See proposed Article FOURTH, Section III(c)(iii).

[47] See proposed Article FOURTH, Section III(c)(iv).

[48] See proposed Article FOURTH, Section III(c)(v).

[49] See proposed Article FOURTH, Section III(c)(vi).

event resulting in such Excess Shares.[50]

- Deletion of current Article FOURTH, Section III(c)(v), which currently relates to the ISE Trust Beneficiary's right to reacquire Excess Shares from the ISE Trust under certain circumstances.

The Exchange is not proposing to reinstate all of the ISE Holdings COI text that existed prior to Deutsche Börse's ownership of ISE Holdings, as certain of such text would continue to not be applicable, even after the Transaction, given the Exchange's resulting ownership. For example, prior to Deutsche Börse's ownership of ISE Holdings, the ISE Holdings COI contained certain provisions that dealt with the publicly-traded nature of ISE Holdings' stock. This text was removed from the ISE Holdings COI upon Deutsche Börse's ownership of ISE Holdings, as ISE Holdings' stock ceased to be publicly-traded.[51] Therefore, the Exchange is not proposing to reinstate the following provisions of the ISE Holdings COI that existed prior to Deutsche Börse's ownership of ISE Holdings relating to:

- Regulation 14A under the Act (pertaining to solicitations of proxies).
- the treatment of transactions of ISE Holdings stock on or through the facilities of any national securities exchange or national securities association.
- inspection of the ISE Holdings accounts and records by ISE Holdings stockholders.
- stockholder voting to amend, repeal or adopt provisions of the ISE Holdings COI or the ISE Holdings Bylaws.
- stockholder action called at annual or special meetings of stockholders.

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[50] See proposed Article FOURTH, Section III(c)(vii).

[51] See Exhibit 5A to SR-ISE-2007-101, supra note 6.

- nominations for directors and the election thereof.

The Exchange also is not proposing to reinstate the ISE Holdings COI text that existed prior to Deutsche Börse's ownership of ISE Holdings that related to changes in terminology used throughout the ISE Holdings COI.[52] Additionally, provisions of the ISE Holdings COI that authorize shares of capital stock of ISE Holdings have been amended since Deutsche Börse acquired ownership of ISE Holdings.[53] The Exchange does not propose to amend the text of the ISE Holdings COI relating to share authorization. The Exchange also does not propose to reinstate the location or specific wording of text of the ISE Holdings COI that was adjusted or relocated upon Deutsche Börse's ownership of ISE Holdings, but that otherwise has the same practical effect and meaning as it did prior to Deutsche Börse's ownership of ISE Holdings.

7. U.S. Exchange Holdings COI

The Exchange proposes to remove the reference to the Trust Agreement in Article THIRTEENTH of the U.S. Exchange Holdings COI. As proposed herein, the Trust Agreement will cease to be considered rules of the Exchange as of the Closing of the Transaction and would be repealed in connection with the Transaction. The Exchange also proposes to retitle the document as the "Fourth" Amended and Restated Certificate of Incorporation of U.S. Exchange Holdings and update the effective date thereof.[54]

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[52] For example, the ISE Holdings COI currently refers to Delaware General Corporation Law as "DGCL." The Exchange would not reinstate the prior "GCL" term that was used in the ISE Holdings COI.

[53] See, e.g., Securities Exchange Act Release No 73860 (December 17, 2014), 79 FR 77066 (December 23, 2014) (SR-ISE-2014-44).

[54] The proposed, amended U.S. Exchange Holdings COI is attached hereto as Exhibit 5F. Article SIXTEENTH of the U.S. Exchange Holdings COI provides that, for so long as U.S. Exchange Holdings shall control, directly or indirectly, the Exchange, or facility thereof, before any amendment to or repeal of any provision of the U.S. Exchange Holdings COI shall be effective, the same shall be submitted to the board of directors of

8. ISE Holdings Bylaws

The ISE Holdings COI Voting Limits restrict any person, either alone or together with its related persons, from having voting control, either directly or indirectly, over more than 20% of the outstanding capital stock of ISE Holdings. The ISE Holdings COI Ownership Limits restrict any person, either alone or together with its related persons, from directly or indirectly owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings (or in the case of any Exchange member, acting alone or together with its related persons, from directly or indirectly owning of record or beneficially more than 20% of the outstanding capital stock of ISE Holdings).[55]

The ISE Holdings COI and the ISE Holdings Bylaws provide that the board of directors of ISE Holdings may waive these voting and ownership restrictions in an amendment to the ISE Holdings Bylaws if the board makes the following three findings: (1) the waiver will not impair the ability of the Exchange to carry out its functions and responsibilities as an exchange under the Act and the rules thereunder; (2) the waiver is otherwise in the best interests of ISE Holdings, its stockholders, and the Exchange; and (3) the waiver will not impair the ability of the Commission to enforce the Act. However, the board of directors may not waive these voting and ownership restrictions as they apply to Exchange members. In addition, the board of directors may not waive these voting and ownership restrictions if such waiver would result in a person subject to a "statutory disqualification" owning or voting shares above the stated thresholds. Any

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the Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. The Exchange also proposes to amend the U.S. Exchange Holdings COI to consistently refer to such document as the "Restated Certificate," which is a defined term therein.

[55] See ISE Holdings COI, Article FOURTH, Section III.

waiver of these voting and ownership restrictions must be by way of an amendment to the Bylaws approved by the board of directors, which amendment must be approved by the Commission.[56]

Acting pursuant to this waiver provision, the board of directors of ISE Holdings has approved the amendment to the ISE Holdings Bylaws to waive the Ownership Limits and Voting Limits in order to permit Nasdaq to indirectly own 100% of the outstanding common stock of ISE Holdings as of and after Closing of the Transaction.[57] In adopting such amendment, the board of directors of ISE Holdings made the necessary determinations and approved the submission of the Proposed Rule Change to the Commission. In so waiving the applicable voting and ownership restrictions, the board of directors of ISE Holdings has determined, with respect to Nasdaq, that: (i) such waiver will not impair the ability of ISE Holdings and each Controlled National Securities Exchange, or facility thereof, to carry out its respective functions and responsibilities

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[56] See ISE Holdings COI, Article FOURTH, Sections III(a)(i) and III(b)(i). Such amendment to Holdings Bylaws must be filed with and approved by the Commission under Section 19(b) of the Act and become effective thereunder. In this regard, Section 10.1 of the Bylaws provides that the Bylaws may be amended, added to, rescinded or repealed at any meeting of the Board of Directors of ISE Holdings or meeting of the stockholders. With respect to each national securities exchange controlled, directly or indirectly, by ISE Holdings (the "Controlled National Securities Exchanges"), or facility thereof, before any amendment to or repeal of any provision of the Bylaws of ISE Holdings shall be effective, the same shall be submitted to the board of directors of each Controlled National Securities Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

[57] The proposed, amended ISE Holdings Bylaws are attached hereto as Exhibit 5G. The proposed amendment to the ISE Holdings Bylaws would also clarify that Eurex Global Derivatives AG or "EGD," which is referenced in Section 11.2 of the ISE Holdings Bylaws, ceased to be an Upstream Owner of the Exchange as a result of a prior transaction that did not require an amendment to the ISE Holdings Bylaws. See Securities Exchange Act Release No. 73530 (November 5, 2014), 79 FR 77066 (December 17, 2014) (SR-ISE-2014-44).

under the Act and the rules promulgated thereunder;[58] (ii) such waiver is otherwise in the best interests of ISE Holdings, its stockholders, and each Controlled National Securities Exchange, or facility thereof;[59] (iii) such waiver will not impair the ability of the Commission to enforce the Act;[60] (iv) neither Nasdaq nor any of its Related Persons (as that term is defined in the ISE Holdings COI) are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act); and (v) neither Nasdaq nor any of its Related Persons is a member (as such term is defined in Section 3(a)(3)(A) of the Act) of such Controlled National Securities Exchange.

The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. In addition, the Transaction will not impair the ability of the Exchange's, or any facility thereof, to carry out their respective functions and responsibilities under the Act and will not impair the ability of the Commission to enforce the Act. The Exchange therefore seeks approval of the waiver described herein with respect to the Ownership Limits and Voting Limits in order to permit Nasdaq to indirectly own 100% of the outstanding

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[58] The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. The Exchange is not proposing any amendments to its trading or regulatory rules at this time relating to the Transaction.

[59] For example, the Transaction will produce a stronger and more efficient infrastructure that will have an improved ability to provide innovative products and services.

[60] The Commission will continue to have plenary regulatory authority over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect owners with respect to activities related to the Exchange. The Commission will continue to have appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect owners and their directors (where applicable), officers, employees and agents to the extent they are involved in the activities of the Exchange.

common stock of ISE Holdings as of and after Closing of the Transaction.

Summary

The Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. The Transaction will not impair the ability of ISE Holdings, the Exchange, or any facility thereof, to carry out their respective functions and responsibilities under the Act. Moreover, the Transaction will not impair the ability of the Commission to enforce the Act with respect to the Exchange. As such, the Commission's plenary regulatory authority over the Exchange will not be affected by the approval of this Proposed Rule Change. The Exchange is requesting approval by the Commission of changes proposed herein in order to allow the Transaction to take place.

2. Statutory Basis

The Exchange believes that this proposal is consistent with Section 6(b)of the Act,[61] in general, and furthers the objectives of Section 6(b)(1) of the Act,[62] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Proposed Rule Change is designed to enable the Exchange to continue to have the authority and ability to effectively fulfill its self-regulatory duties pursuant to the Act and the rules promulgated thereunder. The Exchange will continue to conduct its regulated

[61] 15 U.S.C. 78s(b).

[62] 15 U.S.C. 78s(b)(1).

activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect owners with respect to activities related to the Exchange. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will continue to provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect owners and their directors (where applicable), officers, employees and agents to the extent they are involved in the activities of the Exchange.

The Exchange also believes that this Proposed Rule Change furthers the objectives of Section 6(b)(5)[63] of the Act because the Proposed Rule Change would be consistent with and facilitate a governance and regulatory structure that is designed 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. Specifically, the Exchange believes that the Proposed Rule Change will continue to provide the Commission and the Exchange with access to necessary information that will allow the Exchange to efficiently and effectively enforce compliance with the Act, as well as allow the Commission to provide proper oversight, which will ultimately promote just and equitable principles of trade and protect investors.

[63] 15 U.S.C. 78f(b)(5).

Approval of this Proposed Rule Change will enable ISE Holdings to continue its operations and the Exchange to continue its orderly discharge of regulatory duties 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.

In addition, the Exchange expects that the Transaction will facilitate efficiencies and innovation for clients and efficient, transparent and well-regulated markets for issuers and clients, thus removing impediments to, and perfecting the mechanism of a free and open market and a national market system. The Transaction will benefit investors, the market as a whole, and shareholders by, among other things, enhancing competition among securities venues and reducing costs. In particular, the Transaction will contribute to streamlined and efficient operations, thereby intensifying competition for transaction order flow with other exchange and non-exchange trading centers, as well as potentially in other areas, such as proprietary market data products and listings. This enhanced level of competition among trading centers will benefit investors through new or more competitive product offerings and, ultimately, lower costs.

Furthermore, the Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted and will not make any changes to its regulated activities in connection with the Transaction. Therefore, the Exchange believes that it will continue to satisfy the

requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.

The Exchange believes it is consistent with the Act to allow Nasdaq to become the ultimate parent of the Exchange. Neither Nasdaq nor any of its related persons is subject to any statutory disqualification or is a Member of the Exchange. Moreover, the Nasdaq governing documents include certain provisions designed to maintain the independence of the Exchange's self-regulatory functions. Accordingly, the Exchange believes that Nasdaq's acquisition of ultimate ownership and exercise of voting control of the Exchange will not impair the ability of the Commission or the Exchange to discharge their respective responsibilities under the Act.

Although Nasdaq will not carry out regulatory functions, its activities with respect to the operation of the Exchange must be consistent with, and not interfere with, the Exchange's self-regulatory obligations. Nasdaq's governing documents include certain provisions that are designed to maintain the independence of the Exchange's self-regulatory functions, enable the Exchange to operate in a manner that complies with the U.S. federal securities laws, including the objectives and requirements of Sections 6(b) and 19(g) of the Act,[64] and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act. For example, the Nasdaq governing documents provide that Nasdaq will comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and the Exchange. Also, each board member, officer, and employee of Nasdaq, in discharging his or her responsibilities, shall comply with the U.S. federal securities laws and the rules and regulations thereunder, cooperate with the Commission, and cooperate

[64] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

with the Exchange. In discharging his or her responsibilities as a board member of Nasdaq, each such member must, to the fullest extent permitted by applicable law, take into consideration the effect that Nasdaq's actions would have on the ability of the Exchange to carry out its responsibilities under the Act. In addition, Nasdaq, its board members, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange.

Further, Nasdaq (along with its respective board members, officers, and employees) and U.S. Exchange Holdings agree to keep confidential, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the Exchange, including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices, and audit information, contained in the books and records of the Exchange and not use such information for any non-regulatory purposes.

In addition, Nasdaq's books and records relating to the activities of the Exchange will at all times be made available for, and books and records of U.S. Exchange Holdings will be subject at all times to, inspection and copying by the Commission and the Exchange. Books and records of U.S. Exchange Holdings related to the activities of the Exchange also will continue to be maintained within the U.S. Moreover, for so long as Nasdaq directly or indirectly controls the Exchange, the books, records, officers, directors (or equivalent), and employees of Nasdaq shall be deemed to be the books, records, officers, directors, and employees of the Exchange.

To the extent involved in the activities of the Exchange, Nasdaq, its board members, officers, and employees irrevocably submit to the jurisdiction of the

U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of the Exchange. Likewise, U.S. Exchange Holdings, its officers and directors, and employees whose principal place of business and residence is outside of the U.S., to the extent such directors, officers, or employees are involved in the activities of the Exchange, irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for purposes of any action arising out of, or relating to, the activities of the Exchange.

The Nasdaq governing documents, the U.S. Exchange Holdings COI, and the U.S. Exchange Holdings Bylaws require that any change thereto must be submitted to the Exchange's Board. If such change must be filed with, or filed with and approved by, the Commission under Section 19 of the Act and the rules thereunder, then such change shall not be effective until filed with, or filed with and approved by, the Commission. This requirement to submit changes to the Exchange's Board continues for so long as Nasdaq or U.S. Exchange Holdings, as applicable, directly or indirectly, control the Exchange.

As Deutsche Börse and Eurex Frankfurt will both cease to be Non-U.S. Upstream Owners of the Exchange upon the Closing of the Transaction, the Exchange believes that its proposal that the resolutions of Deutsche Börse and Eurex Frankfurt will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction is consistent with the Act.

The purpose for which the ISE Trust was formed will not be relevant after the Closing of the Transaction, given that the Exchange will no longer have Non-U.S. Upstream Owners and that the Exchange's current and resulting U.S. upstream owners' governing documents provide for similar protections (e.g., U.S. Exchange Holdings COI Article THIRTEENTH and Nasdaq Bylaws Section 12.5). Accordingly, the Exchange

believes that its proposal that the Trust Agreement will cease to be considered rules of the Exchange as of a date that corresponds to the Closing date of the Transaction is consistent with the Act.

Given the Exchange's proposal to repeal the Trust Agreement and dissolve the ISE Trust, the Exchange believes that the proposed changes to the ISE Holdings COI are consistent with the Act. The proposed changes would delete provisions of the ISE Holdings COI that will no longer be relevant and would reinstate certain provisions of the ISE Holdings COI that were removed upon introduction of the provisions relating to the ISE Trust and the Trust Agreement.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[65] the Exchange believes that the Proposed Rule Change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange believes that the Proposed Rule Change will enhance competition among intermarket trading venues, as the Exchange believes that the Transaction will produce a stronger and more efficient infrastructure that will have an improved ability to provide innovative products and services. Moreover, the Exchange will continue to conduct regulated activities (including operating and regulating its market and Members) of the type it currently conducts, but will be able to do so in a more efficient manner to the benefit of its Members.

The Exchange's conclusion that the Proposed Rule Change would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act is consistent with the Commission's prior conclusions about similar

[65] 15 U.S.C. 78f(b)(8).

combinations involving multiple exchanges in a single corporate family.[66] In this regard, the Exchange notes that the Exchange, and its affiliates ISE Gemini and ISE, function only as options trading markets – they do not function as equity trading markets or as clearing agencies, as do certain of Nasdaq's existing subsidiaries.

The Exchange believes that there is considerable support for a finding that the Transaction is consistent with the Act with respect to competition. 14 exchanges currently compete for options trading business. Exchanges compete on technology, market model, trading venue, fees and fee structure. Additionally, low switching costs allow customers to easily move to another exchange, which customers do regularly, as reflected in constantly varying market shares among the existing exchange operators. In addition, the Commission has approved several, new registered options exchanges in recent history, which highlights an increase in competition in the market for listed options trading.[67]

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[66] See, e.g., Securities Exchange Act Release No. 66071 (Dec. 29, 2011), 77 FR 521 (Jan. 05, 2012) (SR-CBOE-2011-107 and SR-NSX-2011-14); Securities Exchange Act Release No. 58324 (Aug. 7, 2008), 73 FR 46936 (Aug. 12, 2008) (SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01); Securities Exchange Act Release No. 53382 (Feb. 27, 2006), 71 FR 11251 (Mar. 06, 2006) (SR-NYSE-2005-77); Securities Exchange Act Release No. 71449 (Jan. 30, 2014), 79 FR 6961 (Feb. 05, 2014) (SR-EDGA-2013-34; SR-EDGX-2013-43); Securities Exchange Act Release No. 66171 (January 17, 2012), 77 FR 3297 (January 23, 2012) (File Nos. SR-EDGA-2011-34; SR-EDGX-2011-33; SR-ISE-2011-69; SR-NYSE-2011-51; SR-NYSEAmex-2011-78; SR-NYSEArca-2011-72).

[67] See, e.g., Securities Exchange Act Release Nos. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (Order approving application for exchange registration of ISE Mercury, LLC); 75650 (August 7, 2015), 80 FR 48600 (August 13, 2015) (Order approving rules governing the trading of options on the EDGX Options Market); 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (Order approving application for exchange registration of Topaz Exchange, LLC (n/k/a ISE Gemini, LLC)); 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (Order approving application for exchange registration of Miami International Securities Exchange, LLC); 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (Order approving rules governing the trading of options on the BATS Options Exchange).

The Exchange believes that the Transaction will not change the competitive landscape for listed options trading and the changes proposed herein are consistent with other recent Commission approvals. For example, a similar proposed combination of Deutsche Börse and NYSE Euronext in 2011 received Commission approval and would have resulted in a combined greater than 40% market share of listed options volume among its three, respective options exchanges (based on 2010 data).[68] Similarly, as a result of the Transaction, the options exchanges owned by Nasdaq would account for approximately 41% aggregate market share of listed options volume.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the publication date of this notice or within such longer period (1) as the Commission may designate up to 45 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such Proposed Rule Change; or

[68] See Securities Exchange Act Release No. 66171 (January 17, 2012), 77 FR 3297 (January 23, 2012) (File Nos. SR-EDGA-2011-34; SR-EDGX-2011-33; SR-ISE-2011-69; SR-NYSE-2011-51; SR-NYSEAmex-2011-78; SR-NYSEArca-2011-72).

(b) institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form http://www.sec.gov/rules/sro.shtml); or
- Send an E-mail to rule-comments@sec.gov. Please include File No. SR-ISEMercury-2016-10 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISEMercury-2016-10.

This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room. Copies of

such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISEMercury-2016-10 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Secretary

[69] 17 CFR 200.30-3(a)(12).

Exhibit 5A – Form of German Parent Corporate Resolutions

All text to be deleted.

FORM OF GERMAN PARENT CORPORATE RESOLUTIONS

WHEREAS, on December 19, 2007, International Securities Exchange Holdings, Inc. ("**ISE Holdings**") became a wholly-owned subsidiary of U.S. Exchange Holdings, Inc., a wholly-owned subsidiary of Eurex Frankfurt AG (the "**Merger**");

WHEREAS, in connection with the Merger, the Corporation and the members of this [Supervisory Board/Executive Board] adopted resolutions, substantially in the form attached hereto as Exhibit A, on [ ], 2007, relating to the ongoing activities of International Securities Exchange, LLC ("**ISE**")[1] (the "**ISE Resolutions**");

WHEREAS, on July 26, 2013, the U.S. Securities and Exchange Commission ("**SEC**") issued an order approving registration of ISE Gemini, LLC (formerly known as Topaz Exchange, LLC, "**ISE Gemini**") as a national securities exchange, under Section 6 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**");

WHEREAS, in connection with the registration of ISE Gemini as a national securities exchange under Section 6 of the Exchange Act, the Corporation and the members of this [Supervisory Board/Executive Board] adopted resolutions (the "**ISE Gemini Addendum**"), substantially in the form attached hereto as Exhibit B, on [ ], supplementing the ISE Resolutions, so that the ISE Resolutions apply to ISE Gemini in the same manner and to the same extent as the ISE Resolutions apply to ISE;

WHEREAS, ISE Mercury, LLC ("**ISE Mercury**") will file a Form 1 application (the "**Application**") with the SEC seeking registration of a national securities exchange, under Section 6 of the Exchange Act;

WHEREAS, in connection with the approval by the SEC of the Application, the Corporation is required to make certain resolutions with respect to the ongoing activities of ISE Mercury in the same manner and extent as the ISE Resolutions;

WHEREAS, the Corporation and the members of this [Supervisory Board/Executive Board] hereby desire to supplement the ISE Resolutions so that the ISE Resolutions apply to ISE Mercury in the same manner and to the same extent as the ISE Resolutions apply to ISE and ISE Gemini, respectively;

WHEREAS, the ISE Resolutions, as supplemented by the ISE Gemini Addendum, continue to remain in full force and effect and shall not be limited in any way by supplementing the ISE Resolutions pursuant to these resolutions (this "**Addendum**"); and

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[1] See Securities and Exchange Commission Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (SR-ISE-2007-101).

WHEREAS, the Corporation and the members of this [Supervisory Board/Executive Board] hereby acknowledge that the resolutions made in this Addendum are made specifically in connection with the Application (and the Corporation's indirect ownership and voting interests in ISE Mercury) and the ongoing activities of ISE Mercury and are not intended to limit any duty or obligation of any Person[2], under law or otherwise.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

(1) The ISE Resolutions, which shall remain in full force and effect, are hereby incorporated by reference herein, in their entirety, except that any reference in the ISE Resolutions to "commercial purposes" shall be read to reference "non-regulatory purposes";

(2) The ISE Resolutions are hereby supplemented to apply to ISE Mercury in the same manner and to the same extent as the ISE Resolutions apply to ISE and ISE Gemini, respectively. In that regard:

(a) The Corporation hereby agrees to the provisions in resolutions 1-6 (inclusive), resolution 9, and resolution 10 of the ISE Resolutions, except that any reference in the ISE Resolutions to ISE, LLC shall be read to reference ISE Mercury;

(b) Each member of this [Supervisory Board/Executive Board] hereby agrees, and the Corporation shall take reasonable steps necessary to cause each person who becomes a member of this [Supervisory Board/Executive Board] after the date of these resolutions to agree, in writing to the provisions in resolutions 7(a)-7(f) (inclusive) of the ISE Resolutions, except that any reference in the ISE Resolutions to ISE, LLC shall be read to reference ISE Mercury; and

(c) The Corporation shall take reasonable steps necessary to cause each of its officers and employees who are involved in the activities of ISE Mercury to agree, in writing to the provisions in resolutions 8(a)-8(e) (inclusive) of the ISE Resolutions, except that any reference in the ISE Resolutions to ISE, LLC shall be read to reference ISE Mercury.

(3) Notwithstanding any provision of the foregoing resolutions or the ISE Resolutions, before: (a) any amendment to or repeal of any provision of this or any of the foregoing resolutions or the ISE Resolutions; or (b) any action by the Corporation that would have the effect of amending or repealing any provision of this or any of the foregoing resolutions or the ISE Resolutions shall be effective, the same shall be submitted to the board of directors of ISE Mercury, and if the same must be filed with, or filed with and approved by, the SEC before the same may be effective, under Section 19 of the Exchange Act and the rules promulgated

[2] As used in these resolutions, the term "Person" shall mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

thereunder, then the same shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

The undersigned, being the members of this Board, hereby declare to have adopted the foregoing resolutions and agree to be bound by the obligations and consents provided therein

[Date/place, signature of each board member]

Exhibit A

FORM OF GERMAN PARENT CORPORATE RESOLUTIONS

WHEREAS, the [Corporation] [Corporation's indirect subsidiary, Eurex Frankfurt AG ("**Eurex Frankfurt**")] is a party to that certain Agreement and Plan of Merger dated as of April 30, 2007 (the "**Merger Agreement**") among Eurex Frankfurt, Ivan Acquisition Co. (the "**Merger Sub**") and International Securities Exchange Holdings, Inc. ("**ISE Holdings**"), pursuant to which the parties thereto have agreed to the merger of the Merger Sub with and into ISE Holdings on the terms and subject to the conditions set forth in the Merger Agreement ("**Merger**"), as a result of which Merger the sole stockholder of ISE Holdings will be U.S. Exchange Holdings, Inc., a wholly-owned subsidiary of Eurex Frankfurt;

WHEREAS, ISE Holdings is the sole member of International Securities Exchange, LLC ("**ISE, LLC**"), which is registered with the U.S. Securities and Exchange Commission ("**SEC**") as a national securities exchange;

WHEREAS, ISE Holdings is subject to Ownership Limits and Voting Limits, as such terms are defined in Article FOURTH, Section III of the Certificate of Incorporation of ISE Holdings;

WHEREAS, the completion of the Merger is subject to approval by the SEC of a proposed rule change filed by ISE, LLC (the "**Rule Filing**") under Section 19 of the U.S. Securities Exchange Act of 1934 ("**Exchange Act**");

WHEREAS, the Corporation is required to make certain resolutions in connection with the Merger that will become part of the Rule Filing and will be subject to SEC approval under Section 19 of the Exchange Act; and

WHEREAS, the Corporation and the members of this [Supervisory Board/Executive Board] hereby acknowledge that said resolutions are made specifically in connection with the Merger and the ongoing activities of ISE, LLC and are not intended to limit any duty or obligation of any Person (as defined in paragraph (4) below), under law or otherwise;

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

(1) The Corporation shall, in connection with its involvement in the activities of ISE, LLC, comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate: (a) with the SEC; and (b) with ISE, LLC pursuant to, and to the extent of, ISE, LLC's regulatory authority.

(2) The Corporation shall, to the extent that it is involved in the activities of ISE, LLC, be deemed to irrevocably submit to the jurisdiction of the United States federal courts and the SEC for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of ISE, LLC (and shall be deemed to agree that ISE Holdings may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding), and

shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it is not personally subject to the jurisdiction of the SEC, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

(3) For so long as the Corporation shall directly or indirectly control ISE, LLC: (a) the books, records, officers, directors (or equivalent) and employees of the Corporation shall be deemed to be the books, records, officers, directors and employees of ISE, LLC for purposes of and subject to oversight pursuant to the U.S. Securities Exchange Act of 1934 ("**Exchange Act**") to the extent that such books and records are related to, or such officers, directors (or equivalent) and employees are involved in, the activities of ISE, LLC; and (b) the Corporation's books and records related to the activities of ISE, LLC shall at all times be made available for inspection and copying by the SEC and ISE, LLC.

(4) The Corporation shall take reasonable steps necessary to cause ISE Holdings to be in compliance with the Ownership Limits and the Voting Limits. For so long as the Corporation shall directly or indirectly control ISE, LLC, if any Person, at any time, either alone or together with its related persons, owns (whether by acquisition or by a change in the number of shares outstanding), of record or beneficially, all as would be determined under Sections 21 and 22 of the German Securities Trading Act, each as may be amended from time to time, whether directly or indirectly, 20%, 25%, 30%, 50%, or 75% or more of the then-outstanding shares of stock in the Corporation entitled to vote on any matter, the Corporation shall, as soon as practicable, give written notice of such ownership to the board of directors of ISE, LLC and to ISE Trust, a statutory trust formed under the laws of the State of Delaware of the United States of America, as provided in that certain Trust Agreement, dated as of [•], 2007, among U.S. Exchange Holdings, Inc., ISE Holdings, Inc., [•], as Delaware Trustee, [•], as Trustee, [•], as Trustee and [•], as Trustee, which notice shall state: (a) such Person's full legal name; (b) such Person's title or status and the date on which such title or status was acquired; (c) such Person's approximate ownership interest in the Corporation; and (d) whether such Person has the power, directly or indirectly, to direct the management or policies of the Corporation, whether through ownership of securities, by contract or otherwise. As used in these resolutions, the term "**Person**" shall mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

(5) The Corporation shall, to the extent it is involved in the activities of ISE, LLC, give due regard to the preservation of the independence of the self-regulatory function of ISE, LLC and to its 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 of ISE, LLC relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of ISE, LLC to carry out its responsibilities under the Exchange Act.

(6) To the fullest extent permitted by applicable law, all confidential information that shall come into the possession of the Corporation pertaining to the self-regulatory function of ISE, LLC (including but not limited to confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of ISE, LLC

shall: (a) not be made available to any Persons other than to those officers, directors (or equivalent), employees and agents of the Corporation that have a reasonable need to know the contents thereof; (b) be retained in confidence by the Corporation and the officers, directors (or equivalent), employees, and agents of the Corporation; and (c) not be used for any commercial purposes, *provided, however*, that nothing in these resolutions shall be interpreted so as to limit or impede: (i) the rights of the SEC or ISE, LLC to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees, or agents of the Corporation to disclose such confidential information to the SEC or ISE, LLC.

(7) Each member of this [Supervisory Board/Executive Board] hereby agrees, and the Corporation shall take reasonable steps necessary to cause each person who becomes a member of this [Supervisory Board/Executive Board] after the date of these resolutions to agree, in writing:

(a) that, in discharging his or her responsibilities as a member of this [Supervisory Board/Executive Board], such member shall, in connection with such member's involvement in the activities of ISE, LLC: (i) comply with the U.S. federal securities laws and the rules and regulations thereunder; and (ii) cooperate (A) with the SEC, and (B) with ISE, LLC pursuant to, and to the extent of, ISE, LLC's regulatory authority;

(b) to irrevocably submit to the jurisdiction of the United States federal courts and the SEC for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of ISE, LLC, to the extent such member is involved in the activities of ISE, LLC, and that ISE Holdings may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding, and such member waives, and agrees not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that such member is not personally subject to the jurisdiction of the SEC, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency;

(c) that such member is deemed to be a director of ISE, LLC for purposes of and subject to oversight pursuant to the Exchange Act to the extent that such member is involved in the activities of ISE, LLC;

(d) to give due regard to the preservation of the independence of the self-regulatory function of ISE, LLC and to its obligations to investors and the general public, and not to take any actions that would interfere with the effectuation of any decisions by the board of directors of ISE, LLC relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of ISE, LLC to carry out its responsibilities under the Exchange Act;

(e) that, to the fullest extent permitted by applicable law, all confidential information that shall come into the possession of such member pertaining to the self-regulatory function of ISE, LLC (including but not limited to confidential information regarding disciplinary matters,

trading data, trading practices and audit information) contained in the books and records of ISE, LLC shall: (a) not be made available to any Persons other than to those officers, directors (or equivalent), employees and agents of the Corporation that have a reasonable need to know the contents thereof; (b) be retained in confidence by such member; and (c) not be used by such member for any commercial purposes, *provided, however*, that nothing in these resolutions shall be interpreted so as to limit or impede: (i) the rights of the SEC or ISE, LLC to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of such member to disclose such confidential information to the SEC or ISE, LLC; and

(f) that, in discharging his or her responsibilities as a member of this [Supervisory Board/Executive Board], to the extent such member is involved in the activities of ISE, LLC and to the fullest extent permitted by applicable law, such member will take into consideration the effect that the Corporation's actions would have on the ability of:

(i) ISE, LLC to carry out its responsibilities under the Exchange Act; and

(ii) ISE, LLC and the Corporation: (A) to engage in conduct that fosters and does not interfere with the ability of ISE, LLC and the Corporation to prevent fraudulent and manipulative acts and practices in the securities markets; (B) to promote just and equitable principles of trade in the securities markets; (C) to foster cooperation and coordination with Persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (D) to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (E) in general, to protect investors and the public interest.

(8) The Corporation shall take reasonable steps necessary to cause each of its officers and employees who are involved in the activities of ISE, LLC to agree, in writing:

(a) that, in discharging such officer's or employee's responsibilities as an officer or employee of the Corporation, in connection with such officer's or employee's involvement in the activities of ISE, LLC, such officer or employee will: (i) comply with the U.S. federal securities laws and the rules and regulations thereunder; and (ii) cooperate (A) with the SEC, and (B) with ISE, LLC pursuant to, and to the extent of, ISE, LLC's regulatory authority;

(b) to irrevocably submit to the jurisdiction of the United States federal courts and the SEC for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of ISE, LLC to the extent that such officer or employee is involved in the activities of ISE, LLC, and that ISE Holdings may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding, and that such officer or employee waives, and agrees not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that such officer or employee is not personally subject to the jurisdiction of the SEC, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency;

(c) that such officer or employee is deemed to be an officer or employee of ISE, LLC for purposes of and subject to oversight pursuant to the Exchange Act to the extent that such officer or employee is involved in the activities of ISE, LLC;

(d) to give due regard to the preservation of the independence of the self-regulatory function of ISE, LLC and to its obligations to investors and the general public, and not to take any actions that would interfere with the effectuation of any decisions by the board of directors of ISE, LLC relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of ISE, LLC to carry out its responsibilities under the Exchange Act; and

(e) that, to the fullest extent permitted by applicable law, all confidential information that shall come into the possession of such officer or employee pertaining to the self-regulatory function of ISE, LLC (including but not limited to confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of ISE, LLC shall: (a) not be made available to any Persons other than to those officers, directors (or equivalent), employees and agents of the Corporation that have a reasonable need to know the contents thereof; (b) be retained in confidence by such officer or employee; and (c) not be used by such officer or employee for any commercial purposes, *provided, however*, that nothing in these resolutions shall be interpreted so as to limit or impede: (i) the rights of the SEC or ISE, LLC to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of such officer or employee to disclose such confidential information to the SEC or ISE, LLC.

(9) The Corporation shall take reasonable steps to cause each of its agents that is involved in the activities of ISE, LLC and could come into the possession of any confidential information pertaining to the self-regulatory function of ISE, LLC (including but not limited to confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of ISE, LLC to agree that, to the fullest extent permitted by applicable law, all such confidential information shall: (a) not be made available to any Persons other than to those officers, directors (or equivalent), employees and agents of the Corporation that have a reasonable need to know the contents thereof; (b) be retained in confidence by such agent; and (c) not be used by such agent for any commercial purposes, *provided, however*, that nothing in these resolutions shall be interpreted so as to limit or impede: (i) the rights of the SEC or ISE, LLC to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of such agent to disclose such confidential information to the SEC or ISE, LLC.

(10) The Corporation shall take reasonable steps necessary to cause its agents that are involved in the activities of ISE, LLC to cooperate: (a) with the SEC; and (b), where applicable, ISE, LLC pursuant to its regulatory authority.

(11) Notwithstanding any provision of the foregoing resolutions, before: (a) any amendment to or repeal of any provision of this or any of the foregoing resolutions; or (b) any action by the Corporation that would have the effect of amending or repealing any provision of this or any of the foregoing resolutions shall be effective, the same shall be submitted to the board of directors

of ISE, LLC, and if the same must be filed with, or filed with and approved by, the SEC before the same may be effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

Exhibit B

FORM OF GERMAN PARENT CORPORATE RESOLUTIONS

WHEREAS, on December 19, 2007, International Securities Exchange Holdings, Inc. ("**ISE Holdings**") became a wholly-owned subsidiary of U.S. Exchange Holdings, Inc., a wholly-owned subsidiary of Eurex Frankfurt AG (the "**Merger**");

WHEREAS, in connection with the Merger, the Corporation and the members of this [Supervisory Board/Executive Board] adopted resolutions, attached hereto as Exhibit A, on [ ], 2007, relating to the ongoing activities of International Securities Exchange, LLC ("**ISE**")[3] (the "**ISE Resolutions**");

WHEREAS, Topaz Exchange, LLC ("**Topaz**") will file a Form 1 application (the "**Application**") with the U.S. Securities and Exchange Commission ("**SEC**") seeking registration of a national securities exchange, under Section 6 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**");

WHEREAS, in connection with the approval by the SEC of the Application, the Corporation is required to make certain resolutions with respect to the ongoing activities of Topaz in the same manner and extent as the ISE Resolutions;

WHEREAS, the Corporation and the members of this [Supervisory Board/Executive Board] hereby desire to supplement the ISE Resolutions so that the ISE Resolutions apply to Topaz in the same manner and to the same extent as the ISE Resolutions apply to ISE;

WHEREAS, ISE Resolutions continue to remain in full force and effect and shall not be limited in any way by supplementing the ISE Resolutions pursuant to these resolutions (this "**Addendum**"); and

WHEREAS, the Corporation and the members of this [Supervisory Board/Executive Board] hereby acknowledge that the resolutions made in this Addendum are made specifically in connection with the Application (and the Corporation's indirect ownership and voting interests in Topaz) and the ongoing activities of Topaz and are not intended to limit any duty or obligation of any Person[4], under law or otherwise.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

(1) The ISE Resolutions, which shall remain in full force and effect, are hereby incorporated by reference herein, in their entirety;

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[3] See Securities and Exchange Commission Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (SR-ISE-2007-101).

[4] As used in these resolutions, the term "**Person**" shall mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

(2) The ISE Resolutions are hereby supplemented to apply to Topaz in the same manner and to the same extent as the ISE Resolutions apply to ISE. In that regard:

(a) The Corporation hereby agrees to the provisions in resolutions 1-6 (inclusive), resolution 9, and resolution 10 of the ISE Resolutions, except that any reference to ISE, LLC shall be read to reference Topaz;

(b) Each member of this [Supervisory Board/Executive Board] hereby agrees, and the Corporation shall take reasonable steps necessary to cause each person who becomes a member of this [Supervisory Board/Executive Board] after the date of these resolutions to agree, in writing to the provisions in resolutions 7(a)-7(f) (inclusive) of the ISE Resolutions, except that any reference to ISE, LLC shall be read to reference Topaz; and

(c) The Corporation shall take reasonable steps necessary to cause each of its officers and employees who are involved in the activities of Topaz to agree, in writing to the provisions in resolutions 8(a)-8(e) (inclusive) of the ISE Resolutions, except that any reference to ISE, LLC shall be read to reference Topaz.

(3) Notwithstanding any provision of the foregoing resolutions or the ISE Resolutions, before: (a) any amendment to or repeal of any provision of this or any of the foregoing resolutions or the ISE Resolutions; or (b) any action by the Corporation that would have the effect of amending or repealing any provision of this or any of the foregoing resolutions or the ISE Resolutions shall be effective, the same shall be submitted to the board of directors of Topaz, and if the same must be filed with, or filed with and approved by, the SEC before the same may be effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

The undersigned, being the members of this Board, hereby declare to have adopted the foregoing resolutions and agree to be bound by the obligations and consents provided therein

[Date/place, signature of each board member]

Exhibit 5B –Nasdaq, Inc. Amended and Restated Certificate of Incorporation and Subsequent Amendments

Text of the Proposed Rule Change.
All text is new.

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF THE NASDAQ OMX GROUP, INC.

The undersigned, Joan C. Conley, Senior Vice President and Corporate Secretary of The NASDAQ OMX Group, Inc. ("Nasdaq"), a Delaware corporation, does hereby certify:

FIRST: That the name of the corporation is The NASDAQ OMX Group, Inc. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was November 13, 1979. The name under which Nasdaq was originally incorporated was "NASD Market Services, Inc."

SECOND: Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation further amends and restates the provisions of Nasdaq's Restated Certificate of Incorporation filed on May 11, 2009, to read in its entirety as follows:

ARTICLE FIRST

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

ARTICLE SECOND

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

ARTICLE THIRD

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

ARTICLE FOURTH

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

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of Nasdaq (the "Board") is hereby authorized to provide for the issuance of

shares of Preferred Stock in one or more series and, by filing a certificate pursuant to the applicable law of the State of Delaware (hereinafter referred to as "Preferred Stock Designation"), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations and restrictions thereof. The authority of the Board with respect to each series shall include, but not limited to, determination of the following:

(1) The designation of the series, which may be by distinguishing number, letter or title.

(2) The number of shares of the series, which number the Board may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding).

(3) The amounts payable on, and the preferences, if any, of shares of the series in respect of dividends, and whether such dividends, if any, shall be cumulative or noncumulative.

(4) Dates at which dividends, if any, shall be payable.

(5) The redemption rights and price or prices, if any, for shares of the series.

(6) The terms and amount of any sinking fund provided for the purchase or redemption of shares of the series.

(7) The amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of Nasdaq.

(8) Whether the shares of the series shall be convertible into or exchangeable for shares of any other class or series, or any other security, of Nasdaq or any other corporation, and, if so, the specification of such other class or series or such other security, the conversion or exchange price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible or exchangeable and all other terms and conditions upon which such conversion or exchange may be made.

(9) Restrictions on the issuance of shares of the same series or of any other class or series.

(10) The voting rights, if any, of the holders of shares of the series.

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

of Preferred Stock, as such, shall be entitled to any voting powers in respect thereof.

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

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

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

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

(i) which such person or any of such person's Affiliates is deemed to beneficially own, directly or indirectly, within the meaning of Rule l3d-3 of the General Rules and Regulations under the Exchange Act as in effect on the date of the filing of this Restated Certificate of Incorporation;

(ii) which such person or any of such person's Affiliates has (A) the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the beneficial owner of, or to beneficially own, securities tendered pursuant to a tender or exchange offer made by or on

behalf of such person or any of such person's Affiliates until such tendered securities are accepted for purchase; or (B) the right to vote pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the beneficial owner of, or to beneficially own, any security by reason of such agreement, arrangement or understanding if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given to such person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations promulgated under the Exchange Act and (2) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report); or

(iii) which are beneficially owned, directly or indirectly, by any other person and with respect to which such person or any of such person's Affiliates has any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities) for the purpose of acquiring, holding, voting (except to the extent contemplated by the proviso to (b)(ii)(B) above) or disposing of such securities; provided, however, that no person who is an officer, director or employee of an Exempt Person shall be deemed, solely by reason of such person's status or authority as such, to be the "beneficial owner" of, to have "beneficial ownership" of or to "beneficially own" any securities that are "beneficially owned" (as defined herein), including, without limitation, in a fiduciary capacity, by an Exempt Person or by any other such officer, director or employee of an Exempt Person.

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

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

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

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

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

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

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 beneficially owned by any person as may be approved for such exemption by the Board prior to the time such person beneficially owns more than five percent (5%) of the outstanding shares of stock entitled to vote on the election of a majority of directors at such time. The Board, however, may not approve an exemption under Section 6(b): (i) for a registered broker or dealer or an Affiliate thereof or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act. The Board may approve an exemption for any other stockholder if the Board determines that granting such exemption would (A) not reasonably be expected to diminish the quality of, or public confidence in, Nasdaq or The NASDAQ Stock Market LLC or the other operations of Nasdaq and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

7. In the event any provision (or portion thereof) of this paragraph C. of this Article Fourth shall be found to be invalid, prohibited or unenforceable for any reason, the remaining provisions (or portions thereof) of this paragraph C. of this Article Fourth shall remain in full force and effect, and shall be construed as if such invalid, prohibited or unenforceable provision (or portion hereof) had been stricken herefrom or otherwise rendered inapplicable, it being the intent of Nasdaq and its stockholders that each such remaining provision (or portion thereof) of this paragraph C. of this Article Fourth remains, to the fullest extent permitted by law, applicable and enforceable as to all stockholders, including stockholders that beneficially own Excess Shares, 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. The directors (other than those directors elected by the holders of any series of Preferred Stock provided for, or fixed pursuant to the provisions of Article Fourth hereof (the "Preferred Stock Directors")) shall be elected at an annual meeting of stockholders, or at a special meeting called for such purpose in lieu of the annual meeting, by the holders of the Voting Stock (as hereinafter defined) and shall hold office until the next annual meeting of stockholders and until their respective successors shall have been duly elected and qualified, subject, however, to prior death, resignation, retirement, disqualification or removal from office.

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

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

E. During any period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to the provisions of Article Fourth hereof, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of Nasdaq shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions,

whichever occurs earlier, subject to his earlier death, disqualification, resignation or removal. Except as otherwise provided by the Board in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from death, resignation, disqualification or removal of such additional directors, shall forthwith terminate and the total authorized number of directors of Nasdaq shall automatically be reduced accordingly.

ARTICLE SIXTH

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

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

ARTICLE SEVENTH

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

ARTICLE EIGHTH

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

B. For so long as Nasdaq shall control, directly or indirectly, The NASDAQ Stock Market LLC, any proposed adoption, alteration, amendment, change or repeal (an "amendment") of any By-Law shall be submitted to the Board of Directors of The NASDAQ Stock Market LLC (the "Exchange Board"), and if the Exchange Board determines that such amendment is required, under Section 19 of the Exchange Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the

Securities and Exchange Commission (the "Commission") before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

ARTICLE NINTH

A. Nasdaq reserves the right to amend, alter, change, or repeal any provisions contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred herein are granted subject to this reservation; provided, however, that the affirmative vote of the holders of a majority of the outstanding Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with paragraph C. of Article Fourth, Article Fifth, Article Seventh, Article Eighth or this Article Ninth.

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

ARTICLE TENTH

Nasdaq shall have perpetual existence.

ARTICLE ELEVENTH

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

and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

IN WITNESS WHEREOF, the undersigned has executed this certificate this 24th day of January, 2014.

THE NASDAQ OMX GROUP, INC.

By:
Name: Joan C. Conley
Office: Senior Vice President and Corporate Secretary

Attached hereto as Exhibit A is a copy of the Certificate of Designation of Series A Convertible Preferred Stock of The NASDAQ OMX Group, Inc.

EXHIBIT A TO AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF THE NASDAQ OMX GROUP, INC.

CERTIFICATE OF DESIGNATION
OF SERIES A CONVERTIBLE PREFERRED STOCK
OF
THE NASDAQ OMX GROUP, 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 General Corporation Law of the State of Delaware, the Board of Directors of the Company (the "Board"), acting by unanimous written consent, has duly adopted the following resolution, which resolution remains in full force and effect as of the date hereof:

WHEREAS, the Certificate of Incorporation authorizes 30,000,000 shares of preferred stock, par value $0.01 per share (the "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 the shares of Preferred Stock in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations and restrictions thereof.

NOW, THEREFORE, BE IT RESOLVED, that a series of Preferred Stock with the powers, designations, preferences and rights 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 par value $0.01 per share (the "Series A Preferred Stock"). The number of shares constituting the Series A Preferred Stock is 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 (the "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 remain 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 and 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 "Dividend Payment Date"), commencing on the first Dividend Payment Date immediately succeeding the Shareholder Vote Date. For the avoidance of doubt, with respect to any provision of this Certificate of Designation that provides for dividends to be paid and/or to cease to accrue upon the occurrence of a specified event, dividends shall accrue through and including the day 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 of Ten U.S. Dollars ($10.00) plus any accrued and unpaid dividends thereon in funds consisting of cash or cash equivalents (collectively, 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 the 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 liquidation, dissolution or winding-up of the Company subject to this Section 3 (it being understood that an actual liquidation, dissolution 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 amend, modify or waive (by merger, consolidation or otherwise) the provisions of the Certificate of Incorporation, the Company's bylaws or this Certificate of Designation in a way that would adversely affect the rights, preferences or privileges of the 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 any (i) amendment (A) reducing the dividend rate, rate of accretion or manner of payment of dividends or (B) the definitions of the Dividend Payment Date, the Mandatory Redemption Date, the Liquidation Preference, the Fundamental Change Redemption 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 shall require the written consent of 75% of the then outstanding shares of Series A preferred Stock, voting together as a single 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 the Series A Preferred Stock into shares of Common Stock at the regularly scheduled 2010 annual meeting of the shareholders of the Company or at such earlier date as the Company and a majority of the holders of the Series A Preferred Stock may agree (such approval, the "Shareholder Approval" and such meeting, the "Annual Meeting"). On the date on which the Shareholder Approval is obtained (the "Conversion Date"), each of the Series A Preferred Stock will automatically, and without any further action required by any holder, be converted into a number of duly authorized, validly issued, fully paid 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 Floor Price, 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, in each case, with the Floor Price and the Ceiling Price being subject to appropriate adjustments set forth in Section 5(d) below.

(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 (and subject to the next sentence), deliver a whole share of Common Stock or pay cash (subject to compliance with all laws, rules and regulations applicable to the Company (and including, for the 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, dated 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 issuing bank), 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 upon conversion will be calculated on the basis of the aggregate number of shares of Series A Preferred Stock converted by such holder at such time.

(c) Mechanics of Conversion.

(i) In the event of mandatory conversion pursuant to Section 5(a), the Company shall deliver as promptly as practicable (but in no event later than three (3) Business Days after the Conversion Date) written notice to each 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 place or places 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 later of 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, together 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 Section 7) 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 documentary, 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 in order that 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 preemptive rights arising under law or contract and free from all taxes, liens and charges with respect to the issuance thereof.

(iv) From and after the Conversion Date, the shares of Series A Preferred Stock converted as of such Conversion Date will no longer be deemed to be outstanding, dividends will cease to accrue on the Series A Preferred Stock, and all rights of the holders of the Series A Preferred Stock will terminate except for the right to receive the number of whole shares of Common Stock issuable upon conversion thereof at the Settlement Rate then in effect and

cash or whole shares in lieu of any fractional shares of Common Stock. Any shares of Series A Preferred Stock that have been 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 into which the shares of Series A Preferred Stock are then convertible is then listed on an Exchange, the Company shall list and 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 made without charge to any holder of shares of Series A Preferred Stock for any issue or transfer tax (other than taxes in respect of any transfer occurring contemporaneously therewith or as a result of the holder being a non-U.S. person) or other 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 payable in respect of any transfer involved in the issuance or delivery of shares of Common Stock in a name other than that of the holder of the Series A Preferred Stock to be converted, and no such issuance or delivery shall be made unless and until the person requesting such issuance or delivery has paid to the Company the amount of any such tax or has established, 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 this Section 5(d), an "Adjustment Event"):

(i) Stock Splits, Subdivisions, Reclassifications or Combinations. If the Company shall (A) declare a dividend or make a distribution on its Common Stock in shares of Common Stock, (B) subdivide or reclassify the outstanding shares of 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 prior to such action, and the denominator of which

shall be the number of shares of Common Stock outstanding immediately 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 that shall be in effect after such adjustment and the Company shall also cause a copy of such statement to be sent by mail, first class postage prepaid, to each holder of shares of Series A Preferred Stock at the address appearing in 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 such date (subject to 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 in the 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 of the place to where, 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 such Mandatory Redemption Date, provided that the Mandatory Redemption Price and the dividends accrued through, and including, the day immediately preceding the Mandatory Redemption Date, shall have been paid on 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 the Series A Preferred Stock will become redeemable by the Company, by payment in cash on such applicable date, at the 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 but 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 not less than 10 nor more than 30 Business Days prior to the Optional Redemption Date, addressed to the holders of record of the Series A Preferred Stock as they appear in the records of the Company as of the date of such notice. Each notice must 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 surrendered 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 notify (such notice, the "Fundamental Change Notice") of such occurrence each of the holders of record of the Series A Preferred Stock as they appear in the records of the Company as of the date of the Fundamental Change Notice. Upon the occurrence of a Fundamental Change, any holder of the Series A Preferred Stock may elect to require the Company (subject to the Company's compliance with the Credit Agreement) 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 not less than 10 nor more than 30 Business Days (subject to extension to comply with applicable law) following the delivery of the Fundamental Change Notice to such holder; provided that, subject to the limitations below, the Company may elect, solely at its option, to pay the Fundamental Change Redemption Amount in cash or, to the extent permissible under the Exchange listing requirements then applicable to the Company, in shares of Common Stock (or, if applicable, 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, issue a number of shares of Common Stock equal to (or, if applicable and subject to the limitations below, 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 for the purposes of 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, the Company shall, with respect to each fractional share otherwise deliverable (and subject to the next sentence), deliver a 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 to the Company 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 address of 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 will cease to 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 be subject to 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 shares of Series A Preferred Stock then outstanding elect to be redeemed pursuant to this Section 6(c), the Company or the entity 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 the holders of Series A

Preferred Stock established herein are unchanged, except as required by applicable law. The certificate or articles of incorporation or other constituent documents shall provide for adjustments, which, for events subsequent to the effective date of the certificate or articles of incorporation or other constituent documents, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 6(c). Lawful provision 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, 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 Global Select Market as displayed under the heading "Bloomberg VWAP" on Bloomberg page "NDAQ.UQ <equity> AQR" (or any successor page thereto) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day 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 as determined in a commercially reasonable manner by the Board using a volume-weighted method and (B) Daily VWAP will be determined without regard to after hours trading or any other trading outside of the regular trading session.

(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 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 any other national securities exchange on which the Common Stock is listed and, with respect to other security that is listed on a national securities exchange, such exchange.

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

(g) "Fair Market Value" of any asset on any date of determination means the fair market value thereof as determined in good faith by the Company assuming a willing buyer and a willing seller in an arms'-length transaction; provided that with respect to any Common Stock or other security traded or quoted on an Exchange, the Fair Market Value shall be the average of the Daily VWAP of such security on such Exchange over a ten (10)

consecutive Trading Day period, ending on the Trading Day immediately prior to the date of determination (appropriately adjusted for any Adjustment Event effected in such 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 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 Common Stock or (B) shares of the Company's capital stock entitling such person or group to exercise 50% or more of the total 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 business combination of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its subsidiaries, taken as a whole, to any person other than one of the Company's subsidiaries; or

(iii) the directors who were members of the Board on the date of this Certificate of Designation (the "Continuing Directors"), or who become directors subsequent to such date and whose election, appointment or nomination for election by the shareholders of the Company is duly approved by a majority of the Continuing Directors on the Board 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 at least 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 as a whole 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 occurrence or existence prior to 1:00 p.m. New York City time, on any Trading Day for the Common Stock for an aggregate one-half hour period of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock.

(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 subdivisions 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 such 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 Section 5(a) are determined.

(s) "Trading Day" means a day during which trading in the Common Stock generally occurs and there is no Market 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 reason of redemption, purchase, conversion or otherwise shall be reissued, and all of such shares shall be cancelled, retired and 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 incapable of being enforced 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, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth 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 Incorporation or this Certificate of Designation or through

any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company but shall at all times in good faith assist in the carrying out of all of the provisions or this Certificate of Designation and in taking of all such action as may be necessary or appropriate in order 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 affect the interpretation of any of the provisions hereof.

[*Rest of page intentionally left blank.*]

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: _____

Name:
Title:

Certificate of Elimination of the Series A Convertible Preferred Stock of The NASDAQ OMX Group, Inc.

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

1. That, pursuant to Section 151 of the General Corporation Law and authority granted in the Restated Certificate of Incorporation of the Company, as theretofore amended, the Board of Directors (the "Board") of the Company, by resolution duly adopted, authorized the issuance of a series of preferred stock of the Company as Series A Convertible Preferred Stock, par value $.01 per share (the "Series A Convertible Preferred Stock"), and established the voting powers, designations, preferences and relative, participating and other rights, and the qualifications, limitations or restrictions thereof, and, on October 1, 2009, filed a Certificate of Designation with respect to such Series A Convertible Preferred Stock in the office of the Secretary of State of the State of Delaware (the "Secretary of State").

2. That no shares of such Series A Convertible Preferred Stock are outstanding and no shares thereof will be issued subject to such Certificate of Designation.

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

> BE IT RESOLVED, that recognizing that no shares of Series A Convertible Preferred Stock are outstanding and no shares of such series shall be issued subject to the Certificate of Designation, Preferences and Rights of Series A Convertible Preferred Stock filed with the Delaware Secretary of State, the elimination of such Certificate of Designation and of all matters set forth therein is hereby approved; and
>
> BE IT FURTHER RESOLVED, that the amendment of the Company's Restated Certificate of Incorporation to eliminate the matters set forth therein relating to the Series A Convertible Preferred Stock is hereby approved; and
>
> BE IT FURTHER RESOLVED, that staff is hereby authorized to make all necessary filings with the State of Delaware to effectuate the foregoing resolutions.

4. That, accordingly, the Certificate of Designation with respect to such Series A Convertible Preferred Stock, and all matters set forth therein with respect to such Series A Convertible Preferred Stock, be, and hereby are, eliminated from the Restated Certificate of Incorporation of the Company.

[Signature Page Follows]

IN WITNESS WHEREOF, The NASDAQ OMX Group, Inc. has caused this Certificate to be executed by its duly authorized officer this 27th day of January, 2014.

THE NASDAQ OMX GROUP, INC.

By:

_____

Name:
Title:

CERTIFICATE OF AMENDMENT

OF THE

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

THE NASDAQ OMX GROUP, INC.

The NASDAQ OMX Group, Inc., a corporation duly organized and existing under the General Corporation Law of the State of Delaware, does hereby certify that:

FIRST: Article Fourth, Paragraph C(6) of the Amended and Restated Certificate of Incorporation of The NASDAQ OMX Group, Inc. is hereby amended in its entirety to read as follows:

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 beneficially owned by any person as may be approved for such exemption by the Board prior to the time such person beneficially owns more than five percent (5%) of the outstanding shares of stock entitled to vote on the election of a majority of directors at such time. For so long as Nasdaq shall control, directly or indirectly, any Self-Regulatory Subsidiary, a resolution of the Board to approve an exemption for any person under this subparagraph 6 of this paragraph C. of this Article Fourth shall not be permitted to become effective until such resolution has been filed with and approved by the Securities and Exchange Commission under Section 19 of the Exchange Act. The Board, however, may not approve an exemption under this subparagraph 6: (i) for a registered broker or dealer or an Affiliate thereof (provided that, for these purposes, an Affiliate shall not be deemed to include an entity that either owns ten percent or less of the equity of a broker or dealer, or the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity); or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act. The Board may approve an exemption for any other stockholder if the Board determines that granting such exemption would (A) not reasonably be expected to diminish the quality of, or public confidence in, Nasdaq or the Self-Regulatory Subsidiaries or the other operations of Nasdaq and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, (B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system, and (C) promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), 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, foster cooperation and coordination with persons engaged in the clearance and settlement of securities

transactions, and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. For purposes of this provision, "Self-Regulatory Subsidiary" shall mean any subsidiary of Nasdaq that is a self-regulatory organization as defined under Section 3(a)(26) of the Exchange Act.

SECOND: The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, The NASDAQ OMX Group, Inc. has caused this Certificate to be executed by its duly authorized officer this 17th day of November, 2014.

THE NASDAQ OMX GROUP, INC.

/s/_____
Name:
Title:

CERTIFICATE OF AMENDMENT
OF
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
THE NASDAQ OMX GROUP, INC.

Pursuant to Section 242
of the General Corporation Law of the State of Delaware

THE NASDAQ OMX GROUP, INC., a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. The Amended and Restated Certificate of Incorporation of the Corporation is hereby amended by deleting ARTICLE FIRST thereof and inserting the following in lieu thereof:

"FIRST. The name of the corporation is Nasdaq, Inc. ("Nasdaq")."

2. The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

[Signature Page Follows]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed by its duly authorized officer on this 8th day of September, 2015.

THE NASDAQ OMX GROUP, INC.

By: _____
Name:
Office:

Exhibit 5C – By-Laws of Nasdaq, Inc.

Text of the Proposed Rule Change.
All text is new.

BY-LAWS OF NASDAQ, 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) An "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;

(c) "Board" means the Board of Directors of the Corporation;

(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) "Corporation" means Nasdaq, Inc.;

(g) "day" means calendar day;

(h) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act;

(i) "Delaware law" means the General Corporation Law of the State of Delaware;

(j) "Director" means a member of the Board;

(k) An "Executive Officer" of a member or member organization means those officers covered in Rule 16a-1(f) under the Act, as if the member or member organization were an issuer within the meaning of such Rule.

(l) "Immediate family member" means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home;

(m) "Industry Director" or "Industry committee member" means a Director (excluding any Staff Directors or committee member who (1) is, or within the last year was, or has an immediate family member who is, or within the last year was, a member of a Self-Regulatory Subsidiary; (2) is, or within the last year was, employed by a member or a member organization of a Self-Regulatory Subsidiary; (3) has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization of a Self- Regulatory

Subsidiary; (4) has within the last year received from any member or member organization of a Self-Regulatory Subsidiary more than $100,000 per year in direct compensation, or received from such members or member organizations in the aggregate an amount of direct compensation that in any one year is more than 10 percent of the Director's annual gross compensation for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); or (5) is affiliated, directly or indirectly, with a member or member organization of a Self- Regulatory Subsidiary;

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

(o) "Issuer Director" or "Issuer committee member" means a Director (excluding any Staff Director) or committee member who is an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary, excluding any Director or committee member who is a director of such an issuer but is not also an officer or employee of such an issuer;

(p) "Nominating & Governance Committee" means the Nominating & Governance Committee appointed pursuant to these By-Laws;

(q) "Non-Industry Director" or "Non-Industry committee member" means a Director (excluding any Staff Director) or committee member who is (1) a Public Director or Public committee member; (2) an Issuer Director or Issuer committee member; or (3) any other individual who would not be an Industry Director or Industry committee member;

(r) "Public Director" or "Public committee member" means a Director or committee member who (1) is not an Industry Director or Industry committee member, (2) is not an Issuer Director or Issuer committee member, and (3) has no material business relationship with a member or member organization of a Self- Regulatory Subsidiary, the Corporation or its affiliates, or FINRA;

(s) "Self-Regulatory Subsidiary" means any subsidiary of the Corporation that is a self-regulatory organization as defined under Section 3(a)(26) of the Act; and.

(t) "Staff Director" means an officer of the Corporation that is serving as a Director.

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 registered agent at such address shall be: The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. The Corporation also may have offices at such other places

both within and without the State of Delaware as the Board may from time to time designate or the business of the Corporation may require.

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.

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 by the stockholders may be made at an annual meeting of stockholders only (i) pursuant to the Corporation's notice of meeting (or any supplement thereto), (ii) by or at the direction of the Board or the Nominating & Governance Committee or (iii) by any stockholder of the Corporation who (A) is a stockholder of record of the Corporation (and, with respect to any beneficial owner, if such person is different from the shareholder of record, on whose behalf such nomination or other business is made or proposed to be brought, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time the notice provided for in this Section 3.1 is delivered to the Secretary of the Corporation and at the time of the meeting, (B) is entitled to vote at the meeting and (C) 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 (including, in the case of a nomination, timely delivery of the completed and signed questionnaire, representation and agreement required by Section 3.1(b)(i)(D)), and timely updates or supplements to such notice, in writing and in proper form to the Secretary of the Corporation and any such proposed business other than the nominations of persons for election to the Board must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth day nor earlier than the close of business on the one hundred twentieth day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty days before or more than seventy days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth day prior to such annual meeting and not later than the close of business on the later of the ninetieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. In

addition, to be timely, a stockholder's notice shall further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the annual meeting and as of the 10th business day prior to the annual meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered in writing to the Secretary at the principal executive offices of the Corporation not later than the fifth business day after the record date for the annual meeting (in the case of the update and supplement required to be made as of the record date), and not later than the eighth business day prior to the date for the annual meeting or, if practicable, any adjournment or postponement thereof and, if not practicable, on the first practicable date prior to the date to which the annual meeting has been adjourned or postponed (in the case of the update and supplement required to be made as of the 10th business day prior to the annual meeting or any adjournment or postponement thereof). Such stockholder's notice shall set forth:

(i) as to each person, if any, whom a Proposing Person proposes to nominate for election or reelection as a director, (A) all information with respect to such proposed nominee that would be required to be disclosed pursuant to clause (iii) of this Section 3.1(b) if such proposed nominee were a Proposing Person, (B) all information relating to such proposed nominee that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Section 14(a) under the Act and the rules thereunder (including such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (C) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among any Proposing Person, on the one hand, and such proposed nominee and any of his or her respective affiliates and associates, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Requesting Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant, and (D) a completed and signed questionnaire, representation and agreement in accordance with Section 3.5. The Corporation may require any proposed nominee to furnish such other information (i) as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation or (ii) that could be material to a reasonable stockholder's understanding of the independence, or lack of independence, of such proposed nominee;

(ii) as to any other business that the stockholder proposes to bring before the meeting, (A) a reasonably detailed description of such business, the reason or reasons for conducting such business at such meeting and any material interest in such business of each Proposing Person, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the By-Laws of the Corporation, the language of the proposed amendment), and (C) a reasonably detailed description of all contracts, agreements, arrangements and understandings (1) between or among

any of the Proposing Persons or (2) between or among any Proposing Person and any other person or persons (including their names) in connection with the proposal of such business; and

(iii) as to each Proposing Person

(A) the name and address of such Proposing Person (including, if applicable as they appear on the Corporation's books);

(B) the class or series and number of shares of capital stock of the Corporation which are owned beneficially (within the meaning of Rule 13d-3 under the Act) and of record by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such person has a right to acquire beneficial ownership at any time in the future;

(C) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing;

(D) any derivative, swap or other transaction (including any short positions, profit interest, options, warrants, convertible securities, stock appreciation or similar rights) or series of transactions engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to give such Proposing Person economic risk similar to ownership of shares of any class or series of the Corporation, including due to the fact that the value of such derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any shares of any class or series of the Corporation, or which derivative, swap or other transaction or series of transactions provides, directly or indirectly, the opportunity to profit from any increase in the price or value of shares of any class or series of the Corporation (any of the foregoing, a "Synthetic Equity Interest"), which Synthetic Equity Interest shall be disclosed without regard to whether (1) the derivative, swap or other transaction or series of transactions conveys any voting rights in such shares to such Proposing Person, (2) the derivative, swap or other transaction or series of transactions is required to be, or is capable of being, settled through delivery of such shares or (3) such Proposing Person may have entered into other transactions that hedge or mitigate the economic effect of such derivative, swap or other transaction or series of transactions;

(E) any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Act by way of a solicitation statement filed on Schedule 14A), agreement, arrangement,

understanding or relationship pursuant to which such Proposing Person has or shares a right to vote any shares of any class or series of the Corporation;

(F) any proportionate interest in shares of the Corporation or Synthetic Equity Interest held, directly or indirectly, by a general or limited partnership in which such Proposing Person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner;

(G) any agreement, arrangement, understanding or relationship, including any repurchase or similar so-called "stock borrowing" agreement or arrangement, entered into or engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Proposing Person with respect to shares of any class or series of the Corporation, or that provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of shares of any class or series of the Corporation (any of the foregoing, a "Short Interest");

(H) any performance-related fees (other than an asset-based fee) to which such Proposing Person is entitled based on any increase or decrease in the price or value of shares of any class or series of the Corporation, or any Synthetic Equity Interest or Short Interest;

(I) any significant equity interest or any Synthetic Equity Interest or Short Interest in any principal competitor of the Corporation held by such Proposing Person;

(J) any direct or indirect interest of such Proposing Person in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement);

(K) any pending or threatened litigation in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or Directors, or any affiliate of the Corporation;

(L) any material transaction occurring, in whole or in part, during the then immediately preceding 12-month period between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation, on the other hand;

(M) any other information relating to the Proposing Person required to be disclosed in a proxy statement or other filings required to be made in connection

with solicitations of proxies for, as applicable, the proposal and/or for the election of Directors in an election contest pursuant to and in accordance with Section 14(a) of the Act and the rules and regulations promulgated thereunder (the disclosures to be made pursuant to the foregoing clauses (C) through (M) are referred to as "Disclosable Interests"); provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these By-Laws on behalf of a beneficial owner;

(N) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination; and

(O) a representation whether the Proposing Person intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (2) otherwise to solicit proxies from stockholders in support of such proposal or nomination.

The 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 intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(c) For purposes of this Section 3.1, the term "Proposing Person" shall mean (i) the stockholder providing the notice of business or the notice of the nomination, as applicable, proposed to be brought before an annual meeting, (ii) any beneficial owner or beneficial owners, if different, on whose behalf such business is proposed to be brought before the meeting or the notice of the nomination proposed to be made at the meeting is made, as applicable, and (iii) any affiliate or associate (each within the meaning of Rule 12b-2 under the Act for purposes of these By-Laws) of such stockholder or beneficial owner.

(d) Notwithstanding anything in the second sentence of Section 3.1(b) to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased effective at the annual meeting and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 3.1 shall also be considered timely, but only with respect to nominees for the additional

directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the Corporation.

Sec. 3.2 Special Meetings of Stockholders

(a) Special meetings of the stockholders of the Corporation may only be called (i) at any time by the Board pursuant to a resolution adopted by a majority of the total number of directors the Corporation would have if there were no vacancies and (ii) by the Secretary following his or her receipt of a written request in proper form for a special meeting (a "Special Meeting Request") by one or more stockholders holding of record, in the aggregate, at least 15 percent of the outstanding shares of capital stock of the Corporation entitled to vote on the matter or matters to be brought before the proposed special meeting (the "Requisite Percentage"), which shares are determined to be "Net Long Shares" in accordance with this Section 3.2, and having held such Net Long Shares continuously for at least one year as of the date of such request (the "Requisite Holders"). For purposes of determining Requisite Holders under this Section 3.2, "Net Long Shares" shall be limited to the number of shares beneficially owned, directly or indirectly, by any stockholder or beneficial owner that constitute such person's "net long position" as defined in Rule 14e–4 under the Act, provided that (A) for the purposes of such definition, references in such Rule to "the date the tender offer is first publicly announced or otherwise made known by the bidder to the holders of the security to be acquired" shall be the date of the relevant Special Meeting Request and all dates in the one year period prior thereto, the "highest tender offer price or stated amount of the consideration offered for the subject security" shall refer to the closing sales price of the Corporation's capital stock on the NASDAQ Stock Market on such date (or, if such date is not a trading day, the next succeeding trading day), the "person whose securities are the subject of the offer" shall refer to the Corporation, a "subject security" shall refer to the issued and outstanding voting stock of the Corporation; and (B) the net long position of such stockholder shall be reduced by any shares as to which such person does not have the right to vote or direct the vote at the proposed special meeting or as to which such person has entered into a derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares. In addition, to the extent any affiliates of the stockholder or beneficial owner are acting in concert with the stockholder or beneficial owner with respect to the calling of the special meeting, the determination of Net Long Shares may include the effect of aggregating the Net Long Shares (including any negative number) of such affiliate or affiliates. Whether shares constitute Net Long Shares shall ultimately be decided by the Board in its reasonable determination. In determining whether a special meeting of stockholders has been requested by the Requisite Holders representing in the aggregate at least the Requisite Percentage, multiple Special Meeting Requests delivered to the Secretary will be considered together only if (i) each Special Meeting Request identifies substantially the same purpose or purposes of the special meeting and substantially the same matters proposed to be acted on at the requested special

meeting (in each case as determined in good faith by the Board) and (ii) such Special Meeting Requests have been dated and delivered to the secretary within 60 days of the earliest dated Special Meeting Request. To be in proper form, a Special Meeting Request must comply with this Section 3.2. The Board shall determine whether a Special Meeting Request is in proper form and such determination shall be binding on the Corporation and the stockholders.

(b) If a Special Meeting Request is in proper form, the Board shall determine the place, if any, date and time of the special meeting requested in such Special Meeting Request and the Secretary shall call such special meeting; provided, however, that the date of the special meeting requested in such Special Meeting Request shall not be more than 120 days after the date on which such Special Meeting Request was delivered to the Secretary; provided, further, that the Board may (in lieu of calling the special meeting requested in such Special Meeting Request) present an identical or substantially similar item of business (a "Similar Item"; the election of directors shall be deemed a "Similar Item" with respect to all items of business involving the nomination, election or removal of directors), as determined in good faith by the Board, for stockholder approval at any other meeting of the stockholders that is held not less than 120 days after the date on which such Special Meeting Request was delivered to the Secretary. In fixing the place, if any, date and time for any special meeting, the Board may consider such factors as it deems relevant in its business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for a meeting and any plan of the Board to call an annual meeting or a special meeting.

(c) Notwithstanding anything in these By-Laws to the contrary, a Special Meeting Request shall not be valid and the special meeting requested in such Special Meeting Request shall not be called by the Secretary if (i) such Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law, (ii) such Special Meeting Request is delivered to the Secretary during the period commencing 90 days prior to the one-year anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting, (iii) a Similar Item was presented at any meeting of stockholders held within 120 days prior to the date on which such Special Meeting Request was delivered to the Secretary or (iv) a Similar Item is included in the Corporation's notice of meeting as an item of Business to be presented at a stockholder's meeting that has been called but not yet held. The Board may adjourn or reschedule any previously scheduled special meeting of the stockholders.

(d) To be in proper form for purposes of this Section 3.2, a Special Meeting Request shall:

(i) Be in writing, signed by each Requesting Person (as defined in Section 3.2(e)) and delivered to the Secretary at the principal executive offices of the Corporation;

(ii) Set forth the information described in Section 3.1(b)(i), Section 3.1(b)(ii) and, as to each Requesting Person, the information described in Section 3.1(b)(iii) (except that, for purposes of this Section 3.2(d)(ii), the term "Requesting Person" shall be substituted for the term

"Proposing Person" in all places it appears in Section 3.1(b)(i), Section 3.1(b)(ii) and Section 3.1(b)(iii)); and

(iii) Include (A) an agreement by each Requisite Holder to immediately deliver written notice to the Secretary at the principal executive offices of the Corporation in the case of any disposition, on or prior to the record date for the special meeting requested in the Special Meeting Request, of any shares of capital stock of the Corporation held of record by such Requisite Holder and (B) an acknowledgement that (1) any such disposition shall be deemed a revocation of the Special Meeting Request to the extent of such disposition and (2) if, following such deemed revocation, the Requisite Holders hold of record, in the aggregate, less than the Requisite Percentage of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, there shall be no obligation to hold such special meeting.

(e) For purposes of this Section 3.2, the term "Requesting Person" shall mean (i) each Requisite Holder, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the Special Meeting Request is being delivered to the Secretary and (iii) any affiliate or associate of such stockholder or beneficial owner.

(f) At any special meeting of the stockholders, only such business shall be conducted or considered as shall have been specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board or the Secretary, as the case may be. Notwithstanding anything in these By-Laws to the contrary, the Board may submit its own proposal or proposals for consideration at a special meeting. Except in accordance with this Section 3.2, stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders.

(g) The Requisite Holders giving a Special Meeting Request shall further update and supplement such Special Meeting Request, if necessary, so that the information provided or required to be provided in such Special Meeting Request shall be true and correct as of the record date for the special meeting requested to be called pursuant to such Special Meeting Request and as of the 10th business day prior to the special meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the fifth business day after the record date for the special meeting (in the case of the update and supplement required to be made as of the record date), and not later than the eighth business day prior to the date for the special meeting or, if practical, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the special meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of the 10th business day prior to the special meeting or any adjournment or postponement thereof).

(h) The Requisite Holders may revoke a Special Meeting Request by written revocation delivered to the Corporation at any time prior to the special meeting requested in such Special Meeting Request; provided, however, that the Board shall have the discretion to determine whether or not to proceed with the special meeting.

(i) In the event the Board calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder entitled to vote in such election may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by Section 3.1(b) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth day prior to such special meeting and not later than the close of business on the later of the ninetieth day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

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 and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Article III. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (i) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Article III (including whether the Proposing Person solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such nomination or proposal in compliance with such Proposing Person's representation as required by Section 3.1(b)(iii)(O)) and (ii) if any proposed nomination or business was not made or proposed in compliance with this Article III, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Article III, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this 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 an 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 the 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 reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Commission pursuant to Section 13, 14, or 15(d) of the Act.

(c) Notwithstanding the foregoing provisions of this Article III, a stockholder shall also comply with all applicable requirements of the Act and the rules and regulations thereunder with respect to the matters set forth in this Article III; provided however, that any references in these By-Laws to the Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Article III (including Section 3.1(a)(iii) and (b) hereof), and compliance with Section 3.1(a)(iii) and (b) of this Article III shall be the exclusive means for a stockholder to make nominations or submit other business (other than, as provided in the last sentence of Section 3.1(b), matters brought properly under and in compliance with Rule 14a-8 of the Act, as may be amended from time to time). Nothing in Article III shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Act or (ii) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Restated Certificate of Incorporation.

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 will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding officer of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the

Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Sec. 3.5 Submission of Questionnaire, Representation and Agreement

To be eligible to be a nominee for election or reelection as a director of the Corporation, a proposed nominee must deliver (in accordance with the time periods prescribed for delivery of a stockholder's notice under Section 3.1(b) or Section 3.2(i), as applicable), to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such proposed nominee (which questionnaire shall be provided by the Secretary upon written request), and a written representation and agreement (in form provided by the Secretary upon written request) that such proposed nominee (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been fully disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (ii) is not, and will not become a party to, any agreement, arrangement or understanding with any person other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the Corporation that has not been fully disclosed to the Corporation, (iii) would be in compliance, if elected as a director of the Corporation, and will comply, with Section 4.3 and Section 4.14, and (iv) in such proposed nominee's individual capacity and on behalf of any person on whose behalf the nomination is made, would be in compliance, if elected as a director of the Corporation, and will comply, with the Corporation's Corporate Governance Guidelines, Board of Director Code of Conduct and Code of Ethics, including all applicable, publicly disclosed conflict of interest, confidentiality, stock ownership and insider trading policies and guidelines of the Corporation.

Article IV Board of Directors

Sec. 4.1 General Powers

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

Sec. 4.2 Number of Directors

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

Sec. 4.3 Qualifications

Directors need not be stockholders of the Corporation. The number of Non-Industry Directors shall equal or exceed the number of Industry Directors. The Board shall include at least two Public Directors. The Board may include at least one, but no more than two, Issuer Directors. The Board shall include no more than one Staff Director, unless the Board consists of ten or more Directors. In such case, the Board shall include no more than two Staff Directors.

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 at a special meeting called for such purpose in lieu of the annual meeting. If the annual election of Directors is not held on the date designated therefor, the Directors shall cause such election to be held as soon thereafter as convenient.

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, provided that if, as of the tenth (10^{th}) day preceding the date the Corporation first mails its notice of meeting for such 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 this Section 4.4 of these By-Laws, a majority of votes cast shall mean that the number of votes cast "for" a Director's election exceeds the number of votes cast "against" that Director's election (with "abstentions" and "broker nonvotes" 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, such person must submit an irrevocable resignation, contingent on (i) that person not receiving a majority of the votes cast in an 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 to the Board as to whether to accept or reject the resignation of such incumbent Director, or whether other action should be taken. The Board shall act on the resignation, taking into account the committee's recommendation, and publicly disclose (by a press release and filing an appropriate disclosure with the Commission) its decision regarding the resignation and, if such resignation is rejected, the rationale behind the decision within ninety

(90) days following certification of the election 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 elected and the nominee is not an incumbent Director, then the Board may fill the resulting vacancy pursuant to Section 4.8 of these By-Laws.

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 the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Sec. 4.6 Removal

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

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 Board set forth in Section 4.3. If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy. Notwithstanding the foregoing, the Board may elect to defer the determinations set forth in clauses (a) and (b) above with respect to a Director until the next annual meeting of stockholders, and, if the Board makes such an election, neither the Board nor any committee shall be deemed to be in violation of Section 4.3 or 4.13 of these By-Laws as a result of the deferral.

Sec. 4.8 Filling of Vacancies

If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, such vacancy shall be filled only by a majority vote of the Directors then in office, though less than a quorum, or by a vote of the sole remaining Director, and not by the stockholders, for a person nominated by the Nominating & Governance Committee and satisfying the classification (Industry, Non-Industry, Issuer, or Public Director), if applicable, for the directorship as provided in Section 4.3 to fill such vacancy, except that if the remaining term

of office for the vacant Director position is not more than six months, no replacement shall be required.

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, a quorum for the transaction of business shall consist of a majority of the Board. In the absence of a quorum, a majority of the Directors present may adjourn the meeting until a quorum be present.

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

Sec. 4.10 Regulation

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

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, such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with Section 4.12.

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

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

(d) Directors or members of any committee appointed by the Board may participate in a meeting of the Board or of such committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting may hear

one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

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 address last made known in writing to the Corporation by such Director as the address to which such notices are to be sent, at least seven days before the day on which such meeting is to be held; (ii) sent to the Director at such address by telegraph, telefax, cable, radio, wireless, e-mail or other means of written electronic transmission, not later than the day before the day on which such meeting is to be held; or (iii) delivered to the Director personally or orally, by telephone or otherwise, not later than the day before the day on which such meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

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

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

Sec. 4.13 Committees

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

(b) The Board may, by resolution or resolutions adopted by the Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of the Corporation to the extent permitted by law. A committee, to the extent permitted by law and provided in the resolution or

resolutions creating such committee, may authorize the seal of the Corporation to be affixed to all papers that may require it.

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

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

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

(f) The Board shall appoint a Management Compensation Committee consisting of at least two members. The Management Compensation Committee shall consider and recommend compensation policies, programs, and practices for employees of the Corporation. The number of Non-Industry Directors on the Management Compensation Committee shall equal or exceed the number of Industry Directors on the Management Compensation Committee. 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, and shall meet the eligibility requirements set forth in, 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. The number of Non-Industry Directors on the Audit Committee shall equal or exceed the number of Industry Directors on the Audit Committee. The Audit Committee shall include two Public Directors. A Public Director shall serve as Chair of the Committee. An Audit Committee member shall hold office for a term of one year.

(h) The Board may appoint a Nominating & 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 Non- Industry Directors on the Nominating & Governance Committee shall equal or exceed the number of Industry Directors on the Nominating & Governance Committee. The Nominating & Governance Committee shall include at least two Public Directors.

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

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

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

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 party if that Director has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director shall recuse himself or herself or shall be disqualified.

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

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

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.

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.

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. One person may hold the offices and perform the duties of any two or more of said principal offices, except the offices and duties of President and Vice President or of President and Secretary. None of the principal officers, except the Chair of the Board, need be Directors of the Corporation.

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 dissolve the Corporation.

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

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

Sec. 7.3 Subordinate Officers, Agents, or Employees

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

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 to any Director for a specified period of time and for any reason that the Board may deem sufficient.

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 later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

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

Sec. 7.6 Bond

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

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 from time to time by the Board.

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.

Sec. 7.9 President

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

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

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 care and custody of the corporate records and the corporate seal of the Corporation. The Secretary shall be empowered to affix the corporate seal to documents, the execution of which on behalf of the Corporation under its seal, is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board.

The Secretary shall exercise such other powers and perform such other duties as may be assigned to the Secretary from time to time by the Board, the Chief Executive Officer or the President.

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.

Sec. 7.13 Treasurer

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

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.

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 thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of the Corporation or any wholly owned subsidiary of the Corporation, or is or was a Director, officer, or employee 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, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:

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

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

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

(c) The Corporation may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of the Corporation or any 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; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

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

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

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

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

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

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

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

Sec. 8.2 Indemnification Insurance

The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee, or agent of the Corporation or any wholly owned subsidiary of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in

any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability hereunder.

Article IX Capital Stock

Sec. 9.1 Certificates

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

Sec. 9.2 Signatures

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

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

Sec. 9.3 Stock Ledger

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

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

Sec. 9.4 Transfers of Stock

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

(b) Transfers of capital stock shall be made on the books of the Corporation only upon delivery to the Corporation or its transfer agent of: (i) a written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing; (ii) the certificate for the shares of capital stock being transferred; and (iii) a written assignment of the shares of capital stock evidenced thereby; or, with respect to uncertificated shares, by delivery of duly executed instructions or in any other manner permitted by applicable law.

Sec. 9.5 Cancellation

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

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 any such certificate shall be lost, stolen, or destroyed, the Corporation may, in the discretion of the Board or a committee appointed thereby with power so to act, issue a new certificate for capital stock or uncertificated shares in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or the owner's representatives, to furnish to the Corporation a bond with an acceptable surety or sureties and in such sum as will be sufficient to indemnify the Corporation against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate or uncertificated shares. 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.

Sec. 9.7 Fixing of Record Date

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

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 device approved by the Board, the name of the Corporation, the year of its incorporation, and the words “Corporate Seal” and “Delaware.” The seal may be used by causing it to be affixed or impressed, or a facsimile thereof may be reproduced or otherwise used in such manner as the Board may determine.

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 as the Board may determine by resolution.

Sec. 10.3 Waiver of Notice

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

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

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

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

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

Sec. 10.5 Form of Records

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

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 a majority of the outstanding stock entitled to vote, voting together as a single class, provided that, in the case of a special meeting, notice that an amendment is to be considered and acted upon shall be inserted in the notice or waiver of notice of said meeting.

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 regular or special meeting of the Board by a resolution adopted by a vote of a majority of the whole Board; but no By-Law adopted by the stockholders shall be amended or repealed by the Board if the By-Law so adopted so provides.

Sec. 11.3 Review by Self-Regulatory Subsidiaries

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

Sec. 11.4 Emergency By-Laws

The Board may adopt emergency By-Laws subject to repeal or change by action of the stockholders which shall, notwithstanding any different provision of law, the Restated Certificate

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

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

(b) All books and records of each Self-Regulatory Subsidiary reflecting confidential information pertaining to the self-regulatory function of such Self-Regulatory Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) which shall come into the possession of the Corporation, and the information contained in those books and records, shall be retained in confidence by the Corporation and the Directors, officers, employees and agents of the Corporation and shall not be used for any non-regulatory purposes. Nothing in these By-Laws shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission. The Corporation’s books and records shall be subject at all times to inspection and copying by the Commission. The Corporation’s books and records relating to each Self-Regulatory Subsidiary shall be maintained in the United States.

(c) To the extent they are related to the activities of a Self-Regulatory Subsidiary, the books, records, premises, officers, Directors, and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors, and employees of such Self-Regulatory Subsidiary for the purposes of, and subject to oversight pursuant to, the Act.

Sec. 12.2 Cooperation with the Commission

(a) The Corporation shall comply with the U.S. federal securities laws and the rules and regulations thereunder 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 functions and responsibilities of the Self-Regulatory Subsidiaries.

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

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, as applicable, 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.

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

Sec. 12.6 Amendments to the Certificate of Incorporation

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

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 or exchange offer or invitation for tenders or exchanges, or proposal to make a tender or exchange offer or request or invitation for tenders or exchanges, by another

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

Exhibit 5D – Third Amended and Restated Trust Agreement

Text of the Proposed Rule Change.
All text to be deleted.

THIRD AMENDED AND RESTATED TRUST AGREEMENT

DATED AS OF

DECEMBER 22, 2014

AMONG

INTERNATIONAL SECURITIES EXCHANGE HOLDINGS, INC.,

U.S. EXCHANGE HOLDINGS, INC.,

WILMINGTON TRUST COMPANY, AS DELAWARE TRUSTEE,

SHARON BROWN-HRUSKA, AS TRUSTEE,

ROBERT SCHWARTZ, AS TRUSTEE

AND

HEINZ ZIMMERMANN, AS TRUSTEE

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THIRD AMENDED AND RESTATED TRUST AGREEMENT

This THIRD AMENDED AND RESTATED TRUST AGREEMENT is dated as of December 22, 2014 (this "**Agreement**") among International Securities Exchange Holdings, Inc., a Delaware corporation ("**ISE Holdings**"), U.S. Exchange Holdings, Inc., a Delaware Corporation (the "**Trust Beneficiary**"), Wilmington Trust Company, as Delaware trustee, and Sharon Brown-Hruska, Robert Schwartz and Heinz Zimmermann, as trustees.

RECITALS

WHEREAS, on December 19, 2007, the Trust Beneficiary, a wholly-owned subsidiary of Eurex Frankfurt AG ("**Eurex Frankfurt**"), became the sole stockholder of ISE Holdings pursuant to that certain Agreement and Plan of Merger dated as of April 30, 2007, among Eurex Frankfurt, Ivan Acquisition Co. and ISE Holdings;

WHEREAS, ISE Holdings, the Trust Beneficiary, the Delaware Trustee, and the Board of Trustees (as such term is defined below) have previously entered into the Trust Agreement dated as of December 19, 2007 (the "**Trust Agreement**"), for the purpose of forming a statutory trust (the "**Trust**") under and pursuant to the provisions of the Delaware Statutory Trust Act, 12 Del. C. §§ 3801 *et seq.* (the "**Delaware Act**");

WHEREAS, the Trust Beneficiary, as of the date of the Trust Agreement owned, and as of the date hereof continues to own, 100% of the Voting Shares (as such term is defined below);

WHEREAS, the Trust Beneficiary, by execution of the Trust Agreement on December 19, 2007, granted the Trust an option to call Voting Shares as provided in Section 4.2 below (the "Call Option");

WHEREAS, on December 19, 2007, the parties hereto established the independent Trust and granted to it, subject to the terms and conditions of the Trust Agreement, the powers set forth therein in the event that such action was needed to effectively mitigate the effects of a breach of an Ownership Limit or a Voting Limit or to address a Material Compliance Event (as such terms are defined below);

WHEREAS, the Trust and the Board of Trustees (as such term is defined below) shall perform their duties and exercise their rights and powers independently in accordance with their duties and obligations set forth in this Agreement;

WHEREAS, ISE Holdings is a party to that certain Transaction Agreement dated as of August 22, 2008, by and among, among others, ISE Stock Exchange, LLC, a Delaware limited liability company and direct subsidiary of ISE Holdings, Direct Edge Holdings LLC, a Delaware

limited liability company ("**Direct Edge**"), and Maple Merger Sub, LLC, a Delaware limited liability company and direct wholly owned subsidiary of Direct Edge ("**Merger Sub**"), pursuant to which ISE Stock Exchange, LLC merged with and into Merger Sub with Merger Sub surviving the merger, and ISE Holdings became a member of Direct Edge and Direct Edge became the sole member of Merger Sub (the "**Transaction**");

WHEREAS, in connection with the Transaction, Direct Edge's indirect subsidiaries, EDGA Exchange, Inc., a Delaware corporation wholly owned by Direct Edge ("**EDGA Exchange**"), and EDGX Exchange, Inc., a Delaware corporation wholly owned by Direct Edge ("**EDGX Exchange,**" and together with EDGA Exchange, the "**Direct Edge Exchanges**"), have each filed with the SEC (as such term is defined below) a Form 1 to register each Direct Edge Exchange as a national securities exchanges;

WHEREAS, in connection with the Transaction, ISE Holdings amended and restated its Certificate of Incorporation (as such term is defined below) and Bylaws to provide that for so long as ISE Holdings directly or indirectly controls one or more national securities exchange, ISE Holdings shall be subject to the Ownership Limit and Voting Limit;

WHEREAS, the parties hereto amended the terms of and restated the Trust Agreement to reflect ISE Holdings' indirect ownership of the Direct Edge Exchanges and any hereinafter acquired ownership of a Controlled National Securities Exchange;

WHEREAS, in order to permit the transactions contemplated by that certain Share Purchase Agreement, dated as of June 7, 2011, between Deutsche Börse AG and SIX Group AG (formerly SWX Group AG) and SIX Swiss Exchange AG (formerly SWX Swiss Exchange AG), under which ISE Holdings will become an indirect subsidiary of Eurex Global Derivatives AG, a stock corporation organized under the laws of Switzerland;

WHEREAS, in connection with the transactions contemplated by the Share Purchase Agreement, dated as of June 7, 2011, ISE Holdings amended and restated its Bylaws to waive the applicable Ownership Limits and Voting Limits to allow ownership and voting of the capital stock of ISE Holdings by Eurex Global Derivatives AG;

WHEREAS, the parties hereto amended the terms of and restated the Trust Agreement to reflect Eurex Global Derivatives AG's indirect ownership of the Controlled National Securities Exchanges;

WHEREAS, in connection with a business combination involving Direct Edge, approved by the SEC on January 30, 2014, EDGA Exchange and EDGX Exchange ceased to be "Controlled National Securities Exchanges," (as such term is defined below).

WHEREAS, the parties hereto desire to amend the terms of and restate the Trust Agreement to eliminate any references to EDGA Exchange and EDGX Exchange as "Controlled National Securities Exchanges";

WHEREAS, in order to permit the transactions contemplated by a certain Share Purchase and Transfer Agreement, effective as of December 19, 2014, under which ISE Holdings will cease to be an indirect subsidiary of: (i) Eurex Global Derivatives AG, a stock corporation organized under the laws of Switzerland; and (ii) Eurex Zürich AG, a stock corporation organized under the laws of Switzerland; and

WHEREAS, the parties hereto desire to amend the terms of and restate the Trust Agreement to eliminate any references to Eurex Global Derivatives AG and Eurex Zürich AG's indirect ownership of the Controlled National Securities Exchanges;

NOW, THEREFORE, in consideration of the premises and the representations, warranties, covenants and agreements contained 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:

ARTICLE I
DEFINITIONS; CONSTRUCTION

Section 1.1 **Definitions**.

"**Affiliate**" or "**Affiliated**" has the meaning given to that term in Rule 405 of the Securities Act, or any successor rule thereunder.

"**Affected Affiliate**" means any one or more of Eurex Frankfurt AG, Deutsche Börse AG, and any Affiliate of the Trust Beneficiary that, at any time, controls a Controlled National Securities Exchange, directly or indirectly.

"**Agreement**" has the meaning set forth in the preamble hereto.

"**Board of Trustees**" has the meaning set forth in Section 3.2(a).

"**Call Option**" means the option granted by the Trust Beneficiary to the Trust to call the Voting Shares as set forth in Section 4.2.

"**Cause**" means, in relation to any Trustee, any of the following: (a) a breach of the duties of the Trustee set forth herein or under the Delaware Act; (b) any misconduct, fraud, misappropriation or embezzlement by the Trustee; or (c) the incapacity to perform the duties set forth herein or under the Delaware Act as a result of insanity, disability or incompetency (determined by a court of competent jurisdiction or a competent Governmental Entity).

"**Certificate of Incorporation**" means the Amended and Restated Certificate of Incorporation of ISE Holdings.

"**Confidential Information**" has the meaning set forth in Section 6.1.

"**Controlled National Securities Exchange**" means a national securities exchange controlled, directly or indirectly, by ISE Holdings, including but not limited to, the ISE Exchange, or facility thereof.

"**Covered Claim**" has the meaning set forth in Section 8.4(a).

"**Cure Period**" has the meaning set forth in Section 4.2(c).

"**Delaware Act**" has the meaning set forth in the preamble hereto.

"**Delaware Courts**" has the meaning set forth in Section 8.4(a).

"**Delaware Trustee**" has the meaning set forth in Section 3.3(a).

"**Deposited Shares**" has the meaning set forth in Section 4.2(g).

"**Direct Edge**" has the meaning set forth in the recitals hereto.

"**Direct Edge Exchanges**" has the meaning set forth in the recitals hereto.

"**Eligibility Requirements**" has the meaning set forth in Section 3.2(a).

"**Excess Shares**" has the meaning set forth in Article FOURTH, Section III, subparagraph (c) of the Certificate of Incorporation of ISE Holdings.

"**Exchange**" has the meaning set forth in Section 3(a)(1) of the Exchange Act.

"**Exchange Act**" means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Executive Officer**" has the meaning set forth in Rule 3b-7 under the Exchange Act.

"**Federal Courts**" has the meaning set forth in Section 8.4(a).

"**Government Entity**" means any national or local government, governmental or regulatory authority, agency, commission, body or other governmental or regulatory entity.

"**Immediate Family Member**" means a Person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such Person's home.

"**Indemnified Person**" has the meaning set forth in Section 7.3

"**Initial Trustees**" has the meaning set forth in Section 3.4(a).

"**ISE Exchange**" means International Securities Exchange, LLC, a Delaware limited liability company.

"**ISE Holdings**" has the meaning set forth in the preamble hereto.

"**ISE Holdings Board**" has the meaning set forth in Section 3.2(b).

"**Material Compliance Event**" means, with respect to an Affected Affiliate, any state of facts, development, event, circumstance, condition, occurrence or effect that results in the failure of any of the Affected Affiliates to adhere to their respective commitments under the Resolutions in any material respect.

"**Merger Sub**" has the meaning set forth in the recitals hereto.

"**Ownership Limit**" has the meaning set forth in Article FOURTH, Section III, subparagraph (a)(i) of the Certificate of Incorporation of ISE Holdings.

"**Ownership Percentage**" has the meaning set forth in Article FOURTH, Section III, subparagraph (a)(i)(E) of the Certificate of Incorporation of ISE Holdings.

"**Person**" means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, government or any agency or political subdivision thereof, or any other entity of any kind or nature.

"**Resolutions**" means, with respect to any Affected Affiliate, the resolutions and consents adopted, or to be adopted, by such Affected Affiliate in connection with such Affected Affiliate's ownership interest or voting interest in a Controlled National Securities Exchange.

"**Sale**" has the meaning set forth in Section 4.3(a).

"**SEC**" means the U.S. Securities and Exchange Commission.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Subsidiary**" means, with respect to any Person, any entity, whether incorporated or unincorporated, of which at least a majority of the securities or ownership interests having by their terms voting power to elect a majority of the board of directors or other Persons performing similar functions is directly or indirectly owned or controlled by such Person or by one or more of the Subsidiaries of such Person.

"**Successor Delaware Trustee**" has the meaning set forth in Section 3.3(f).

"**Transaction**" has the meaning set forth in the recitals hereto.

"**Trust**" has the meaning set forth in the preamble hereto.

"**Trust Beneficiary**" has the meaning set forth in the preamble hereto.

"**Trust Property**" means all estate, right, title and interest acquired by the Trust pursuant to this Agreement (including any Trust Shares), whether held directly or indirectly (including through any corporation or other Subsidiary), as the same may be added to or changed from time to time following the acquisition thereof.

"**Trust Purposes**" has the meaning set forth in Section 2.3.

"**Trust Shares**" means either Excess Shares or Deposited Shares, or both, as the case may be.

"**Trustee**" means each member of the Board of Trustees (excluding, for the avoidance of doubt, the Delaware Trustee).

"**Voting Control Percentage**" has the meaning set forth in Article FOURTH, Section III, subparagraph (b)(iii) of the Certificate of Incorporation of ISE Holdings.

"**Voting Limit**" has the meaning set forth in Article FOURTH, Section III, subparagraph (b) of the Certificate of Incorporation of ISE Holdings.

"**Voting Shares**" has the meaning set forth in Article FOURTH, Section III, subparagraph (a)(i) of the Certificate of Incorporation of ISE Holdings.

Section 1.2 **Construction**.

(a) For the purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (a) words using the singular or plural number also include the plural or singular number, respectively, and the use of any gender herein shall be deemed to include the other genders; (b) references herein to "Articles", "Sections", "subsections" and other subdivisions, and to Exhibits, Schedules, Annexes and other attachments, without reference to a document are to the specified Articles, Sections, subsections and other subdivisions of, and Exhibits, Schedules, Annexes and other attachments to, this Agreement; (c) a reference to a subsection or other subdivision without further reference to a Section is a reference to such subsection or subdivision as contained in the same Section in which the reference appears; (d) the words "herein", "hereof", "hereunder", "hereby" and other words of similar import refer to this Agreement as a whole and not to any particular provision; (e) the words "include", "includes" and "including" are deemed to be followed by the phrase "without limitation"; and (f) all accounting terms used and not expressly defined herein have the respective meanings given to them under U.S. generally accepted accounting principles.

(b) The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE II
THE TRUST

Section 2.1 **Name**. The name of the Trust shall be the International Securities Exchange Trust (the "**ISE Trust**").

Section 2.2 **Offices**. The address of the principal offices of the Trust on the date of execution of this Agreement is ISE Trust, c/o International Securities Exchange Holdings, Inc., 60 Broad Street, New York, NY 10004.

Section 2.3 **Purposes**.

(a) The purposes of the Trust (the "**Trust Purposes**") are to:

(i) accept, hold and dispose of Trust Shares on the terms and subject to the conditions set forth herein,

(ii) determine whether a Material Compliance Event has occurred or is continuing;

(iii) determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option; and

(iv) transfer Deposited Shares from the Trust to the Trust Beneficiary as provided in Section 4.2(h) below.

(b) In carrying out the Trust Purposes: (i) in performing their obligations with respect to voting any Trust Shares as described in Article IV, the duty of the Trust and the Trustees shall be to act in the public interests of the markets operated by each Controlled National Securities Exchange; (ii) in performing their obligations relating to distributions paid to the Trust with respect to Trust Shares and Sales, the duty of the Trust and the Trustees shall be as set forth in the proviso set forth in the first sentence of Section 4.3(a); and (iii) in all other circumstances, the duty of the Trust and the Trustees shall be to act in the best interests of ISE Holdings. In the event of any conflict between the duties of the Trust and the Trustees referred to in clauses (i), (ii), and (iii) of the immediately preceding sentence, the duties referred to in such clause (i) shall prevail. Notwithstanding anything to the contrary, neither the Trustees nor the Delaware Trustee shall, on behalf of the Trust, enter into or engage in any profit-making trade or business, and neither the Trustees nor the Delaware Trustee shall have any power to take, and none of them shall take, any actions hereunder other than such as are reasonably necessary and incidental to the achievement of the Trust Purposes.

Section 2.4 **Beneficial Owner**. The beneficial owner (as that term is used in the Delaware Act) of the Trust shall be ISE Holdings and the beneficial owner of any Trust Property shall be ISE Holdings; *provided, however*, that to the extent that any Trust Shares are transferred to the Trust pursuant to Article IV, such shares shall be held for the benefit of the Trust Beneficiary.

Section 2.5 **Certificate of Trust**. The certificate of trust was filed in the Office of the Secretary of State of Delaware in accordance with the applicable provisions of the Delaware Act on December 19, 2007.

Section 2.6 **Duration**.

(a) The term of the Trust shall be perpetual; *provided, however*, that the Trust shall be dissolved and its affairs wound up in the event that ISE Holdings no longer controls, directly or indirectly, a Controlled National Securities Exchange.

(b) In the event that the Trust is dissolved pursuant to Section (a), the Trustees shall wind up the affairs of the Trust in accordance with Section 3808 of the Delaware Act.

(c) Upon completion of the winding up of the Trust, the Trustees shall file a certificate of cancellation with the Secretary of State of Delaware terminating the Trust, which certificate of cancellation may be signed by any Trustee, and this Agreement shall terminate and be of no further force and effect; *provided, however*, that the provisions of Section 6.1 and Section 6.2 shall survive any such termination for period of ten years.

ARTICLE III
TRUSTEES

Section 3.1 **Authority**. Except as specifically provided in this Agreement, the Trustees shall have exclusive and complete authority to carry out the Trust Purposes, and shall have no duties or powers except as set forth in this Agreement and applicable law. The Delaware Trustee shall have no duties or powers except as set forth in Section 3.3. Any action taken by the Board of Trustees in accordance with the terms of this Agreement shall constitute the act of and serve to bind the Trust. In dealing with the Trustees acting on behalf of the Trust, no Person shall be required to inquire into the authority of the Trustees to bind the Trust. Persons dealing with the Trust shall be entitled to rely conclusively on the power and authority of the Trustees as set forth in this Agreement.

Section 3.2 **Number and Certain Qualifications of Trustees**.

(a) Except to the extent that there shall be one or more vacancies on the Board of Trustees, there shall be at all times three Trustees, who, together, shall constitute the "**Board of Trustees**", and who shall satisfy the eligibility requirements set forth in the following sentence (the "**Eligibility Requirements**"). A Person may serve as a Trustee only if such Person:

(i) is not subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act;

(ii) is of high repute and has experience and expertise in, or knowledge of, the securities industry, regulation and/or corporate governance;

(iii) is independent of ISE Holdings, the Trust Beneficiary, and any Affiliate of ISE Holdings or the Trust Beneficiary, *provided*, that:

(A) a Person shall be independent for purposes of this paragraph (iii) only if the Person does not have any material relationships with ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary; and

(B) a Person is not independent for purposes of this paragraph (iii):

(1) if the Person is an officer, director (or equivalent), or employee of a broker or dealer or has served in any such capacity at any time within the prior three years;

(2) if the Person has an Immediate Family Member who is, or within the last three years was, an Executive Officer (or equivalent) of a broker or dealer;

(3) if the Person has, within the last three years, received from any broker or dealer more than $100,000 per year in direct compensation, or received from brokers or dealers in the aggregate an amount of direct compensation which in any one year is more than 10 percent of the Person's annual gross income for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service);

(4) if the Person is affiliated, directly or indirectly, with a broker or dealer;

(5) if the Person, or an Immediate Family Member of the Person, is, or within the last three years was, a member (or equivalent) of a U.S. or non-U.S. Exchange that is owned or operated by ISE Holdings, the Trust Beneficiary, or

any Affiliate of ISE Holdings or the Trust Beneficiary, or is affiliated, directly or indirectly, with such a member (or equivalent).

(6) if the Person, or an Immediate Family Member of the Person, is a director (or equivalent) of, has a consulting or employment relationship with, or has provided professional services to ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary or has served in such capacity, had any such relationship, or provided any such services to ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary within the prior three years;

(7) if the Person, or an Immediate Family Member of the Person, receives more than $100,000 per year in direct compensation from ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), until three years after he or she ceases to receive more than $100,000 per year in such compensation;

(8) if the Person, or an Immediate Family Member of the Person, is affiliated with, employed in a professional capacity by, or a partner of a present or former internal or external auditor of ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary, until three years after the end of the affiliation or the employment or auditing relationship;

(9) if the Person, or an Immediate Family Member of the Person, is employed as an Executive Officer (or equivalent) of a company where any of the present Executive Officers (or equivalent) of ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary serve on that company's compensation committee, until three years after the end of such service or the employment relationship.

(10) if the Person, or an Immediate Family Member of the Person, is an Executive Officer (or equivalent) or an employee of a company that makes payments to, or receives payments from, ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary, for property or services in an amount which, in any single fiscal year, exceeds the greater of $1 million, or 2% of such other company's consolidated gross revenues, until three years after falling below such threshold; or

(11) if the Person is an Executive Officer (or equivalent) of an issuer of securities listed on a U.S. or non-U.S. Exchange that is owned or operated by ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary; and

(iv) is independent to such a degree that the Trustee can be entrusted to resist undue pressures.

(b) The board of directors of ISE Holdings (the "**ISE Holdings Board**") shall determine whether a Person satisfies the Eligibility Requirements. Each Person to be nominated or appointed by the ISE Holdings Board to serve as a Trustee must not be unacceptable to the Staff of the SEC. In determining whether a Person is independent under the Eligibility Requirements, the ISE Holdings Board shall consider:

(i) a Person's relationships and interests not only from the standpoint of the Person, but also from the standpoint of other Persons with which such Person is Affiliated or associated; and

(ii) the special responsibilities of a Trustee in light of the fact that Trust Shares would represent ownership in an entity that controls an entity that is a U.S. self-regulatory organization and a U.S. national securities exchange subject to the supervision of the SEC.

(c) The ISE Holdings Board shall make an independence determination with respect to each Trustee upon the Trustee's nomination or appointment to serve as a Trustee and thereafter at such times as the ISE Holdings Board considers advisable in light of the Trustee's circumstances, but in any event not less frequently than annually. Any Trustee whom the ISE Holdings Board determines not to be independent under the Eligibility Requirements shall be deemed to have tendered his or her resignation for consideration by the ISE Holdings Board.

Section 3.3 **Delaware Trustee**.

(a) If required by the Delaware Act, one trustee (the "**Delaware Trustee**") shall be: (i) a natural person who is a resident of the State of Delaware; or (ii) if not a natural person, an entity which has its principal place of business in the State of Delaware, and otherwise meets the requirements of applicable law, including Section 3807 of the Delaware Act.

(b) The Delaware Trustee shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more authorized officers.

(c) The initial Delaware Trustee shall be Wilmington Trust Company, whose offices are located at Rodney Square North, 1100 N. Market Street, Wilmington, Delaware 19890, Attn: Corporate Trust Administration.

(d) Notwithstanding any other provision of this Agreement, the Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of any of the Trustees described in this Agreement and the Delaware Trustee shall be a trustee for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Delaware Act.

(e) No resignation or removal of the Delaware Trustee and no appointment of a Successor Delaware Trustee pursuant to this Agreement shall become effective until the acceptance of appointment by the Successor Delaware Trustee in accordance with the applicable requirements of this Article.

(f) Subject to Section 3.3(e), the Delaware Trustee may resign at any time by giving written notice thereof to the Board of Trustees and to the ISE Holdings Board. Such resignation shall be effective upon the appointment of a successor Delaware Trustee (the "**Successor Delaware Trustee**") by the ISE Holdings Board, which appointment shall require that the Successor Delaware Trustee execute an instrument of acceptance required by this Section 3.3. If the instrument of acceptance by the Successor Delaware Trustee required by this Section 3.3 shall not have been delivered to the resigning Delaware Trustee within 60 days after the giving of such notice of resignation, the resigning Delaware Trustee may petition, at the expense of the Trust, any court of competent jurisdiction for the appointment of a Successor Delaware Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint the Successor Delaware Trustee.

(g) The Delaware Trustee and each Successor Delaware Trustee may be removed with or without Cause by the ISE Holdings Board by delivery of notification of removal to the Delaware Trustee and to the Board of Trustees. A Delaware Trustee who is a natural person may also be removed by the ISE Holdings Board if such Delaware Trustee becomes incompetent or incapacitated, and shall be deemed removed if such Delaware Trustee dies. In the event of the removal of the Delaware Trustee or any Successor Delaware Trustee or in the event that the Person at any time serving as a Delaware Trustee shall cease to serve in such capacity for any other reason, the ISE Holdings Board shall appoint a Successor Delaware Trustee, which appointment shall require that the Successor Delaware Trustee execute an instrument of acceptance required by this Section 3.3.

(h) In the case of the appointment hereunder of a Successor Delaware Trustee, the retiring Delaware Trustee (except in the case of the death, incompetence or incapacity of a Delaware Trustee who is a natural person) and each Successor Delaware Trustee shall execute and deliver an amendment hereto wherein each Successor Delaware Trustee shall accept such appointment and which shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each Successor Delaware Trustee all the rights, powers, and duties of the retiring Delaware Trustee with respect to the Trust; it being understood that nothing herein or in such amendment shall designate such Delaware Trustee as a Trustee and upon the execution and delivery of such amendment the resignation or removal of the retiring Delaware Trustee shall become effective to the extent provided therein and each such successor Delaware Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, and duties of the retiring Delaware Trustee; but, on request of the Trust or any Successor Delaware Trustee, such retiring Delaware Trustee shall duly assign, transfer and deliver to such Successor Delaware Trustee all property of the Trust, all proceeds thereof and money held by such retiring Delaware Trustee hereunder with respect to the Trust. Upon the appointment of a Successor Delaware Trustee, a Trustee shall file an amendment to the certificate of trust with the Delaware Secretary of State reflecting the name and address of such Successor Delaware Trustee in the State of Delaware.

(i) Any Person into which the Delaware Trustee may be merged or converted, or any Person resulting from any merger, conversion or consolidation to which the Delaware Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Delaware Trustee, shall be the successor of the Delaware Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties

hereto (other than the filing of an amendment to the certificate of trust if required by the Delaware Act); *provided*, that such Person shall be otherwise qualified and eligible under this Article.

(j) The initial Delaware Trustee represents and warrants to the Trust and each of the other parties at the date of this Agreement, and each Successor Delaware Trustee represents and warrants to the Trust at the time of such Successor Delaware Trustee's acceptance of its appointment as Delaware Trustee, that:

(i) the Delaware Trustee, if other than a natural person, is duly organized, validly existing and in good standing under the laws of the State of Delaware, with power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Agreement;

(ii) the Delaware Trustee has been authorized to perform its obligations under this Agreement. This Agreement constitutes a legal, valid and binding obligation of the Delaware Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether considered in a proceeding in equity or at law); and

(iii) the Delaware Trustee is a natural person who is a resident of the State of Delaware or, if not a natural person, an entity that has its principal place of business in the State of Delaware and, in either case, a Person that satisfies for the Trust the requirements of Section 3807 of the Delaware Act.

Section 3.4 **Appointment of Trustees; Term; Successor Trustees**.

(a) ISE Holdings hereby appoints Sharon Brown-Hruska, Robert Schwartz and Heinz Zimmermann as the initial Trustees (the "**Initial Trustees**"). By countersigning this Agreement, the Initial Trustees confirm their acceptance of their appointment in accordance with the terms hereof.

(b) Each Trustee represents and warrants to the other parties hereto that this Agreement constitutes a legal, valid and binding obligation of such Trustee, enforceable against him or her in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(c) Subject to Section 3.2(a), all Trustees (other than the Initial Trustees) shall be appointed by the ISE Holdings Board.

(d) The Trustees shall serve for three-year terms. There shall be no limitation to the number of terms that can be served by any Trustee.

(e) Any Trustee may be removed at any time by the ISE Holdings Board for Cause by a written notice delivered to the Board of Trustees; *provided, however*, that

ISE Holdings shall provide prior written notice of such removal to the Director of the Division of Trading and Markets of the SEC. In the event that such removal would result in no Trustees being in office, then such removal shall be effective only upon the appointment by the ISE Holdings Board of a successor Trustee, who shall have the authority to act as a Trustee of the Trust as of such appointment and during the pendency of any regulatory approval of such appointment.

(f) Any Trustee may resign as such by executing an instrument in writing to that effect and delivering that instrument to the ISE Holdings Board, with a copy to the Trust. In the event of a resignation, such Trustee shall promptly: (i) execute and deliver such documents, instruments or other writings as may be reasonably requested by the ISE Holdings Board, to effect the termination of such Trustee's capacity under this Agreement; (ii) deliver, to the remaining Trustees, all assets, documents, instruments, records and other writings related to the Trust as may be in the possession of such Trustee; and (iii) otherwise assist and cooperate in effecting the assumption of such Trustee's obligations and functions by his or her successor Trustee.

(g) Upon the resignation, retirement, removal or incompetency (determined by a court of competent jurisdiction or a competent Government Entity) or death of a Trustee, the ISE Holdings Board shall have the power to appoint a successor Trustee for the remaining portion of such Trustee's current term in office subject to and in accordance with 0 and this Section 3.4. Such appointment shall specify the date on which such appointment shall be effective. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the ISE Holdings Board and the Trust an instrument accepting such appointment and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers and duties of a Trustee.

(h) The resignation, retirement, removal, incompetency (determined by a court of competent jurisdiction or a competent Government Entity) or death of a Trustee shall not operate to dissolve, terminate or annul the Trust. Whenever a vacancy in Trustee shall occur, until such vacancy shall be filled by the appointment of a Trustee in accordance with Section (g), the Trustee or Trustees remaining in office shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Agreement.

Section 3.5 **Actions by the Trustees; Meetings of the Board of Trustees**.

(a) Any action of the Trustees shall require the approval of a majority of the Trustees then in office acting at a meeting where there is present or represented a quorum. A quorum shall exist where there is present or represented a majority of the Trustees then in office and in no event less than two Trustees; *provided, however*, that, if there shall be only one Trustee then in office, a quorum shall exist where there is present or represented the sole Trustee then in office. Any action of the Board of Trustees shall be evidenced by a written consent, approval or instruction, executed by the required number of Trustees to approve such action. The Trustees may adopt their own rules and procedure subject to the terms of this Agreement, but may not delegate the authority to act on behalf of the Trust or the Trustees to any Person (except to another Trustee to vote on behalf of the first Trustee pursuant to the instructions of such first Trustee at a meeting of the Board of Trustees).

(b) Meetings of the Board of Trustees may be held from time to time upon the call of any member of the Board of Trustees. Notice of any in-person meetings of the Board of Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile or e-mail, with a hard copy by overnight mail) not less than five business days before such meeting. Notice of any telephonic meetings of the Board of Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile or e-mail, with a hard copy by overnight mail) not less than 48 hours before a meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. Trustees shall be entitled to participate in a meeting of the Board by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at such meeting. The presence (whether in person or by telephone) of a member of the Board of Trustees at a meeting shall constitute a waiver of notice of such meeting except where such member of the Board of Trustees attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the meeting has not been lawfully called or convened. Any member of the Board of Trustees may also waive such notice of in-person or telephonic meetings in writing by hand delivering or otherwise delivering (including by facsimile or e-mail, with a hard copy by overnight mail) such written waiver to all other members of the Board of Trustees.

Section 3.6 **Duties of the Trustees**.

(a) In discharging their duties, the Trustees and the Delaware Trustee shall:

(i) consult reasonably and cooperate in good faith with ISE Holdings, the Trust Beneficiary, each Controlled National Securities Exchange, as applicable, and the SEC, including in connection with any exercise of the remedies described in ARTICLE IV; and

(ii) (A) in performing their obligations with respect to voting any Trust Shares as described in Article IV, act in the public interests of the markets operated by each Controlled National Securities Exchange; (B) in performing their obligations relating to distributions paid to the Trust with respect to Trust Shares and Sales, the duty of the Trust and the Trustees shall be as set forth in the proviso set forth in the first sentence of Section 4.3(a) of this Agreement; and (C) in all other circumstances, act in the best interests of ISE Holdings. In the event of any conflict between the duties of the Trust and the Trustees referred to in clauses (A), (B), and (C) of the immediately preceding sentence, the duties referred to in such clause (A) shall prevail.

(b) The Trustees and the Delaware Trustee need perform only those duties as are specifically set forth in this Agreement and as are contemplated by any other agreement to which the Trustees, the Delaware Trustee or the Trust are a party that was entered into in accordance with the terms of this Agreement, and no others and no implied covenants or obligations shall be read into this Agreement against or for the benefit of the Trustees.

(c) The duties and responsibilities of the Trustees and of the Delaware Trustee shall be as provided by this Agreement and the Delaware Act.

(d) The Trustees and the Delaware Trustee may consult with counsel acceptable to ISE Holdings.

(e) In the absence of a Trustee's or Delaware Trustee's gross negligence, misconduct or bad faith on its part, such Trustee or Delaware Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon notices, certificates or opinions that by any provision of this Agreement are permitted or required to be furnished to such Trustee or Delaware Trustee; *provided*, that such notices, certificates or opinions conform to the requirements of this Agreement. A Trustee or Delaware Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper Person. Such Trustee or Delaware Trustee need not investigate any fact or matter stated in the document.

Section 3.7 **Compensation of Trustees**. Trustees may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the ISE Holdings Board may from time to time determine. The Delaware Trustee shall receive as compensation such fees as agreed in a separate fee agreement.

ARTICLE IV
REMEDIES

Section 4.1 **Exercise of Remedies – Ownership Limits and Voting Limits**.

(a) For so long as ISE Holdings shall control, directly or indirectly, a Controlled National Securities Exchange, in the event that:

(i) any Person's Ownership Percentage exceeds an Ownership Limit; or

(ii) any Person's Voting Control Percentage exceeds a Voting Limit; and

(b) in any such case, such Person's Ownership Percentage or Voting Control Percentage in excess of any of the Ownership Limits or Voting Limits, as applicable, is not waived by the ISE Holdings Board and approved by the SEC in accordance with the Certificate of Incorporation of ISE Holdings; then

(c) the Excess Shares shall be automatically transferred to the Trust pursuant to Article FOURTH, Section III, subparagraph (c) of the Certificate of Incorporation of ISE Holdings; and

(d) the Trust shall accept the contribution of the Excess Shares to the Trust, for the benefit of the Trust Beneficiary.

(e) Nothing in this Agreement shall prohibit the SEC from bringing such matters to the attention of the Trustees as the SEC deems relevant or from providing advice to the Trustees at any time before or after the occurrence of a Person's Ownership Percentage or

Voting Control Percentage exceeding any of the Ownership Limits or Voting Limits, as applicable.

(f) The Trust Beneficiary shall have the right to reacquire Excess Shares contributed to the Trust pursuant to this Section 4.1 if and when (a) a Person's Ownership Percentage and Voting Control Percentage no longer exceeds any Ownership Limit or Voting Limit, as applicable, or (b) a Person's Ownership Percentage or Voting Control Percentage in excess of any of the Ownership Limits or Voting Limits, as applicable, is waived by the ISE Holdings Board and approved by the SEC in accordance with the Certificate of Incorporation of ISE Holdings. Neither the Trust Beneficiary nor ISE Holdings shall be obligated to make any payment to the Trust or any other Person as a result of reacquisition of Excess Shares pursuant to this Section 4.1(f).

Section 4.2 **Exercise of Remedies – Material Compliance Event**.

(a) If a Material Compliance Event shall have occurred and continues to be in effect, then, subject to Section 4.2(b), (c), and (d) below, and, if required, approval by the SEC, the Trust shall exercise the Call Option as set forth in Section 4.2(g) below.

(b) Upon becoming aware of facts, developments, events, circumstances, conditions, occurrences or effects that could reasonably be expected to result in the occurrence of a Material Compliance Event, the Board of Trustees shall promptly meet together (either in person or electronically) to commence a review of such facts, developments, events, circumstances, conditions, occurrences or effects and shall, within five (5) business days of such meeting, make a determination of whether or not a Material Compliance Event has occurred.

(c) Promptly after making a determination pursuant to Section 4.2(b) above that a Material Compliance Event has occurred, and prior to any exercise of the Call Option, the Board of Trustees shall provide written notice to the Affected Affiliate or Affiliates of the occurrence of the Material Compliance Event, which notice shall provide for sixty (60) calendar days in which to address the Material Compliance Event (such period of time, the "**Cure Period**"), and shall provide a copy of such notice to the SEC.

(d) During the Cure Period, the Board of Trustees shall:

(i) consult with the Boards of Directors (or equivalent) of each Controlled National Securities Exchange, as applicable, ISE Holdings, and the Affected Affiliates, and with the SEC, to consider alternatives to the exercise of the Call Option, whether as suggested by any of the foregoing or otherwise, to address any Material Compliance Event; and

(ii) after such consultation, if the Board of Trustees determines that the Material Compliance Event has not been addressed, provide written notice to the Boards of Directors (or equivalent) of each Controlled National Securities Exchange, as applicable, ISE Holdings, and the Affected Affiliates that the Board of Trustees has determined in its reasonable opinion that the exercise of the Call Option is necessary to address the effects of the Material Compliance Event.

(e) Nothing in this Agreement shall prohibit the SEC from bringing such matters to the attention of the Trustees as the SEC deems relevant or from providing advice to the Trustees at any time before or after the occurrence of a Material Compliance Event.

(f) Nothing in this Agreement shall (i) limit the ability of the Trustees to provide confidential non-binding advice to a Controlled National Securities Exchange, ISE Holdings, or any of their Affiliates at any time before the exercise of the Call Option or (ii) prevent a Controlled National Securities Exchange, ISE Holdings, or any of their Affiliates, in their sole discretion, from implementing any remedy at any time before the exercise of the Call Option.

(g) Exercise of the Call Option. Promptly following the end of the Cure Period, the Trust shall exercise the Call Option, as follows:

(i) the Trust shall deliver a written notice to ISE Holdings and the Trust Beneficiary specifying that the Trust has determined to exercise the Call Option in accordance with the terms of this Agreement; and

(ii) the Trust Beneficiary and ISE Holdings, as applicable, promptly shall take such actions as are necessary to transfer to the Trust, or cause the transfer to the Trust of a majority of the Voting Shares then outstanding (the securities transferred or issued to the Trust pursuant to this Section 4.2(g), the "**Deposited Shares**").

(h) The Trustees shall transfer the Deposited Shares from the Trust to the Trust Beneficiary in the event that:

(i) no Material Compliance Event is continuing; or

(ii) notwithstanding the continuation of a Material Compliance Event, the Trustees determine that the retention of the Deposited Shares by the Trust could not reasonably be expected to address any continuing Material Compliance Event, *provided, however,* that any such determination shall not be effective unless it is filed with, or filed with and approved by, the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder.

Section 4.3 **Operation of the Trust Property**.

(a) Subject to Section 2.3(a) and Section 3.6(a)(ii), the Trustees shall act in a manner designed to enhance and preserve the Trust Property in the best interests of ISE Holdings; *provided, however*, that, notwithstanding anything to the contrary contained herein, the Trustees shall promptly (i) distribute to the Trust Beneficiary all dividends and other distributions paid to the Trust with respect to the Trust Shares, (ii) distribute to the Trust Beneficiary all assets received by the Trust in respect of the Trust Shares, as a result of any liquidation, dissolution or winding up of, or any distribution of the assets of, ISE Holdings, and (iii) upon receipt of written instructions from the Trust Beneficiary to sell the Trust Shares, use their commercially reasonable efforts to sell such Trust Shares to a Person or Persons whose Ownership Percentage or Voting Control Percentage will not violate any of the Ownership Limits or Voting Limits, as applicable, and who is or are not an Affected Affiliate or Affiliates

with respect to which a Material Compliance Event has occurred and is continuing, in one or more market transactions, public offerings or otherwise, in each case at a time or times and in a manner so as to maximize the return on the sale of such Trust Shares (any such sale, a "**Sale**"). Upon any Sale, the interest of the Trust Beneficiary in the Trust Shares so sold shall terminate and the Trustees shall distribute to the Trust Beneficiary the net proceeds received by the Trust from such Sale. The Trustees shall have the right to vote any Trust Shares held by the Trust. The Trustees are empowered with respect to the Trust Property to exercise from time to time in their discretion and without prior judicial authority all powers granted to them in this Agreement, including all acts necessary to exercise such powers. Persons dealing with the Trust shall not be obligated to look to the application of any moneys or other property paid or delivered to the Trust. All powers and discretions given to the Trustees by this Agreement shall be subject to the provisions of the Delaware Act and of this Agreement, and each exercise thereof in good faith shall be conclusive on all Persons, including Persons unascertained or not born.

(b) Except as otherwise expressly provided in this Agreement, the Trustees shall not be required (i) to file any account or report of the Trustees' administration of the Trust hereby created in any court unless demand therefor in writing has been made by any Person entitled by law to make such demand, (ii) to furnish any surety or other security or any official bond for the proper performance of the Trustees' duties hereunder, or (iii) to procure authorization by any court in the exercise of any power conferred upon the Trustees by this Agreement.

Section 4.4 **Further Assurances**. Upon exercise by the Trust of its powers in accordance with this Agreement, ISE Holdings shall, and shall cause its Subsidiaries to, cooperate and take any and all action, promptly upon the request of the Trust, to implement such exercise.

ARTICLE V
CONSIDERATIONS OF THE BOARD; OTHER DUTIES OF THE TRUST

Section 5.1 **Regulatory Considerations**.

(a) In discharging his or her responsibilities as a Trustee, Delaware Trustee or officer or employee of the Trust, each Trustee, Delaware Trustee and officer and employee of the Trust, as the case may be, must, to the fullest extent permitted by applicable law, take into consideration the effect that the Trust's actions would have on the ability of:

(i) each Controlled National Securities Exchange, to discharge their respective responsibilities under the Exchange Act; and

(ii) ISE Holdings, each Controlled National Securities Exchange, and the Trust (A) to engage in conduct that fosters and does not interfere with the ability of ISE Holdings, each Controlled National Securities Exchange, as applicable, and the Trust to prevent fraudulent and manipulative acts and practices in the securities markets; (B) to promote just and equitable principles of trade in the securities markets; (C) to foster cooperation and coordination with Persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (D) to

remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (E) in general, to protect investors and the public interest.

(b) The Trust, the Trustees, the Delaware Trustee and officers and employees of the Trust shall give due regard to the preservation of the independence of the self-regulatory function of each Controlled National Securities Exchange, and to each of their respective 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 each Controlled National Securities Exchange, relating to their respective regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of each Controlled National Securities Exchange, to carry out each of their respective responsibilities under the Exchange Act.

Section 5.2 **Compliance with Laws**.

(a) In discharging his or her responsibilities as Trustee, Delaware Trustee or officer or employee of the Trust, each such Trustee, Delaware Trustee or officer or employee of the Trust, as the case may be, shall (i) comply with the U.S. federal securities laws and the rules and regulations thereunder, (ii) cooperate with the SEC and (iii) cooperate with each Controlled National Securities Exchange, as applicable, pursuant to, and to the extent of, their respective regulatory authority.

(b) Nothing in this Article V shall create any duty owed by any Trustee, Delaware Trustee, officer or employee of the Trust to any Person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to the foregoing matters. Except as set forth in Section 7.1, no Person shall have any rights against the Trust, the Trustees, the Delaware Trustee or any officer or employee of the Trust under Section 5.1 or this Section 5.2.

Section 5.3 **Other Duties of the Trust.**

(a) The Trust shall comply with the U.S. federal securities laws and the rules and regulations thereunder and shall: (i) cooperate with (A) the SEC and (B) each Controlled National Securities Exchange, as applicable, pursuant to and to the extent of their respective regulatory authority; and (ii) shall take reasonable steps necessary to cause its agents to cooperate, with the SEC and, where applicable, each Controlled National Securities Exchange, pursuant to their respective regulatory authority. Except as set forth in Section 7.1, no Person shall have any rights against the Trust, the Trustees, the Delaware Trustee or any officer or employee of the Trust under this Section 5.3.

(b) The Trust shall take reasonable steps necessary to cause the Trustees, the Delaware Trustee and the officers and employees of the Trust, prior to accepting a position as a Trustee, Delaware Trustee, officer or employee of the Trust, as applicable, to consent in writing to the applicability to them of Section 5.1, Section 5.2(a) and Section 5.4 and ARTICLE VI, as applicable, with respect to their activities related to each Controlled National Securities Exchange, as applicable.

Section 5.4 **Submission to Jurisdiction of U.S. Courts and the SEC**. The Trust, the Trustees, the Delaware Trustee and the officers and employees of the Trust whose principal place of business and residence is outside of the United States shall be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the SEC for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws and the rules and regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of each Controlled National Securities Exchange, as applicable, (and shall be deemed to agree that the Trust may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding), and the Trust and each such Trustee, Delaware Trustee, officer or employee, by virtue of his or her acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the SEC, 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 by such courts or agency.

ARTICLE VI
CONFIDENTIAL INFORMATION

Section 6.1 **Limits on Disclosure**.

(a) To the fullest extent permitted by applicable law, all confidential information that shall come into the possession of the Trust pertaining to the respective self-regulatory function of each Controlled National Securities Exchange (including, without limitation, confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the respective books and records of the Controlled National Securities Exchange (the "**Confidential Information**") shall: (i) not be made available to any Persons (other than as provided in Section 6.2 and Section 6.3) other than to those officers, directors, employees and agents of ISE Holdings and the Trust that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Trust, the Trustees, the Delaware Trustee and the officers and employees of the Trust; and (iii) not be used for any commercial purposes.

(b) The Trust's books and records related to each Controlled National Securities Exchange, shall be maintained within the United States. For so long as the Trust directly or indirectly controls a Controlled National Securities Exchange, the books, records, premises, directors (including the Trustees and the Delaware Trustee), officers and employees of the Trust shall be deemed to be the books, records, premises, directors, officers and employees of the Controlled National Securities Exchange, as applicable, for purposes of and subject to oversight pursuant to the Exchange Act.

Section 6.2 **Certain Disclosure Permitted**. Notwithstanding Section 6.1, nothing in this Agreement shall be interpreted so as to limit or impede:

(a) the rights of the SEC or each Controlled National Securities Exchange, as applicable, to have access to and examine the Confidential Information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or

(b) the ability of any directors, officers, employees or agents of ISE Holdings or any Trustees, Delaware Trustee, officers, employees or agents of the Trust to disclose the Confidential Information to the SEC or each Controlled National Securities Exchange, as applicable.

Section 6.3 **Inspection**. The Trust's books and records shall be subject at all times to inspection and copying by:

(a) the SEC;

(b) each Controlled National Securities Exchange; *provided*, that such books and records are related to the operation or administration of the Controlled National Securities Exchange; and

(c) ISE Holdings and its officers, directors, employees and agents.

ARTICLE VII
LIABILITY, INDEMNIFICATION AND EXCULPATION

Section 7.1 **Liability**.

(a) Except as expressly set forth in this Agreement, the Trustees and the Delaware Trustee shall not be:

(i) personally liable for the payment of any amounts owed by the Trust, which payment shall be made solely from the assets of the Trust, if any; or

(ii) required to pay to the Trust or to any beneficial owner of the Trust any deficit upon dissolution of the Trust or otherwise.

(b) Neither the Delaware Trustee nor any Trustee will have any liability to any Person unless it shall be established in a final and non-appealable judicial determination by clear and convincing evidence that any decision or action of the Delaware Trustee or such Trustee, as applicable, was undertaken by reason of willful misconduct or gross negligence, and, in any event, any liability will be limited to actual, proximate and quantifiable damages.

(c) Neither ISE Holdings, each Controlled National Securities Exchange nor the Trust Beneficiary shall be liable in any capacity (whether as grantor, beneficial owner or otherwise) for any actions of the Trustees pursuant to this Agreement or for any debts, liabilities or other obligations of the Trust or the Trustees. Pursuant to Section 3803(a) of the Delaware Act, as applicable, ISE Holdings and each Controlled National Securities Exchange shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

Section 7.2 **Exculpation**. No Trustee, Delaware Trustee, officer or employee of the Trust shall be liable to the Trust, or any other Person who has an interest in the Trust, for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Trustee, Delaware Trustee, officer or employee of the Trust in good faith on behalf of the Trust

and in a manner reasonably believed to be within the scope of the authority conferred on such Trustee, Delaware Trustee, officer or employee by this Agreement, except that a Trustee, Delaware Trustee, officer or employee of the Trust shall be liable for any such loss, damage or claim incurred by reason of the willful misconduct or gross negligence of such Trustee, Delaware Trustee, officer or employee.

Section 7.3 **Indemnification**. To the fullest extent permitted by applicable law, a Trustee, Delaware Trustee, director, officer, agent or employee of the Trust (each an "**Indemnified Person**") shall be entitled to indemnification from the Trust and ISE Holdings for any loss, damage or claim incurred by such Indemnified Person by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Agreement or, in the case of the Delaware Trustee, solely by reason of the Delaware Trustee's current or former status as such, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of willful misconduct or gross negligence with respect to such acts or omissions.

Section 7.4 **Insurance**. The Trust shall purchase and maintain insurance to cover its indemnification obligations set forth herein, as well as any other liabilities of the Trustees. The Trust shall provide notice to the Trustees 30 days prior to the expiration or termination of such insurance.

Section 7.5 **Survival**. This ARTICLE VII shall survive any termination of this Agreement and dissolution of the Trust.

ARTICLE VIII
MISCELLANEOUS

Section 8.1 **Capital, Costs and Expenses**. ISE Holdings shall fund an initial amount of capital of the Trust and shall pay as its own costs, or reimburse to the Trust or indemnify it against, any and all costs and expenses incurred by the Trust. The initial capital contribution to be made by ISE Holdings in accordance with the Delaware Act shall constitute the initial Trust Property.

Section 8.2 **Amendments**. Except as otherwise provided in this Agreement, and subject to the approval of the SEC as and to the extent required under the Exchange Act, this Agreement may only be amended by a written instrument signed by (a) ISE Holdings, (b) the Trust Beneficiary, (c) the Trust and (d) if the amendment affects the rights, powers, duties, obligations or immunities of the Delaware Trustee or the Trustees, the Delaware Trustee and the Trustees, as applicable. Notwithstanding the forgoing, for so long as ISE Holdings or the Trust shall control, directly or indirectly, a Controlled National Securities Exchange, before any amendment or repeal of any provision of this Agreement shall be effective, such amendment or repeal shall be submitted to the board of directors of each Controlled National Securities Exchange, as applicable, and if such amendment or repeal must be filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal

shall not be effectuated until filed with or filed with and approved by the SEC, as the case may be. Any amendment adopted in accordance with the foregoing shall be binding upon the parties to this Agreement.

Section 8.3 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware; *provided, however*, that, to the fullest extent permitted by law, there shall not be applicable to the Trust, the Delaware Trustee, the Trustees or this Agreement any provision of the laws (statutory or common) of the State of Delaware pertaining to trusts (except the Delaware Act) that relate to or regulate, in a manner inconsistent with the terms hereof, (a) the filing with any court or governmental body or agency of Trustee accounts or schedules of Trustee fees and charges, (b) affirmative requirements to post bonds for trustees, officers, agents or employees of a trust, (c) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (d) fees or other sums payable to trustees, officers, agents or employees of a trust, (e) the allocation of receipts and expenditures to income or principal, (f) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding or investing trust assets or (g) the establishment of fiduciary or other standards of responsibility or limitations on the acts or powers of trustees that are inconsistent with the limitations or liabilities or authorities and powers of the Delaware Trustee or the Trustees as set forth or referenced in this Agreement. Section 3540 and, to the fullest extent permitted by applicable law, Section 3561, of Title 12 of the Delaware Code shall not apply to the Trust.

Section 8.4 **Jurisdiction; Waiver of Jury Trial**.

(a) The parties hereby (i) irrevocably submit to the exclusive (except as set forth in Section 5.4) jurisdiction of the courts of the State of Delaware (the "**Delaware Courts**") and the Federal Courts of the United States of America located in the State of Delaware (the "**Federal Courts**") in respect of any claim, dispute or controversy relating to or arising out of the negotiation, interpretation or enforcement of this Agreement or any of the documents referred to in this Agreement (except where any such document specifically provides otherwise) or the transactions contemplated hereby or thereby (any such claim being a "**Covered Claim**"); (ii) irrevocably agree to request that the Delaware or Federal Courts adjudicate any Covered Claim on an expedited basis and to cooperate with each other to assure that an expedited resolution of any such dispute is achieved; (iii) waive, and agree not to assert, as a defense in any action, suit or proceeding raising a Covered Claim that any of the parties hereto is not subject to the personal jurisdiction of the Delaware or Federal Courts or that such action, suit or proceeding may not be brought or is not maintainable in such Courts or that the venue thereof may be inappropriate or inconvenient or that this Agreement or any such document may not be enforced in or by such Courts; and (iv) irrevocably agree to abide by the rules of procedure applied by the Delaware or Federal Court (as the case may be), including, without limitation, procedures for expedited pre-trial discovery, and waive any objection to any such procedure on the ground that such procedure would not be permitted in the courts of some other jurisdiction or would be contrary to the laws of some other jurisdiction. The parties further agree that any Covered Claim has a significant connection with the State of Delaware and with the United States, and will not

contend otherwise in any proceeding in any court of any other jurisdiction. Each party represents that it has agreed to the jurisdiction of the Delaware and Federal Courts in respect of Covered Claims after being fully and adequately advised by legal counsel of its own choice concerning the procedures and law applied in the Delaware and Federal Courts and has not relied on any representation by any other party or its Affiliates, representatives or advisors as to the content, scope, or effect of such procedures and law, and will not contend otherwise in any proceeding in any court of any jurisdiction.

(b) Each party hereby irrevocably agrees that it will not oppose, on any ground, the recognition, enforcement or exequatur in any other court of any judgment (including a judgment requiring specific performance) rendered by a Delaware or Federal Court in respect of a Covered Claim.

(c) EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT: (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY; AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.4.

Section 8.5 **Entire Agreement**. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.

Section 8.6 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

Section 8.7 **Third Parties**. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor or employee of ISE Holdings, a Controlled National Securities Exchange, the Trust, the Delaware Trustee or the Trustees, or any stockholder or customer of ISE Holdings, a Controlled National Securities Exchange, or the Delaware Trustee. Nothing in this Agreement shall be deemed to create any right in any Person not a party hereto, and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person. No Person not a party hereto shall have any right to compel performance by ISE Holdings, a Controlled National Securities Exchange, the Trust, the Trustees or the Delaware Trustee of its obligations hereunder.

Section 8.8 **Notices**. All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if (a) delivered personally against written receipt, (b) sent by facsimile transmission, (c) mailed by registered or certified mail, postage prepaid, return receipt requested, or (d) mailed by reputable international overnight courier, fee prepaid, to the parties hereto at the following addresses or facsimile numbers:

Notices to the Trust shall be addressed to:

International Securities Exchange Holdings, Inc.
60 Broad Street
New York, New York 10004
Attention: Secretary
Facsimile: (212) 509-3955

with a copy to:

Morgan Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
Attn: Robert Robison
Facsimile: 212-309-6001

Notices to the Delaware Trustee shall be addressed to:

Wilmington Trust Company
1100 N. Market Street
Wilmington, Delaware 19890
Attention: Corporate Trust Administration
Facsimile: (302) 636-4149

with a copy to:
Richards, Layton & Finger, P.A.
920 King Street
Wilmington, Delaware 19801
Attention: Tara J. Hoffner
Facsimile: (302) 498-7708

Notices to the Trustees shall be addressed to:

Dr. Sharon Brown-Hruska
NERA
1255 23rd ST. NW, Suite 600
Washington, DC 20037
Facsimile: (202) 466-1764

Dr. Robert Schwartz

Baruch College
One Bernard Baruch Way, B10-225
New York, New York, 10010
Facsimile: (646) 312-3530

Prof. Dr. Heinz Zimmermann
Wirschaftswissenschafrliches Zentrum WWZ der Universitat Basel
Abteilung Finanzmarkttheorie - Fiaance
Holbeinstrasse 12
CH-4051 Basel
Switzerland
Facsimile: +41 (0)61 267 08 98

with a copy to:
International Securities Exchange Holdings, Inc.
60 Broad Street
New York, New York 10004
Attention: Secretary
Facsimile: (212) 509-3955

Notices to ISE Holdings shall be addressed to:

International Securities Exchange Holdings, Inc.
60 Broad Street
New York, New York 10004
Attention: Secretary
Facsimile: (212) 509-3955

with a copy to:

Morgan Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
Attn: Robert Robison
Facsimile: 212-309-6001

Notices to the Trust Beneficiary shall be addressed to:

U.S. Exchange Holdings, Inc.
233 South Wacker Drive
Chicago, Illinois 60606-6398
Attention.: General Counsel

Facsimile No.: +49 (0)69 211 13801

with a copy to:
Morgan Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
Attn: Robert Robison
Facsimile: 212-309-6001

In addition, copies of all notices hereunder shall be sent to:

Deutsche Börse AG
Neue Börsenstrasse 1
60487 Frankfurt
Attn: General Counsel
Facsimile: +49 (0)69-211-13801

All such notices, requests and other communications will be deemed given, (w) if delivered personally as provided in this Section, upon delivery, (x) if delivered by facsimile transmission as provided in this Section, upon confirmed receipt, (y) if delivered by mail as provided in this Section, upon the earlier of the fifth Business Day following mailing and receipt, and (z) if delivered by overnight courier as provided in this Section, upon the earlier of the second Business Day following the date sent by such overnight courier and receipt (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice is to be delivered pursuant to this Section). Any party hereto may change the address to which notices, requests and other communications hereunder are to be delivered by giving the other parties hereto notice in the manner set forth herein.

Section 8.9 **Severability**. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, rule or regulation, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by such provision or its severance herefrom and (d) in lieu of such provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such provision as may be possible.

Section 8.10 **Assignment**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided, however*, that none of the parties hereto will directly or indirectly assign (except any assignment that occurs by operation of law or in connection with a merger, tender offer, exchange offer or sale of all or substantially all of the assets of a party) its rights or delegate its obligations under this Agreement without the express prior written consent of (a) ISE Holdings, and (b) the Trust, subject to the approval of the SEC as and to the extent required under the Exchange Act.

Section 8.11 **Certain Tax Matters**. It is the intention of the parties that, for United States federal income tax purposes, (a) the Trust be treated as one or more grantor trusts, and (b) any Trust Property held by the Trust be treated as owned by ISE Holdings.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

INTERNATIONAL SECURITIES EXCHANGE HOLDINGS, INC.

By: _____
Name:
Title:

U.S. EXCHANGE HOLDINGS, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

WILMINGTON TRUST COMPANY,
as Delaware Trustee

By: _____
Name:
Title:

_____
Sharon Brown-Hruska, as Trustee and not in her individual capacity

_____
Robert Schwartz, as Trustee and not in his individual capacity

_____
Heinz Zimmermann, as Trustee and not in his individual capacity

Exhibit 5E – Third Amended and Restated Certification of Incorporation of ISE Holdings

Text of the Proposed Rule Change
Underlining indicates additions; [Brackets] indicate deletions.

[SECOND] THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
INTERNATIONAL SECURITIES EXCHANGE HOLDINGS, INC.

International Securities Exchange Holdings, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware, as amended from time to time (the "**DGCL**"), does hereby certify as follows:.

FIRST: The name of the corporation is International Securities Exchange Holdings, Inc. (the "**Corporation**").

SECOND: The address of the Corporation's registered office in the State of Delaware is 160 Greentree Drive, Suite 101, in the City of Dover, County of Kent, Delaware 19904. The name of its registered agent at such address is National Registered Agents, Inc.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is **two hundred one thousand (201,000)** shares, which shall be divided as follows: **one hundred one thousand (101,000)** shares of Common Stock, par value $.01 per share (the "**Common Stock**") and **one hundred thousand (100,000)** shares of preferred stock, par value $.01 per share (hereinafter referred to as the "**Preferred Stock**"). The powers, designations, preferences and relative, participating, optional or other special rights (and the qualifications, limitations or restrictions thereof) of the Common Stock and the Preferred Stock are as follows:

I. Preferred Stock

The Board of Directors of the Corporation (hereinafter referred to as the "**Board of Directors**") is hereby expressly authorized at any time, and from time to time, to create and provide for the issuance of shares of Preferred Stock in one or more series and, by filing a certificate pursuant to the DGCL (hereinafter referred to as a "**Preferred Stock Designation**"), to establish the number of shares to be included in each such series, and to fix the designations, preferences and relative, participating, optional or other special rights of the shares of each such series and the qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue thereof adopted by the Board of Directors, including, but not limited to, the following:

(a) the designation of and the number of shares constituting such series, which number the Board of Directors may thereafter (except as otherwise provided in the Preferred

Stock Designation) increase or decrease (but not below the number of shares of such series then outstanding);

(b) the dividend rate for the payment of dividends on such series, if any, the conditions and dates upon which such dividends shall be payable, the preference or relation which such dividends, if any, shall bear to the dividends payable on any other class or classes of or any other series of capital stock, the conditions and dates upon which such dividends, if any, shall be payable, and whether such dividends, if any, shall be cumulative or non-cumulative;

(c) whether the shares of such series shall be subject to redemption by the Corporation, and, if made subject to such redemption, the times, prices and other terms and conditions of such redemption;

(d) the terms and amount of any sinking fund provided for the purchase or redemption of the shares of such series;

(e) whether or not the shares of such series shall be convertible into or exchangeable for shares of any other class or classes of, any other series of any class or classes of capital stock of, or any other security of, the Corporation or any other corporation, and, if provision be made for any such conversion or exchange, the times, prices, rates, adjustments and any other terms and conditions of such conversion or exchange;

(f) the extent, if any, to which the holders of the shares of such series shall be entitled to vote as a class or otherwise with respect to the election of directors or otherwise;

(g) the restrictions, if any, on the issue or reissue of shares of the same series or of any other class or series;

(h) the amounts payable on and the preferences, if any, of the shares of such series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation; and

(i) any other relative rights, preferences and limitations of that series.

II. Common Stock

The Common Stock shall be subject to the express terms of any series of Preferred Stock set forth in the Preferred Stock Designation relating thereto.

(a) **Voting Rights**. Subject to the limitations set forth in Section III of this Article FOURTH, each holder of Common Stock shall have one vote in respect of each share of Common Stock held by such holder of record on the books of the Corporation on each matter on which the holders of Common Stock shall be entitled to vote.

(b) **Dividend Rights**. The holders of shares of Common Stock shall be entitled to receive, when and if declared by the Board of Directors, out of the assets of the Corporation which are by law available therefor, dividends payable either in cash, in stock or otherwise.

(c) **Liquidation Rights**. Upon the liquidation, dissolution or winding up of the Corporation, holders of Common Stock shall be entitled to receive any amounts available for distribution after the payment of, or provision for, obligations of the Corporation and any preferential amounts payable to holders of any outstanding shares of Preferred Stock.

III. Limitations on Ownership and Voting

As used in this Certificate of Incorporation, the term "**Person**" shall mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof; the term "**Related Persons**" shall mean (1) with respect to any Person, any executive officer (as such term is defined in Rule 3b-7 under the Securities Exchange Act of 1934 (the "**Exchange Act**")), director, general partner, manager or managing member, as applicable, and all "**affiliates**" and "**associates**" of such Person (as such terms are defined in Rule 12b-2 under the Exchange Act); (2) with respect to any Person constituting a member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of a Controlled National Securities Exchange (as such term is defined below)("**Member**")), any broker or dealer with which such Member is associated; (3) with respect to any Person that is an executive officer (as such term is defined in Rule 3b-7 under the Exchange Act), director, general partner, manager or managing member of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (4) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of the Corporation; and the term "**beneficially owned**", including all derivative or similar words, shall have the meaning set forth in Regulation 13D-G under the Exchange Act.

(a) **Ownership Limits**. For so long as the Corporation shall control, directly or indirectly, one or more national securities exchange (each, a "**Controlled National Securities Exchange**"), including, but not limited to, International Securities Exchange, LLC, a Delaware limited liability company and wholly owned subsidiary of the Corporation ("**ISE, LLC**") or facility thereof:

(i) (x) No Person, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares of the capital stock (whether Common Stock or Preferred Stock) of the Corporation that have the right by their terms to vote in the election of members of the Board of Directors or on other matters which may require the approval of the holders of voting shares of the Corporation (other than matters affecting the rights, preferences or privileges of a particular class of capital stock) (the "**Voting Shares**") constituting more than forty percent (40%) of the then-outstanding Voting Shares and (y) no Person who is a Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, Voting Shares constituting more than twenty percent (20%) of the then-outstanding Voting Shares ((x) and (y) each an "**Ownership Limit**, " and (x) and (y) together, the "**Ownership Limits**").

(A) Notwithstanding the foregoing and subject to clause (B) below, the Ownership Limit described in Section III(a)(i)(x) of this Article

FOURTH may be waived by the Board of Directors pursuant to an amendment to the bylaws of the Corporation (the "**Bylaws**") adopted by the Board of Directors, if, in connection with the adoption of such amendment, the Board of Directors in its sole discretion adopts a resolution stating that it is the determination of the Board of Directors that such amendment (1) will not impair the ability of any of the Corporation and the Controlled National Securities Exchange, or facility thereof, to carry out its respective functions and responsibilities under the Exchange Act and the rules promulgated thereunder; (2) is otherwise in the best interests of the Corporation and its stockholders and the Controlled National Securities Exchange or facility thereof; and (3) will not impair the ability of the United States Securities and Exchange Commission (the "**Commission**") to enforce the Exchange Act. Such amendment shall not be effective unless approved by the Commission.

(B) Notwithstanding clause (A) above, in any case where a Person's Ownership Percentage (as defined below) will exceed the Ownership Limits upon consummation of any proposed sale, assignment or transfer of the Corporation's capital stock, the Board of Directors shall have determined that such Person and its Related Persons are not subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Exchange Act).

(C) In making the determinations referred to in clauses (A) and (B) above, the Board of Directors may impose on the Person in question and its Related Persons such conditions and restrictions as it may in its sole discretion deem necessary, appropriate or desirable.

(D) Any Person (and its Related Persons) that proposes to acquire an Ownership Percentage in excess of the Ownership Limit described in Section III(a)(i)(x) of this Article FOURTH shall have delivered to the Board of Directors a notice in writing, not less than forty-five (45) days (or any shorter period to which the Board of Directors shall expressly consent) before the proposed acquisition of shares of capital stock (whether common or preferred) that would result in such Person exceeding the Ownership Limit described in Section III(a)(i)(x) of this Article FOURTH.

(E) For purposes of this Section III of this Article FOURTH, "**Ownership Percentage**" means, with respect to any Person, an amount (expressed as a percentage) equal to the quotient of (1) the aggregate number of Voting Shares owned directly or indirectly, of record or beneficially, by such Person and its Related Persons, ***divided by*** (2) the total number of Voting Shares then outstanding.

(ii) Any Person, either alone or together with its Related Persons, that at any time owns (whether by acquisition or by a change in the number of shares outstanding) of record or beneficially, whether directly or indirectly, five percent

(5%) or more of the then-outstanding Voting Shares shall, immediately upon so owning five percent (5%) or more of the then-outstanding Voting Shares, give the Board of Directors written notice of such ownership of five percent (5%) or more of the then-outstanding Voting Shares, which notice shall state: (1) such Person's full legal name; (2) such Person's title or status and the date on which such title or status was acquired; (3) such Person's approximate ownership interest in the Corporation; and (4) whether such Person has the power, directly or indirectly, to direct the management or policies of the Corporation, whether through ownership of securities, by contract or otherwise. [The Board of Directors shall deliver to the ISE Trust (as defined below) a copy of any written notice provided pursuant to this Section III(a)(ii) of this Article FOURTH.]

(iii) Each Person required to provide written notice pursuant to Section III(a)(ii) of this Article FOURTH shall update such notice promptly after any change therein; *provided*, that no such updated notice shall be required to be provided to the Board of Directors in the event of an increase or decrease of less than one percent (1%) (of the then-outstanding Voting Shares) in such Person's Ownership Percentage so reported (such increase or decrease to be measured cumulatively from the amount shown on the last such report) unless any increase or decrease of less than one percent (1%) results in such Person owning more than twenty percent (20%) or more than forty percent (40%) of the then-outstanding Voting Shares (at a time when such Person so owned less than such percentages) or such Person so owning less than twenty percent (20%) or less than forty percent (40%) of the then-outstanding Voting Shares (at a time when such Person so owned more than such percentages). [The Board of Directors shall deliver to the ISE Trust a copy of any update provided pursuant to this Section III(a)(iii) of this Article FOURTH.]

(b) **Voting Limits**. (i) For so long as the Corporation shall control, directly or indirectly, one or more Controlled National Securities Exchanges, or facility thereof, no Person, either alone or together with its Related Persons, at any time, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, (A) may be entitled to vote or cause the voting of Voting Shares representing more than twenty percent (20%) of the voting power of the then-outstanding Voting Shares, (B) may be entitled to give any consent or proxy with respect to Voting Shares representing more than twenty percent (20%) of the voting power of the then-outstanding Voting Shares, or (C) enter into any agreement, plan or other arrangement with any other Person, either alone or together with its Related Persons, under circumstances which would result in the Voting Shares that shall be subject to such agreement, plan or other arrangement not being voted on any matter or matters or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of Voting Shares representing more than twenty percent (20%) of the then-outstanding Voting Shares (assuming, for purposes of this Section III(b)(i)(C) of this Article FOURTH, that all Voting Shares that are subject to such agreement, plan or other arrangement are not then-outstanding Voting Shares) ((A), (B), and (C) each a "**Voting Limit**" and (A), (B) and (C) collectively, the "**Voting Limits**"); *provided, however*, that a Voting Limit may be waived by the Board of Directors pursuant to an amendment to the Bylaws adopted by

the Board of Directors, if, in connection with the adoption of such amendment, the Board of Directors in its sole discretion adopts a resolution stating that it is the determination of the Board of Directors that (1) such amendment will not impair the ability of any of the Corporation and the Controlled National Securities Exchange, or facility thereof, to carry out its respective functions and responsibilities under the Exchange Act, (2) such amendment is otherwise in the best interests of the Corporation and its stockholders and the Controlled National Securities Exchange, or facility thereof, (3) such amendment will not impair the ability of the Commission to enforce the Exchange Act, (4) such Person and its Related Persons are not subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Exchange Act), and (5) neither such Person nor any of its Related Persons is a Member. In making the determinations referred to in the immediately preceding sentence, the Board of Directors may impose on the Person in question and its Related Persons such conditions and restrictions as it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Exchange Act. Such amendment shall not be effective until approved by the Commission. Any Person that proposes to acquire a Voting Control Percentage (as defined below) in excess of a Voting Limit shall have delivered to the Board of Directors a notice in writing, not less than forty-five (45) days (or any shorter period to which the Board of Directors shall expressly consent) before the date on which such Person acquires a Voting Control Percentage in excess of a Voting Limit, of its intention to do so. [The Board of Directors shall deliver to the ISE Trust a copy of any written notice provided pursuant to this Section III(b) of this Article FOURTH.]

(ii) Section III(b)(i) of this Article FOURTH shall not apply to any solicitation of any revocable proxy from any stockholder of the Corporation by the Corporation.

(iii) Notwithstanding any other provisions contained in this Certificate of Incorporation, to the fullest extent permitted by applicable law, any shares of capital stock of the Corporation (whether such shares be common stock or preferred stock) not entitled to be voted due to the restrictions set forth in subparagraph Section III(b)(i) of this Article FOURTH (and not waived by the Board of Directors and approved by the Commission pursuant to Section III(b)(i) of this Article FOURTH above) shall not be deemed to be outstanding for purposes of determining a quorum or a minimum vote required for the transaction of any business at any meeting of stockholders of the Corporation, including, without limitation, when specified business is to be voted on by a class or a series voting as a class.

([ii]iv) For purposes of this Section III of this Article FOURTH, "**Voting Control Percentage**" means, with respect to any Person, an amount (expressed as a percentage) equal to the quotient of (A) the aggregate number of Voting Shares (1) the Person is entitled to vote or cause to be voted or (2) with respect to which a consent or proxy may be given, in each case by such Person and its Related Persons, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, ***divided by*** (B) the total number of Voting Shares then outstanding (assuming that any Voting Shares subject to an agreement, plan or

other arrangement described in Section III(b)(i)(C) of this Article FOURTH are not outstanding Voting Shares for purposes of this calculation).

(c) **Violations of any Ownership Limit or Voting Limit; Excess Shares**. Notwithstanding any other provisions contained in this Section III of this Article FOURTH, if at any time any Person's Ownership Percentage or Voting Control Percentage exceeds an Ownership Limit or a Voting Limit[, the Board of Directors shall so notify the ISE Trust and such Ownership Percentage or Voting Control Percentage shall result in the automatic transfer to the ISE Trust of a majority of the Voting Shares then outstanding *pro rata* from the holders thereof] , then, except as otherwise provided herein, such shares in excess of the relevant ownership limitations shall constitute "Excess Shares" (the "**Excess Shares**") and shall be treated as provided in this section. Such designation and treatment shall be effective as of the close of business on the business day prior to the date of the purported transfer or other event. Where such Person beneficially owns shares together with one or more Related Persons and the shares held by such Related Persons are designated as Excess Shares, the designation of shares held by such Person and such Related Persons as Excess Shares shall be pro rata in accordance with the number of shares held by each. If the Corporation accepts any offer pursuant to Section III(c)(vii) of this Article FOURTH, the Corporation shall forthwith determine the additional number of shares, if any, that become Excess Shares by reason of the reduction in outstanding shares caused by the Corporation's purchase of Excess Shares (whether any Person, either alone or together with its Related Persons, holds such Excess Shares in connection with a purported transfer or is deemed to hold such Excess Shares as the result of the Corporation's purchase of Excess Shares) and shall take all action reasonably necessary to ensure that such additional Excess Shares are added to the initial number of Excess Shares subject to the provisions of this Section III(c) of this Article FOURTH.

(i) Any sale, transfer, assignment or pledge that, if effective would result in any Person, either alone or together with its Related Persons, owning shares in excess of any of the ownership limits set forth in this Section III of this Article FOURTH shall be void ab initio as to such Excess Shares, and the intended transferee shall acquire no rights in such Excess Shares. Any Person, either alone or together with its Related Persons, owning shares in excess of any of the ownership limits set forth in this Section III of this Article FOURTH as a result of any event other than a sale, transfer, assignment or pledge shall forthwith cease to have any rights in such Excess Shares.

(ii) Upon any purported transfer or other event that results in Excess Shares, such Excess Shares shall be deemed to have been transferred to the Corporation (or to an entity appointed by the Corporation that is unaffiliated with the Corporation and any Person or its Related Persons owning such Excess Shares), as Special Trustee (as defined below) of the Charitable Trust (as defined below) [All Excess Shares transferred to the ISE Trust shall be held] for the exclusive benefit of the Charitable [Trust] Beneficiary or Beneficiaries (as defined below). Notwithstanding any other provision of this Certificate of Incorporation, or any provision of the Bylaws, to the contrary, Excess Shares held by the [ISE] Charitable Trust shall be or continue to be issued and outstanding Voting Shares.

(iii) Excess Shares shall be entitled to dividends or other distributions, which shall be paid to the [ISE] Special Trustee for the exclusive benefit of the [Trust] Charitable Beneficiary. Any dividend or other distribution paid prior to the discovery by the Corporation that the shares had become Excess Shares shall be repaid to the Special Trustee and held for the exclusive benefit of the Charitable Beneficiary. Any dividend declared and unpaid shall be void ab initio as to the purported transferee or holder and shall be paid to the Special Trustee for the exclusive benefit of the Charitable Beneficiary [The Trustees (as defined below) shall promptly distribute such dividends and other distributions received in respect of the Excess Shares to the Trust Beneficiary].

([ii]iv) Subject to the rights of the holders of any series of Preferred Stock, in the event of any voluntary or involuntary liquidation, dissolution or winding up of, or any other distribution of all or substantially all of the assets of the Corporation, the [ISE] Charitable Trust, as the holder of Excess Shares, shall be entitled to receive ratably with each holder of the same class or series of stock, a portion of the assets of the Corporation available for distribution to the stockholders. The Special Trustee[s] shall promptly distribute any such assets received in respect of the Excess Shares in any liquidation, dissolution or winding up of, or any distribution of the assets of the Corporation in accordance with the priorities and limitations set forth herein and as if such assets were the proceeds from the disposition of the Excess Shares with respect to which the distribution is received [to the Trust Beneficiary].

([i]v) To the fullest extent permitted by applicable law, the holder of Excess Shares [Trust Beneficiary] shall not be entitled to vote such Excess Shares on any matter, and the Special Trustee shall have the authority (A) to rescind as void any votes cast by a purported transferee or holder prior to the discovery that such shares should be transferred to the Special Trustee and (B) to recast such vote in accordance with the desires of the Special Trustee acting for the benefit of the Corporation; provided however, that if the Corporation has already taken irreversible action, then the Special Trustee shall not have the authority to rescind and recast such vote. The Special Trustee shall be deemed to have been given an irrevocable proxy by such holder of Excess Shares to vote the shares for the benefit of the Charitable Beneficiary. Notwithstanding the provisions of this section, until the Corporation has received notification that shares have been transferred into a Charitable Trust, the Corporation shall be entitled to rely on its share transfer and other records for purposes of preparing lists of stockholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting stockholder votes.

(vi) Excess Shares shall not be transferable except in a transfer to which the [ISE] Special Trustee is a party. [Upon receipt of written instructions from the Trust Beneficiary, the Trustees shall promptly use their commercially reasonable efforts to sell the] Within twenty (20) days of receiving notice from the Corporation that Excess Shares have been transferred to a Charitable Trust, the Special Trustee shall sell the Excess Shares held in Charitable Trust to a

Person or Persons, designated by the Special Trustee[s], whose ownership of Voting Shares will not violate any Ownership Limit or Voting Limit, in market transactions, by public offering or otherwise, in each case, at a time or times and in a manner so as to maximize the return on the Excess Shares. Upon any such sale, the interest of the [Trust] Charitable Beneficiary in the Voting Shares sold shall so terminate and the Special Trustee[s] shall promptly distribute the net proceeds of the sale to the purported transferee or holder and to the Charitable [Trust] Beneficiary as provided herein. The purported transferee or holder will receive the lesser of (A) the price per share received by the Corporation from the transfer of the Excess Shares, (B) the price per share such purported transferee or holder paid for the shares in the purported transfer or other event that resulted in the Excess Shares, or (C) if the purported transferee or holder did not give value for such Excess Shares in the event resulting in the Excess Shares, a price per share equal to the Market Price (as defined below) for the Excess Shares on the date of the purported transfer or other event that resulted in the Excess Shares; provided, that in the case of a purported holder holding Excess Shares solely as the result of an action or event by the Corporation (such as an action resulting in a reduction in the number of outstanding shares), such purported holder will receive the greater of (A) or (C) above.

Any proceeds in excess of the amount payable to the purported transferee or holder shall be payable to the Charitable Beneficiary. If, prior to the discovery by the Corporation that shares should be transferred to a Charitable Trust, such shares are sold by a purported transferee or holder, then (A) such shares shall be deemed to have been sold on behalf of the Charitable Trust and (B) to the extent that the purported transferee or holder received an amount for such shares that exceeds the amount that such purported transferee or holder was entitled to receive pursuant to this section, such excess shall be paid to the Special Trustee of the Charitable Trust upon demand.

(vii) Excess Shares shall be deemed to have been offered for sale to the Corporation on the date of the transaction or event resulting in such Excess Shares (including any shares deemed to be Excess Shares pursuant to Section III(c) of this Article FOURTH) at a price per share equal to the lesser of (A) the price per share such purported transferee or holder paid for the shares in the purported transfer or other event that resulted in the Excess Shares (or in the case of an event not involving any payment, the Market Price at the time of such transfer or other event) and (B) the Market Price of the shares on the date the Corporation accepts such offer. The Corporation shall have the right to accept such offer, in whole or in part, until the Special Trustee has sold the shares held in the Charitable Trust pursuant to Section III(c)(vi) of this Article FOURTH.

[(v) The Trust Beneficiary shall have the right to reacquire the Excess Shares from the Trust if and when (A) a Person's Ownership Percentage or Voting Control Percentage no longer exceeds any Ownership Limit or Voting Limit, or (B) a Person's Ownership Percentage or Voting Control Percentage in excess of any Ownership Limit or Voting Limit is waived by the Board of

Directors and approved by the Commission in accordance with Sections III(a)(i)(A) and III(b)(i) of this Article FOURTH.]

For purposes of this Section III of this Article FOURTH, "**Charitable Beneficiary**" shall mean one or more organizations described in Sections 170(b)(1)(A) or 170(c) of the Internal Revenue Code of 1986, as amended from time to time; the term "**Charitable Trust**" shall mean the trust established for the benefit of the Charitable Beneficiary pursuant to this section for which the Corporation is the trustee; the term "**Market Price**" shall mean, the last reported sale price of, or the average of the closing bid and asked prices for, the shares, on the trading day immediately preceding the relevant date as reported in any exchange or quotation system over which the shares may be traded, or if not then traded over any exchange or quotation system, then the fair market value of the shares on the relevant date as determined in good faith by the Corporation; the term "**Special Trustee**" shall mean the Corporation, in its capacity as trustee for the Charitable Trust, any entity appointed by the Corporation that is unaffiliated with the Corporation and any Person or its Related Persons owning such Excess Shares, and any successor trustee appointed by the Corporation [the term "**ISE Trust**" shall mean the Delaware statutory trust established for the benefit of the Trust Beneficiary pursuant to that certain Trust Agreement (the "**Trust Agreement**") to be entered into among the Corporation, the Trustees, and the Trust Beneficiary; the term "**Trustees**" shall mean the trustees initially appointed pursuant to the Trust Agreement, and any successor trustees appointed in accordance with the Trust Agreement; the term "**Trust Beneficiary**" shall mean U.S. Exchange Holdings, Inc].

(d) **Effect of Purported Voting in Violation of this Section III of this Article FOURTH**. If any stockholder purports to vote or cause the voting of Voting Shares, grant any consent or proxy with respect to the Voting Shares, or enter into any agreement, plan, or other arrangement for the voting of Voting Shares that would violate, or cause the violation of, any Voting Limit under this Section III of this Article FOURTH, then the Corporation shall not honor such vote or proxy to the extent that such provisions would be violated, and any shares subject thereto shall not be entitled to be voted to the extent of such violation.

FIFTH: The Board of Directors is hereby authorized to create and issue, whether or not in connection with the issuance and sale of any of its stock or other securities or property, rights entitling the holders thereof to purchase from the Corporation shares of stock or other securities of the Corporation or any other corporation, recognizing that, under certain circumstances, the creation and issuance of such rights could have the effect of discouraging third parties from seeking, or impairing their ability to seek, to acquire a significant portion of the outstanding securities of the Corporation, to engage in any transaction which might result in a change of control of the Corporation or to enter into any agreement, arrangement or understanding with another party to accomplish the foregoing or for the purpose of acquiring, holding, voting or disposing of any securities of the Corporation. The creation and issuance of any such rights shall be subject to the prior approval of the Commission. Subject thereto, the times at which and the terms upon which such rights are to be issued will be determined by the Board of Directors and set forth in the contracts or instruments that evidence such rights. The

authority of the Board of Directors with respect to such rights shall include, but not be limited to, determination of the following:

(a) the initial purchase price per share or other unit of the stock or other securities or property to be purchased upon exercise of such rights;

(b) provisions relating to the times at which and the circumstances under which such rights may be exercised or sold or otherwise transferred, either together with or separately from, any other stock or other securities of the Corporation;

(c) provisions which adjust the number or exercise price of such rights or amount or nature of the stock or other securities or property receivable upon exercise of such rights in the event of a combination, split or recapitalization of any stock of the Corporation, a change in ownership of the Corporation's stock or other securities or a reorganization, merger, consolidation, sale of assets or other occurrence relating to the Corporation or any stock of the Corporation, and provisions restricting the ability of the Corporation to enter into any such transaction absent an assumption by the other party or parties thereto of the obligations of the Corporation under such rights;

(d) provisions which deny the holder of a specified percentage of the outstanding stock or other securities of the Corporation the right to exercise such rights and/or cause the rights held by such holder to become void;

(e) provisions which permit the Corporation to redeem or exchange such rights, which redemption or exchange may be within the sole discretion of the Board of Directors, if the Board of Directors reserves such right to itself; and

(f) the appointment of a rights agent with respect to such rights.

SIXTH: The Bylaws may be amended, added to, rescinded or repealed at any meeting of the Board of Directors or meeting of the stockholders.

SEVENTH: Unless and except to the extent that the Bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

EIGHTH: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. No amendment or repeal of this Article EIGHTH shall adversely affect any right or protection of a director of the Corporation existing hereunder in respect of any act or omission occurring prior to such amendment or repeal.

NINTH: Except as may be expressly provided in this Certificate of Incorporation, the Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation or a Preferred Stock Designation, and any other provisions authorized by the laws of the State of Delaware at the time

in force may be added or inserted, in the manner now or hereafter prescribed herein or by law, and all powers, preferences and rights of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation or a Preferred Stock Designation, as the same may be amended, are granted subject to the right reserved in this Article NINTH; *provided, however*, that no Preferred Stock Designation shall be amended after the issuance of any shares of the series of Preferred Stock created thereby, except in accordance with the terms of such Preferred Stock Designation and the requirements of law.

TENTH: In discharging his or her responsibilities as a member of the Board of Directors, each director, to the fullest extent permitted by law, shall take into consideration the effect that the Corporation's actions would have on the ability of each Controlled National Securities Exchange, or facility thereof to carry out its responsibilities under the Exchange Act and on the ability of each Controlled National Securities Exchange, or facility thereof, and the Corporation: to engage in conduct that fosters and does not interfere with each Controlled National Securities Exchange, or facility thereof and the Corporation'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 mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest. In discharging his or her responsibilities as a member of the Board of Directors or as an officer or employee of the Corporation, each such director, officer or employee shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with each Controlled National Securities Exchange, or facility thereof, and the Commission pursuant to their respective regulatory authority.

ELEVENTH: All confidential information pertaining to the self-regulatory function of each Controlled National Securities Exchange, or facility thereof (including but not limited to confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of each Controlled National Securities Exchange, or facility thereof, that shall come into the possession of the Corporation shall, to the fullest extent permitted by law: (x) not be made available to any Person (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the Corporation that have a reasonable need to know the contents thereof; (y) be retained in confidence by the Corporation and the officers, directors, employees and agents of the Corporation; and (z) not be used for any commercial purposes. Nothing in this Certificate of Incorporation shall be interpreted as to limit or impede the rights of the Commission or each Controlled National Securities Exchange to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations promulgated thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission or each Controlled National Securities Exchange.

TWELFTH: For so long as the Corporation shall control, directly or indirectly, each Controlled National Securities Exchange, or facility thereof, the books, records, premises, officers, directors and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors and employees of each Controlled National Securities Exchange for

purposes of and subject to oversight pursuant to the Exchange Act, but only to the extent that such books, records and premises are related to, or such officers, directors and employees are involved in, the activities of each Controlled National Securities Exchange, or facility thereof. The books and records related to the activities of each Controlled National Securities Exchange, or facility thereof, shall be subject at all times to inspection and copying by the Commission and each Controlled National Securities Exchange.

THIRTEENTH: The Corporation shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with each Controlled National Securities Exchange and the Commission pursuant to their respective regulatory authority, and shall take reasonable steps necessary to cause its agents to cooperate with each Controlled National Securities Exchange and the Commission pursuant to their respective regulatory authority with respect to such agents' activities related to each Controlled National Securities Exchange, or facility thereof.

FOURTEENTH: For so long as the Corporation shall control, directly or indirectly, a Controlled National Securities Exchange, or facility thereof, before any amendment to or repeal of any provision of this Certificate of Incorporation of the Corporation shall be effective, the same shall be submitted to the board of directors of each Controlled National Securities Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

IN WITNESS WHEREOF, this [Second] Third Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL and has been executed by a duly authorized officer of the Corporation this [16th day of December, 2014] ●, 2016.

_____

Name:
Title:

Exhibit 5F – Fourth Amended and Restated Certification of Incorporation of U.S. Exchange Holdings

Text of the Proposed Rule Change
Underlining indicates additions; [Brackets] indicate deletions.

[THIRD] FOURTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

U.S. EXCHANGE HOLDINGS, INC.

[December 16, 2014] •, 2016

The name of the corporation is U.S. Exchange Holdings, Inc. (the "**Corporation**"). The Corporation was incorporated on April 24, 2003 by filing its Certificate of Incorporation with the Secretary of State of the State of Delaware under the name U.S. Exchange Holdings, Inc. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on April 24, 2003 and was amended and restated on December 19, 2007 (as amended and restated, the "**Original Certificate**"). The Second Amended and Restated Certificate of Incorporation of the Corporation (the "**Second Amended and Restated Certificate**") was filed pursuant to Sections 242 and 245 of the Delaware General Corporation Law, and restated, integrated and amended the Original Certificate."). [This] The Third Amended and Restated Certificate of Incorporation of the Corporation ([this] the "**Third Restated Certificate**") was filed pursuant to Sections 242 and 245 of the Delaware General Corporation Law, and restates, integrates and amends the Original Certificate. This Fourth Amended and Restated Certificate of Incorporation of the Corporation (this "**Restated Certificate**") was filed pursuant to Sections 242 and 245 of the Delaware General Corporation Law, and restates, integrates and amends the Original Certificate.

FIRST: The name of the Corporation is U.S. Exchange Holdings, Inc.

SECOND: The registered office of the Corporation is to be located at 1209 Orange Street, in the City of Wilmington, in the County of New Castle, in the State of Delaware. The name of its registered agent at that address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the DGCL.

FOURTH: The total number of shares of stock which the Corporation is authorized to issue is 100,000 shares of common stock and the par value of each such share is $0.01.

FIFTH: The board of directors of the Corporation (the "**Board of Directors**") may make bylaws and from time to time may alter, amend or repeal bylaws.

SIXTH: Unless and except to the extent that the bylaws of the Corporation (the "**Bylaws**") shall so require, the election of directors of the Corporation need not be by written ballot.

SEVENTH: The following provision is inserted for the management of the business and for the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

> In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to exercise all corporate powers and do all acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the statutes of the State of Delaware and of this Restated Certificate and the Bylaws in effect at the time of such action; *provided, however,* that no bylaws adopted shall invalidate any prior act of the directors that would have been valid if such bylaw had not been made.

EIGHTH: The Corporation shall, in accordance with the Bylaws and to the fullest extent permitted by Section 145 of the DGCL, as each may be amended from time to time, indemnify all Persons whom it may indemnify pursuant thereto. As used in this Restated Certificate, the term "**Person**" shall mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

NINTH: To the fullest extent that the DGCL, as it may be amended from time to time, permits the limitation or elimination of liability of directors, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except when such liability is imposed (i) directly or indirectly as a result of a violation of the federal securities laws, (ii) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (iii) for any acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law, (iv) pursuant to Section 174 of the DGCL or (v) as a result of any transaction from which the director derived an improper personal benefit. No amendment or repeal of this Article NINTH shall apply or have any affect on the liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

TENTH: In discharging his or her responsibilities as a member of the Board of Directors, each director, to the fullest extent permitted by law, shall, to the extent such director is involved in the activities of one or more national securities exchanges controlled, directly or indirectly, by the Corporation (each, a "**Controlled National Securities Exchange**"), including, but not limited to, International Securities Exchange, LLC, a Delaware limited liability company and an indirect wholly owned subsidiary of the Corporation ("ISE, LLC"), or facility thereof, take into consideration the effect that the Corporation's actions would have on the ability of each Controlled National Securities Exchange, or facility thereof, to carry out its responsibilities under

the Securities Exchange Act of 1934 (the "**Exchange Act**"), and on the ability of each Controlled National Securities Exchange, or facility thereof, and the Corporation: to engage in conduct that fosters and does not interfere with each Controlled National Securities Exchange, or facility thereof, and the Corporation'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 mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest. In discharging his or her responsibilities as a member of the Board of Directors or as an officer or employee of the Corporation, each such director, officer, or employee shall, to the extent such director, officer, or employee is involved in the activities of a Controlled National Securities Exchange, or facility thereof, comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the Controlled National Securities Exchange pursuant to its respective regulatory authority and the United States Securities and Exchange Commission (the "**Commission**"). Nothing in this Article TENTH shall create any duty owed by any director, officer or employee of the Corporation to any Person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to the foregoing matters. No employee, former employee, beneficiary, customer, creditor, community or regulatory authority or member thereof shall have any rights against any director, officer or employee of the Corporation or the Corporation under this Article TENTH.

ELEVENTH: The Corporation shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with each Controlled National Securities Exchange pursuant to its regulatory authority and the Commission and shall take reasonable steps necessary to cause its agents to cooperate with each Controlled National Securities Exchange pursuant to its respective regulatory authority and the Commission with respect to such agents' activities related to each Controlled National Securities Exchange, or facility thereof.

TWELFTH: For so long as the Corporation shall directly or indirectly control a Controlled National Securities Exchange, or facility thereof, the Corporation, its directors, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the Controlled National Securities Exchange and to the Controlled National Securities Exchange's 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 of the Controlled National Securities Exchange relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of the Controlled National Securities Exchange to carry out its responsibilities under the Exchange Act.

THIRTEENTH: For so long as the Corporation shall directly or indirectly control a Controlled National Securities Exchange, the Corporation shall take reasonable steps necessary to cause International Securities Exchange Holdings, Inc. ("**ISE Holdings")**, a Delaware corporation and a wholly-owned subsidiary of the Corporation, to be in compliance with the Ownership Limits and the Voting Limits, as such terms are defined in Article FOURTH, Section III of the certificate of incorporation of ISE Holdings. If any Person, either alone or together with its Related Persons, at any time owns (whether by acquisition or by a change in the number of shares outstanding) of record or beneficially, whether directly or indirectly, 10%,

15%, 20%, 25%, 30%, 35%, or 40% or more of the then-outstanding shares in the Corporation, the Corporation shall, as soon as practicable, give written notice of such ownership to the board of directors of each Controlled National Securities Exchange [and to the International Securities Exchange Trust, a statutory trust formed under the laws of the state of Delaware, as provided in that certain Third Amended and Restated Trust Agreement, dated as of December 22, 2014, among the Corporation, ISE Holdings, Wilmington Trust Company, as Delaware Trustee, Sharon Brown-Hruska, as Trustee, Robert Schwartz, as Trustee and Heinz Zimmermann, as Trustee, (as such trust agreement may be amended, restated or replaced from time to time)], which notice shall state (A) such Person's full legal name, (B) such Person's title or status and the date on which such title or status was acquired, (C) such Person's approximate ownership interest in the Corporation, and (D) whether such Person has the power, directly or indirectly, to direct the management or policies of the Corporation, whether through ownership of securities, by contract or otherwise. As used in this Restated Certificate, the term "**Related Persons**" shall mean (1) with respect to any Person, any executive officer (as defined under Rule 3b-7 under the Exchange Act), director, general partner, manager or managing member, as applicable, and all "**affiliates**" and "**associates**" of such Person (as such terms are defined in Rule 12b-2 under the Exchange Act); (2) with respect to any Person constituting a member of the Controlled National Securities Exchange (as such term is defined in Section 3(a)(3)(A) of the Exchange Act)("**Member**"), any broker or dealer with which such Member is associated; (3) with respect to any Person that is an executive officer (as defined under Rule 3b-7 under the Exchange Act), director, general partner, manager or managing member of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (4) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of the Corporation; and the term "beneficially owned", including all derivative or similar words, shall have the meaning set forth in Regulation 13D-G under the Exchange Act.

FOURTEENTH: All confidential information pertaining to the self-regulatory function of a Controlled National Securities Exchange, or facility thereof (including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Controlled National Securities Exchange, or facility thereof that shall come into the possession of the Corporation shall, to the fullest extent permitted by law: (i) not be made available to any Person (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the Corporation that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Corporation and the officers, directors, employees and agents of the Corporation; and (iii) not be used for any commercial purposes. Nothing in this Restated Certificate [of Incorporation] shall be interpreted as to limit or impede: (A) the rights of the Commission or the Controlled National Securities Exchange to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations promulgated thereunder; or (B) the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission or the Controlled National Securities Exchange.

FIFTEENTH: For so long as the Corporation shall control, directly or indirectly, a Controlled National Securities Exchange, or facility thereof, the books, records, premises, officers, directors and employees of the Corporation shall be deemed to be the books, records,

premises, officers, directors and employees of the Controlled National Securities Exchange for purposes of and subject to oversight pursuant to the Exchange Act, but only to the extent that such books and records are related to, or such officers, directors and employees are involved in, the activities of the Controlled National Securities Exchange, or facility thereof. The Corporation's books and records relating to the activities of a Controlled National Securities Exchange, or facility thereof, shall be subject at all times to inspection and copying by the Commission and the Controlled National Securities Exchange. The Corporation's books and records related to the activities of a Controlled National Securities Exchange, or facility thereof, shall be maintained within the United States.

SIXTEENTH: Notwithstanding any other provision of this Restated Certificate [of Incorporation], for so long as the Corporation shall control, directly or indirectly, a Controlled National Securities Exchange, or facility thereof, before any amendment to or repeal of any provision of this Restated Certificate [of Incorporation of the Corporation] shall be effective, the same shall be submitted to the board of directors of each Controlled National Securities Exchange , and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

IN WITNESS WHEREOF, the Corporation has caused this [Third] Fourth Amended and Restated Certificate of Incorporation to be signed and attested to by its duly authorized officers as of the date set forth above.

U.S. EXCHANGE HOLDINGS, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

Exhibit 5G – Third Amended and Restated Bylaws of International Securities Exchange, Inc.

Text of the Proposed Rule Change
Underlining indicates additions; [Brackets] indicate deletions.

[SECOND] THIRD AMENDED AND RESTATED

BYLAWS

OF

INTERNATIONAL SECURITIES EXCHANGE HOLDINGS, INC.

(Adopted on December 19, 2007; Amended on December 23, 2008 [and], April 30, 2012, and •, 2016)

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[SECOND] THIRD AMENDED AND RESTATED

BYLAWS

OF

INTERNATIONAL SECURITIES EXCHANGE HOLDINGS, INC.

ARTICLE I

Office and Records; Jurisdiction

Section 1.1 **Delaware Office**. The principal office of the corporation (the "**Corporation**") in the State of Delaware shall be located in the City of Dover, County of Kent, and the name and address of its registered agent is National Registered Agents, Inc., 9 East Loockerman Street, Suite 1B, Delaware 19901.

Section 1.2 **Other Offices**. The Corporation may have such other offices, either within or without the State of Delaware, as the board of directors of the Corporation (the "**Board of Directors**") may designate or as the business of the Corporation may from time to time require.

Section 1.3 **Books and Records**. The books and records of the Corporation may be kept at the Corporation's principal executive offices in New York, New York or at such other locations within or without the State of Delaware as may from time to time be designated by the Board of Directors, *provided*, that the books and records shall always be kept within the United States.

Section 1.4 **Consent to Jurisdiction**. The Corporation and its officers, directors, employees and agents, by virtue of their acceptance of such position, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the United States Securities and Exchange Commission (the "**Commission**"), and each national securities exchange controlled, directly or indirectly, by the Corporation ("Controlled National Securities Exchange"), including but not limited to, International Securities Exchange, LLC ("**ISE, LLC**"), for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to, the activities of each Controlled National Securities Exchange, or facility thereof, and by virtue of their acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the United States federal courts, the Commission or each Controlled National Securities Exchange, 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 thereof may not be enforced in or by such courts or agency. The Corporation and its officers, directors, employees and agents also agree that they will maintain an agent, in the United States,

for the service of process of a claim arising out of, or relating to, the activities of Controlled National Securities Exchange, or facility thereof.

Section 1.5 **Officers and Directors**. For so long as the Corporation shall control, directly or indirectly, Controlled National Securities Exchange, or facility thereof, each officer, director and employee of the Corporation shall give due regard to the preservation of the independence of the self-regulatory function of each Controlled National Securities Exchange, and to such Controlled National Securities Exchange's obligations under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the rules thereunder including, without limitation, Section 6(b) of the Exchange Act and shall not take any actions which he or she knows or reasonably should have known would interfere with the effectuation of any decisions by the board of directors of Controlled National Securities Exchange relating to such Controlled National Securities Exchange's regulatory functions (including disciplinary matters) or which would adversely affect the ability of each Controlled National Securities Exchange, or facility thereof, to carry out its respective responsibilities under the Exchange Act.

Section 1.6 **Further Compliance**. The Corporation shall take reasonable steps necessary to cause its officers, directors and employees prior to accepting a position as an officer, director or employee, as applicable, of the Corporation to consent in writing to the applicability to them of Article TENTH, Article ELEVENTH, and Article TWELFTH of the Certificate of Incorporation of the Corporation (the "**Certificate of Incorporation**") and Section 1.4 and Section 1.5 hereof, as applicable, with respect to their activities related to each Controlled National Securities Exchange, or facility thereof.

ARTICLE II

Stockholders

Section 2.1 **Annual Meeting**. The annual meeting of stockholders of the Corporation shall be held on such date and at such time as may be designated by the Board of Directors at the principal executive offices of the Corporation, or at such other place within or without the State of Delaware as may be fixed by the Board of Directors.

Section 2.2 **Special Meetings**. Subject to the rights of the holders of any series of preferred stock, par value $.01 per share, of the Corporation (the "**Preferred Stock**"), or any other series or class of stock as set forth in the Certificate of Incorporation to elect additional directors under specified circumstances, a special meeting of the holders of stock of the Corporation entitled to vote on any business to be considered at any such meeting may be called only by the Chairman of the Board of the Corporation or a majority of the Board of Directors for any purpose or purposes, and shall be called by the Secretary of the Corporation at the request of the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors which the Corporation would at the time have if there were no vacancies (the "**Whole Board**"). The Board of Directors may designate the place of meeting for any special meeting of the stockholders, and if no such designation is made, the place of meeting shall be the principal executive offices of the Corporation.

Section 2.3 **Notice of Meetings**. Whenever stockholders are required or permitted to take any action at a meeting, unless notice is waived as provided in Section 8.1 of these Bylaws, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, and except as to any stockholder duly waiving notice, the written notice of any meeting shall be given personally or by mail, not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at his or her address as it appears on the records of the Corporation. Any previously scheduled meeting of the stockholders may be postponed by resolution of the Board of Directors upon public notice given by press release prior to the time previously scheduled for such meeting of stockholders.

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If, however, the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.4 **Quorum**. Except as otherwise provided by law or by the Certificate of Incorporation or by these Bylaws, at any meeting of stockholders the holders of a majority of the voting power of the shares of the capital stock (whether common stock or Preferred Stock) of the Corporation that have the right by their terms to vote in the election of members of the Board of Directors or on other matters which may require the approval of the holders of voting shares of the Corporation (other than matters affecting the rights, preferences or privileges of a particular class of capital stock) (the "**Voting Shares**"), either present in person or represented by proxy, shall constitute a quorum for the transaction of any business at such meeting, except that when specified business is to be voted on by a class or series voting as a class, the holders of a majority of the voting power of such class or series entitled to vote shall constitute a quorum for the transaction of such business. To the fullest extent permitted by applicable law, the chairman of the meeting or a majority of the voting power of the shares of Voting Shares so present or represented may adjourn the meeting from time to time, whether or not there is such a quorum (or in the case of specified business to be voted on as a class or series, the chairman or a majority of the shares of such class or series entitled to vote which are so present or represented may adjourn the meeting with respect to such specified business). No notice of the time and place of adjourned meetings need be given except as provided in the last paragraph of Section 2.3 of these Bylaws. The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of a sufficient number of stockholders to result in less than a quorum.

Section 2.5 **Voting**. Except as otherwise set forth in the Certificate of Incorporation with respect to the right of any holder of any series of Preferred Stock or any other series or class of stock to elect additional directors under specified circumstances, whenever directors are to be elected at a meeting, they shall be elected by a plurality of the votes cast at the

meeting by the holders of shares of stock entitled to vote. Whenever any corporate action, other than the election of directors, is to be taken by vote of stockholders at a meeting, such corporate action shall, except as otherwise required by law or by the Certificate of Incorporation or by these Bylaws, be authorized by the affirmative vote of the holders of a majority of the shares of stock present in person or represented by proxy and entitled to vote with respect to such corporate action. Except as otherwise provided by law, or by the Certificate of Incorporation, each holder of record of stock of the Corporation entitled to vote on any matter at any meeting of stockholders shall be entitled to one vote for each share of such stock standing in the name of such holder on the stock ledger of the Corporation on the record date for the determination of the stockholders entitled to vote at the meeting.

Upon the demand of any stockholder entitled to vote, the vote for directors or the vote on any other matter at a meeting shall be by written ballot, but otherwise the method of voting and the manner in which votes are counted shall be discretionary with the presiding officer at the meeting.

Section 2.6 **Proxies**. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after eleven (11) months from its date, unless the proxy provides for a longer period. Every proxy shall be signed by the stockholder or by his or her duly authorized attorney. Such proxy must be filed with the Secretary of the Corporation or his or her representative at or before the time of the meeting.

Section 2.7 **Inspectors of Elections; Opening and Closing the Polls**. (a) The Board of Directors by resolution shall appoint one or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives of the Corporation, to act at the meeting and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act, or if all inspectors or alternates who have been appointed are unable to act, at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector to the best of his or her ability. The inspectors shall have the duties prescribed by the Delaware General Corporation Law (the "**DGCL**").

(b) The chairman of the meeting shall fix and announce at the meeting the time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting.

Section 2.8 **List of Stockholders**. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting, either on a reasonably accessible electronic network, *provided*, that information required to gain access to such list is provided with the notice of the meeting, or during ordinary

business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Nothing in this Section shall require the Corporation to include electronic mail addresses or other electronic contact information on such list.

The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this Section or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 2.9 **Stockholder Action by Written Consent**. Unless otherwise provided in the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders of the Corporation, or any action that may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its principal place of business, or an officer or agent of the Corporation having custody of the minutes of proceedings of the stockholders of the Corporation. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation.

ARTICLE III

Directors

Section 3.1 **General Powers**. The business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors. In addition to the powers and authorities by these Bylaws expressly conferred upon it, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders.

Section 3.2 **Number, Tenure and Qualifications**. Subject to the rights of the holders of any series of Preferred Stock or any other series or class of stock as set forth in the Certificate of Incorporation to elect directors under specified circumstances, the number of directors shall be fixed from time to time exclusively pursuant to a resolution adopted by a

majority of the Whole Board, but shall consist of not more than fifteen (15) nor less than two (2) directors, and one (1) of such directors shall be such person who is currently holding the office of Chief Executive Officer of the Corporation. Except as may be provided in the Certificate of Incorporation, the directors shall be elected by the holders of the Voting Shares at the annual meeting or any special meeting called for such purpose. Each director so elected shall hold office until his or her successor shall be duly elected and qualified or until his or her earlier death, resignation or removal.

Section 3.3 **Vacancies and Newly Created Directorship**. Subject to the rights of the holders of any series of Preferred Stock or any other series or class of stock as set forth in the Certificate of Incorporation to elect additional directors under specified circumstances, in the event that a director position becomes available, whether through vacancies resulting from death, resignation, retirement, disqualification, removal from office or other cause, or newly created directorships resulting from any increase in the authorized number of directors, such positions may be filled only by the affirmative vote of a majority of the remaining directors, though less than a quorum of the Board of Directors, and directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class to which such director has been elected expires and until such director's successor shall have been duly elected and qualified. No decrease in the number of authorized directors constituting the Whole Board shall shorten the term of any incumbent director.

Section 3.4 **Resignation**. Any director may resign at any time upon written notice to the Corporation. Any such resignation shall take effect at the time specified therein or, if the time be not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Section 3.5 **Removal**. To the fullest extent permitted by law, any director or the entire Board of Directors may be removed, with or without cause, by the affirmative vote of a majority of the voting power of the outstanding shares then entitled to vote at an election of directors; *provided, however*, that whenever the holders of any class or series of capital stock are entitled to elect or appoint one or more directors by the Certificate of Incorporation, the affirmative vote of the holders of a majority of the outstanding shares of that class or series (and not the vote of the outstanding shares as a whole) shall be necessary to remove a director elected or appointed by such class or series without cause.

Section 3.6 **Meetings**. Meetings of the Board of Directors, regular or special, may be held at any place within or without the State of Delaware. Members of the Board of Directors, or of any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. An annual meeting of the Board of Directors shall be held as soon as practicable following each annual meeting of stockholders. The Board of Directors may fix times and places for such annual meeting and additional regular meetings of the Board of Directors and no further notice of such meetings need be given. A special meeting of the Board of Directors shall be held whenever called by the Chairman of the Board or by a majority of the Whole Board, at such time and place as shall be specified in the notice or waiver thereof. The

person or persons authorized to call a special meeting of the Board of Directors may fix the place and time of the meetings. Notice of any special meeting shall be given to each director at his or her business or residence in writing, by electronic mail or by telegram or by telephone communication. If mailed, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five (5) days before such meeting. If by electronic mail, such notice shall be deemed adequately delivered when the electronic mail is sent at least twenty-four hours before the meeting. If by telegram, such notice shall be deemed adequately delivered when the telegram is delivered to the telegraph company at least twenty-four hours before such meeting. If by facsimile transmission, such notice shall be transmitted at least twenty-four hours before such meeting. If by telephone, the notice shall be given at least twelve hours prior to the time set for the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice of such meeting, except for amendments to these Bylaws as provided under Section 10.1 of these Bylaws.

Section 3.7 **Quorum and Voting**. A whole number of directors equal to at least a majority of the Whole Board shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if there be less than a quorum, a majority of the directors present may adjourn the meeting from time to time, and no further notice thereof need be given other than announcement at the meeting which shall be so adjourned. Except as otherwise provided by law, by the Certificate of Incorporation, or by these Bylaws, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 3.8 **Written Consent of Directors in Lieu of a Meeting**. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or of such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or of such committee.

Section 3.9 **Compensation**. Directors may receive compensation for services to the Corporation in their capacities as directors or otherwise in such manner and in such amounts as may be fixed from time to time by the Board of Directors.

Section 3.10 **Committees of the Board of Directors**. (a) The Board of Directors may, by resolution, establish an Executive Committee and one or more other committees, each committee to consist of one or more directors. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee and the alternate or alternates, if any, designated for such member, the member or members of the committee present at any meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(b) The Executive Committee, if established, and any such other committee to the extent provided in the resolution establishing such committee, shall have and may exercise all the power and authority of the Board of Directors in the management of the business and

affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the Corporation. A committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee. The Executive Committee shall, without limitation, have the power and authority to declare dividends, to authorize the issuance of stock and to adopt a certificate of ownership and merger pursuant to Section 253 of the DGCL (*provided*, that no vote of stockholders of the Corporation is required for the effectuation of such merger). Other committees shall have such names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee so formed shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 3.11 **Chairman of the Board**. The Chairman of the Board shall be elected, by the affirmative vote of at least a majority of the directors then in office. The Chairman of the Board shall serve as such for a term of one (1) year. The Chairman of the Board shall have the authority provided in these Bylaws. The Chairman of the Board shall preside at all meetings of stockholders and of the Board of Directors.

Section 3.12 **Vice Chairman of the Board**. The Vice Chairman of the Board shall be elected from among the directors by the affirmative vote of at least a majority of the directors then in office. The Vice Chairman of the Board shall serve as such for a term of one (1) year. In the case of the absence or inability of the Chairman of the Board to act, or a vacancy in the office of the Chairman of the Board, the Vice Chairman of the Board shall exercise the powers and discharge the duties of the Chairman of the Board, unless determined otherwise by the Board of Directors. The Vice Chairman of the Board shall have the authority provided in these Bylaws.

ARTICLE IV

Officers

Section 4.1 **Officers**. The Board of Directors shall elect a President, a Secretary and a Treasurer, and one or more Vice Presidents, one or more Assistant Secretaries and one or more Assistant Treasurers. All officers elected by the Board of Directors shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article IV, together with such other powers and duties as from time to time may be conferred by the Board of Directors or any committee thereof. Any number of such offices may be held by the same person, but no officer shall execute, acknowledge or verify any instrument in more than one capacity. The Board of Directors may elect, and may delegate power to elect, such other officers, agents and employees as it may deem necessary or proper, who shall hold their offices or positions for such terms, have such authority and perform such duties as may from time to time be determined by or pursuant to authorization of the Board of Directors.

Section 4.2 **Election and Term of Office**. The officers of the Corporation shall be elected annually by the Board of Directors at the regular meeting of the Board of Directors held after each annual meeting of the stockholders. If the election of officers shall not be accomplished at such meeting, such election shall be accomplished as soon thereafter as convenient. Subject to Section 4.3 of these Bylaws, each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death, removal or resignation.

Section 4.3 **Resignation and Removal**. Any officer may resign at any time upon written notice to the Corporation. Any elected officer may be removed by a majority of the members of the Whole Board, with or without cause, at any time. The Board of Directors may delegate such power of removal as to officers, agents and employees not elected by the Board of Directors. Such removal shall be without prejudice to a person's contract rights, if any, but the appointment of any person as an officer, agent or employee of the Corporation shall not itself create contract rights.

Section 4.4 **Compensation and Bond**. The compensation of the officers of the Corporation shall be fixed by the Board of Directors, but this power may be delegated to any officer in respect of other officers under his or her control. The Corporation may secure the fidelity of any or all of its officers, agents or employees by bond or otherwise.

Section 4.5 **President and Chief Executive Officer**.

(a) The Chief Executive Officer shall be appointed by the Board of Directors pursuant to Section 4.1 and shall be nominated for a directorship by virtue of his or her office. The Chief Executive Officer shall manage the affairs of the Corporation and shall be the representative of the Corporation in all public matters. The Chief Executive Officer may be removed by a majority of the members of the Whole Board, with or without cause, at any time. In the case of temporary absence or inability to act, the Chief Executive Officer may designate any other officer to assume all the functions and discharge all the duties of the Chief Executive Officer. Upon his or her failure to do so, or if the office of Chief Executive Officer is vacant, any officer so designated by the Board of Directors shall perform the functions and duties of the Chief Executive Officer.

(b) The President shall have such powers and perform such duties as the Board of Directors may from time to time prescribe.

Section 4.6 **Vice Presidents**. Each Vice President shall have such powers and perform such duties as the Board of Directors may from time to time prescribe.

Section 4.7 **Treasurer**. The Treasurer shall have charge of all funds and securities of the Corporation, shall endorse the same for deposit or collection when necessary and deposit the same to the credit of the Corporation in such banks or depositaries as the Board of Directors may authorize. He or she may endorse all commercial documents requiring endorsements for or on behalf of the Corporation and may sign all receipts and vouchers for payments made to the Corporation and may disburse funds as directed by the Board of Directors.

He or she shall have all such further powers and duties as generally are incident to the position of Treasurer or as may be assigned to him or her by the Board of Directors.

Section 4.8 **Secretary**. The Secretary shall record all the proceedings of the meetings of the stockholders and directors in a book to be kept for that purpose and shall also record therein all action taken by written consent of directors in lieu of a meeting. He or she shall attend to the giving and serving of all notices of the Corporation. He or she shall have custody of the seal of the Corporation and shall attest the same by his or her signature whenever required. He or she shall have charge of the stock ledger and such other books and papers as the Board of Directors may direct, but he or she may delegate responsibility for maintaining the stock ledger to any transfer agent appointed by the Board of Directors. He or she shall have all such further powers and duties as generally are incident to the position of Secretary or as may be assigned to him or her by the Chief Executive Officer or the Board of Directors.

Section 4.9 **Assistant Treasurers**. In the absence or inability to act of the Treasurer, any Assistant Treasurer may perform all the duties and exercise all the powers of the Treasurer. An Assistant Treasurer shall also perform such other duties as the Treasurer or the Board of Directors may assign to him or her.

Section 4.10 **Assistant Secretaries**. In the absence or inability to act of the Secretary, any Assistant Secretary may perform all the duties and exercise all the powers of the Secretary. An Assistant Secretary shall also perform such other duties as the Secretary or the Board of Directors may assign to him or her.

Section 4.11 **Delegation of Duties**. In case of the absence of any officer of the Corporation, or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may confer for the time being the powers or duties, or any of them, of such officer upon any other officer or upon any director.

ARTICLE V

Indemnification And Insurance

Section 5.1 **Right to Indemnification**. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "**proceeding**"), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of any other corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to any employee benefit plan (hereinafter an "**indemnitee**"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss

(including, without limitation, attorneys' fees, judgments, fines, excise taxes or penalties under the Employee Retirement Income Security Act of 1974, as amended, and amounts paid or to be paid in settlement) reasonably incurred by such indemnitee in connection therewith; *provided, however*, that except as provided in Section 5.3 with respect to proceedings seeking to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee seeking indemnification in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors.

Section 5.2 **Right to Advancement of Expenses**. The right to indemnification conferred in Section 5.1 shall include the right to be paid by the Corporation the expenses (including attorneys' fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "**advancement of expenses**"); *provided, however*, that, if the DGCL requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "**undertaking**"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "**final adjudication**") that such indemnitee is not entitled to be indemnified for such expenses under this Section 5.2 or otherwise.

Section 5.3 **Right of Indemnitee to Bring Suit**. If a claim under Section 5.1 or Section 5.2 is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right of an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is

not entitled to be indemnified, or to such advancement of expenses, under this Article V or otherwise shall be on the Corporation.

Section 5.4 **Non-Exclusivity of Rights**. The right to indemnification and the advancement of expenses conferred in this Article V shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, provision of these Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 5.5 **Insurance**. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 5.6 **Indemnification of Employees and Agents of the Corporation**. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to the advancement of expenses, to any employee or agent of the Corporation to the fullest extent of the provisions of this Article V with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 5.7 **Contract Rights**. The rights to indemnification and to the advancement of expenses conferred in Section 5.1 and Section 5.2 shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators.

ARTICLE VI

Stock

Section 6.1 **Certificates**. Certificates for stock of the Corporation shall be in such form as shall be approved by the Board of Directors and shall be signed in the name of the Corporation by the Chairman of the Board, the Chief Executive Officer, the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary. Such certificates may be sealed with the seal of the Corporation or a facsimile thereof. Any of or all the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue. The Board of Directors may provide by resolution or resolutions that all or some of any class or series of stock of the Corporation shall be uncertificated shares. Within a reasonable time following the issuance or transfer of any uncertificated shares, the Corporation shall send to the registered owner thereof any written notice prescribed by the DGCL.

Section 6.2 **Transfers of Stock**. Transfers of stock shall be made only upon the books of the Corporation by the holder, in person or by a duly authorized attorney, and on the

surrender of the certificate or certificates for the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require. The Board of Directors shall have the power to make all such rules and regulations, not inconsistent with the Certificate of Incorporation and these Bylaws and the DGCL, as the Board of Directors may deem appropriate concerning the issue, transfer and registration of certificates for stock of the Corporation. The Board of Directors may appoint one or more transfer agents or registrars of transfers, or both, and may require all stock certificates to bear the signature of either or both.

Section 6.3 **Lost, Stolen or Destroyed Certificates**. The Corporation may issue a new stock certificate in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate or his or her legal representative to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate. The Board of Directors may require such owner to satisfy other reasonable requirements as it deems appropriate under the circumstances.

Section 6.4 **Stockholder Record Date**. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. If no record date is fixed by the Board of Directors, (l) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the date on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and (2) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the adjourned meeting.

Only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to notice of, and to vote at, such meeting and any adjournment thereof, or to receive payment of such dividend or other distribution, or to exercise such rights in respect of any such change, conversion or exchange of stock, or to participate in such action, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation after any record date so fixed.

ARTICLE VII

Seal

Section 7.1 **Seal**. The seal of the Corporation shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board of Directors, the name of the Corporation, the year of its incorporation and the words "**Corporate Seal**" and "**Delaware**". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

ARTICLE VIII

Waiver Of Notice

Section 8.1 **Waiver of Notice**. Whenever notice is required to be given to any stockholder or director of the Corporation under any provision of the DGCL or the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. In the case of a stockholder, such waiver of notice may be signed by such stockholder's attorney or proxy duly appointed in writing. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any written waiver of notice.

ARTICLE IX

Checks, Notes, Drafts, Etc.

Section 9.1 **Checks, Notes, Drafts, Etc**. Checks, notes, drafts, acceptances, bills of exchange and other orders or obligations for the payment of money shall be signed by such officer or officers or person or persons as the Board of Directors or a duly authorized committee thereof may from time to time designate.

ARTICLE X

Amendments

Section 10.1 **Amendments**. These Bylaws may be amended, added to, rescinded or repealed at any meeting of the Board of Directors or meeting of the stockholders. With respect to each Controlled National Securities Exchange, or facility thereof, before any amendment to or repeal of any provision of the Bylaws of this Corporation shall be effective, the same shall be submitted to the board of directors of each Controlled National Securities Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

ARTICLE XI

Waiver Of Limits

Section 11.1 **Waiver of Ownership Limits and Voting Limits to Permit Merger.**

(a) The Board of Directors hereby waives (i) pursuant to Article FOURTH, Section III(a)(i) of the certificate of incorporation of the Corporation dated November 16, 2004, as amended ("**2004 Certificate**"), the restrictions on ownership of capital stock of the Corporation described in Article FOURTH, Section III(a)(i) of the 2004 Certificate, and (ii) pursuant to Article FOURTH, Section III(b)(i) of the 2004 Certificate, the restrictions on voting rights with respect to the capital stock of the Corporation as described in Article FOURTH, Section III(b)(i) of the 2004 Certificate, in each case solely in order to permit the merger and the other transactions contemplated by that certain Agreement and Plan of Merger, dated as of April 30, 2007, by and among Eurex Frankfurt AG, a stock corporation organized under the laws of the Federal Republic of Germany ("**Eurex Frankfurt**"), Ivan Acquisition Co., a Delaware corporation and a wholly-owned indirect subsidiary of Eurex Frankfurt, and the Corporation, under which the Corporation (A) will become a wholly-owned subsidiary of U.S. Exchange Holdings, Inc., a Delaware corporation that is a wholly-owned subsidiary of Eurex Frankfurt, and (B) will become an indirect subsidiary of Eurex Frankfurt, Eurex Zürich AG ("**Eurex Zürich**"), a stock corporation organized under the laws of Switzerland, Deutsche Börse AG ("**Deutsche Börse**"), a stock corporation organized under the laws of the Federal Republic of Germany, SWX Swiss Exchange ("**SWX**"), a stock corporation organized under the laws of Switzerland, SWX Group, a stock corporation organized under the laws of Switzerland, and Verein SWX Swiss Exchange, an association organized under the laws of Switzerland. For the purpose of this Article XI, Deutsche Börse, Eurex Frankfurt, Eurex Zürich, SWX, SWX Group, Verein SWX Swiss Exchange, and U.S. Exchange Holdings, Inc. are collectively referred to as the "**Upstream Owners**."

(b) In so waiving the applicable Ownership Limits and Voting Limits to allow ownership and voting of the capital stock of the Corporation by the Upstream Owners, the Board of Directors has determined, with respect to each Upstream Owner, that: (i) such waiver will not impair the ability of the Corporation and each Controlled National Securities Exchange, or facility thereof, to carry out its respective functions and responsibilities under the Exchange Act and the rules promulgated thereunder; (ii) such waiver is otherwise in the best interests of the Corporation, its stockholders, and each Controlled National Securities Exchange, or facility thereof; (iii) such waiver will not impair the ability of the Commission to enforce the Exchange Act; (iv) neither the Upstream Owner nor any of its Related Persons are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Exchange Act); and (v) neither the Upstream Owner nor any of its Related Persons is a member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of such Controlled National Securities Exchange.

Section 11.2 **Waiver of Ownership Limits and Voting Limits to Permit Transaction.**

(a) The Board of Directors hereby waives (i) pursuant to Article FOURTH, Section III(a)(i) of the certificate of incorporation of the Corporation dated December 23, 2008, as amended ("2008 Certificate"), the restrictions on ownership of capital stock of the Corporation described in Article FOURTH, Section III(a)(i) of the 2008 Certificate, and (ii) pursuant to Article FOURTH, Section III(b)(i) of the 2008 Certificate, the restrictions on voting rights with respect to the capital stock of the Corporation as described in Article FOURTH, Section III(b)(i) of the 2008 Certificate, in each case solely in order to permit the transactions contemplated by that certain Share Purchase Agreement, dated as of June 7, 2011, between Deutsche Börse and SIX Group AG (formerly SWX Group) and SIX Swiss Exchange AG (formerly SWX), under which the Corporation will become an indirect subsidiary of Eurex Global Derivatives AG ("EGD"), a stock corporation organized under the laws of Switzerland (the "Transaction"). At the time the Transaction is consummated, EGD will be referred to as an Upstream Owner, and SIX Group AG, SIX Swiss Exchange AG, and Verein SIX Swiss Exchange (formerly Verein SWX Swiss Exchange) will no longer be referred to as Upstream Owners.

(b) In so waiving the applicable Ownership Limits and Voting Limits to allow ownership and voting of the capital stock of the Corporation by EGD, the Board of Directors has determined, with respect to EGD, that: (i) such waiver will not impair the ability of the Corporation and each Controlled National Securities Exchange, or facility thereof, to carry out its respective functions and responsibilities under the Exchange Act and the rules promulgated thereunder; (ii) such waiver is otherwise in the best interests of the Corporation, its stockholders, and each Controlled National Securities Exchange, or facility thereof; (iii) such waiver will not impair the ability of the Commission to enforce the Exchange Act; (iv) neither EGD nor any of its Related Persons are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Exchange Act); and (v) neither EGD nor any of its Related Persons is a member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of such Controlled National Securities Exchange.

Section 11.3 **Waiver of Ownership Limits and Voting Limits to Permit Transaction.**

(a) The Board of Directors hereby waives (i) pursuant to Article FOURTH, Section III(a)(i) of the certificate of incorporation of the Corporation dated December 16, 2014, as amended ("2014 Certificate"), the restrictions on ownership of capital stock of the Corporation described in Article FOURTH, Section III(a)(i) of the 2014 Certificate, and (ii) pursuant to Article FOURTH, Section III(b)(i) of the 2014 Certificate, the restrictions on voting rights with respect to the capital stock of the Corporation as described in Article FOURTH, Section III(b)(i) of the 2014 Certificate, in each case solely in order to permit the transactions contemplated by that certain Stock Purchase Agreement, dated March 9, 2016, between Deutsche Börse AG, Eurex Frankfurt AG, and Nasdaq, Inc. ("Nasdaq"), under which the Corporation will become an indirect subsidiary of Nasdaq, a corporation organized under the laws of the State of Delaware (the "Transaction"). At the time the Transaction is consummated, Nasdaq will be referred to as an Upstream Owner, and Deutsche Börse and Eurex Frankfurt will no longer be referred to as Upstream Owners (EGD, which is referenced in Section 11.2 above, ceased to be an Upstream Owner as a result of a 2014 transaction).

(b) In so waiving the applicable Ownership Limits and Voting Limits to allow ownership and voting of the capital stock of the Corporation by Nasdaq, the Board of Directors has determined, with respect to Nasdaq, that: (i) such waiver will not impair the ability of the Corporation and each Controlled National Securities Exchange, or facility thereof, to carry out its respective functions and responsibilities under the Exchange Act and the rules promulgated thereunder; (ii) such waiver is otherwise in the best interests of the Corporation, its stockholders, and each Controlled National Securities Exchange, or facility thereof; (iii) such waiver will not impair the ability of the Commission to enforce the Exchange Act; (iv) neither Nasdaq nor any of its Related Persons are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Exchange Act); and (v) neither Nasdaq nor any of its Related Persons is a member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of such Controlled National Securities Exchange.