

Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2021 - * 050

Amendment No. (req. for Amendments *)

Filing by NASDAQ BX, Inc.

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 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 rule change to amend the BX Equities LLC Operating Agreement

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 * Associate General Counsel

E-mail * Sun.Kim@nasdaq.com

Telephone * (646) 420-7816 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, NASDAQ BX, Inc. has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 10/22/2021


(Title *)

By John A. Zecca

EVP and Chief Legal Officer

(Name *)

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

 Date: 2021.10.22 12:53:03 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-BX-2021-050 19b-4.doc

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

SR-BX-2021-050 Exhibit 1.doc

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 Advanced Notice by Clearing Agencies *

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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 2- Notices, Written Comments, Transcripts, Other Communications

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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

Exhibit 4 - Marked Copies

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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

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SR-BX-2021-050 Exhibit 5.doc

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

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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) Nasdaq BX, Inc. (“BX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend its rules to reflect that Nasdaq, Inc. (“Nasdaq HoldCo”), the Exchange’s sole stockholder, will transfer its entire ownership interest in the Exchange’s subsidiary Nasdaq BX Equities LLC (“BX Equities”) to the Exchange, thereby resulting in the Exchange becoming the 100% direct owner and sole LLC member of BX Equities.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. 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 proposed rule change was approved by the Board of Directors (the “Board”) of the Exchange on August 13, 2020. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Sun Kim
Associate General Counsel
Nasdaq, Inc.
646-420-7816

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange’s rules to reflect that Nasdaq HoldCo, the Exchange’s sole stockholder, will transfer its entire ownership interest in the Exchange’s subsidiary BX Equities to the Exchange (the “Transfer”), thereby resulting in the Exchange becoming the 100% direct owner and sole LLC member of BX Equities. The Exchange notes that the proposed Transfer is the first part of a two-step process, the second part of which is the upstream merger of BX Equities with and into the Exchange (the “Merger” and together with the Transfer, the “Transactions”).³ The Transactions will ultimately result in the elimination of BX Equities. The Transactions are designed to simplify the corporate structure of Nasdaq HoldCo’s subsidiaries, specifically the Exchange and BX Equities. The Transactions will not have any effect on Nasdaq HoldCo’s direct ownership of the Exchange.

Background

BX Equities was acquired by Nasdaq HoldCo in 2008,⁴ and established as a facility of and controlled subsidiary owned and operated by the Exchange for the listing

³ The proposed Merger is the subject of a separate rule filing to be filed by the Exchange with the Commission concurrent with this filing. Specifically, the Transfer filing would amend the BX Equities Operating Agreement to reflect Nasdaq HoldCo’s transfer of ownership interest in BX Equities to the Exchange. The Merger filing would then delete the BX Equities Operating Agreement that was amended in the Transfer filing and delete the Delegation Agreement to reflect the Merger. See SR-BX-2021-051 (not yet published).

⁴ See Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02; -23; -25; SR-BSECC-2008-01) (“2008 Acquisition Approval Order”). At the time of the acquisition, the Exchange already owned 53.21% of BX Equities, with the remaining 46.79% owned by several investors. Following the 2008 Acquisition Approval Order, Nasdaq

and trading of cash equity securities.⁵ Today, Nasdaq HoldCo directly owns 100% of the Exchange. The Exchange directly owns 53.21% of BX Equities, and Nasdaq HoldCo directly owns the remaining 46.79% of BX Equities.⁶ The Fifth Amended and Restated Operating Agreement of BX Equities (“Operating Agreement”) reflects that the Exchange and Nasdaq HoldCo are the only owners and LLC members of BX Equities. Under Section 8.1 of the Operating Agreement, the Exchange must obtain Commission approval for transfers of ownership interests in BX Equities, including the proposed Transfer. Subject to the Commission’s approval of this proposed rule change, the Exchange and Nasdaq HoldCo will enter into a contribution and assignment agreement (“Contribution Agreement”) pursuant to which Nasdaq HoldCo will transfer its entire 46.79% ownership interest in BX Equities to the Exchange. As a result of the Transfer, the Exchange will directly own 100% of BX Equities. In addition, the Exchange will continue to be 100% owned by Nasdaq HoldCo.

Proposal

As discussed above, BX Equities is currently governed by the Operating Agreement, which provides that the Exchange and Nasdaq HoldCo are the only owners and LLC members of BX Equities. Management of BX Equities, however, is vested solely in the Exchange. Nasdaq HoldCo has no direct management role in the operation

HoldCo purchased and as a result, became the direct owner of the 46.79% interest in BX Equities that was previously held by those investors. See 2008 Acquisition Approval Order at 46950.

⁵ See Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (“BX Equities Approval Order”). The NASDAQ OMX Group, Inc. (as referenced in both the 2008 Acquisition Approval Order and the BX Equities Approval Order) is now Nasdaq, Inc.

⁶ See supra note 4.

of the entity, with the exception of its limited role as “tax matters Member” under Sections 10.9 and 12.6 and in the definitions of “Capital Account” and “Tax Amount,” and its limited rights with regard to dissolution of the entity under Article 11 and capital contributions under Section 7.4.⁷

To effectuate the proposed Transfer, the Exchange and Nasdaq HoldCo will enter into the Contribution Agreement pursuant to which Nasdaq HoldCo will transfer its entire ownership interest in BX Equities, and all of its other rights and obligations arising thereunder (including, without limitation, as tax matters Member of BX Equities), to the Exchange. Accordingly, the Exchange proposes to amend the Operating Agreement to reflect the foregoing, and to remove references throughout to Nasdaq HoldCo. Notably, the Exchange is proposing to make the following amendments:

- The introductory paragraphs, the definition of “Agreement” in Section 1.1, and Section 2.8(e) will be amended to reflect the most recent version of the Operating Agreement.
- The recitals will also be amended to add language regarding the Contribution Agreement.
- The definitions of “Capital Account” and “Tax Amount” in Section 1.1, and Sections 10.9 and 12.6 will be amended to replace Nasdaq HoldCo with the Exchange in order to reflect that Nasdaq HoldCo will no longer be the tax matters Member of BX Equities.

⁷ As stated in the BX Equities Approval Order, Nasdaq HoldCo remained an LLC member of BX Equities to avoid certain adverse tax consequences that would be associated with contributing its ownership interest to the Exchange. See BX Equities Approval Order at 80469 - 70. Those tax considerations have since expired.

- Section 7.4 will be amended to reflect that Nasdaq HoldCo will no longer have limited rights with respect to capital contributions in BX Equities. The Exchange will also correct a typo in this section.
- Section 11.1(a)(i) will be amended to reflect that Nasdaq HoldCo will no longer have limited rights regarding the dissolution of BX Equities. The Exchange will also correct a typo in this section.
- Section 18.6(a), which relates to oversight pursuant to the Exchange Act over the books, records, premises, officers, directors, agents, and employees of Nasdaq HoldCo, will be deleted in its entirety and Section 18.6 will be renumbered accordingly. Section 18.6(a) will no longer be necessary upon Nasdaq HoldCo's withdrawal as an LLC member of BX Equities. Furthermore, Nasdaq HoldCo's By-Laws at Section 12.1(c) currently also contain similar oversight provisions.
- Lastly, the introductory paragraphs, the definition of "Member" in Section 1.1, Section 7.2, Schedule 1, and Schedule 2 will be amended to remove references to Nasdaq HoldCo as an LLC member of BX Equities.

Subject to Commission approval, the amended Operating Agreement will be operative immediately upon the Transfer. As noted above, the Exchange is concurrently filing a separate rule change to further amend the Operating Agreement by deleting it in its entirety upon the Merger and elimination of BX Equities.⁸ The Exchange intends to implement the Transactions by the end of Q4 2021. The Exchange anticipates that the Merger will occur immediately after the Transfer.

⁸ See supra note 3.

b. Statutory Basis

The Exchange believes that this proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(1) of the Act,¹⁰ 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 merely seeks to simplify the corporate structure of BX Equities, and the Exchange will operate in a substantially similar manner following the Transfer as it operates today, with the addition of the Exchange's role as the tax matters Member of BX Equities. This is a corporate change, and will have no impact on how the Exchange operates its equities market.

The Exchange also believes that its proposal furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to promote just and equitable principles of trade, 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 proposed rule change would result in the Operating Agreement correctly reflecting the ownership structure of its subsidiary BX Equities upon completion of the Transfer. The Exchange reiterates that it will continue to operate its equities market in the same manner as today following the Transfer.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(1).

¹¹ 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is concerned solely with the corporate structure of BX Equities.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

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

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-BX-2021-050)

October __, 2021

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing of Proposed Rule Change to Amend the BX Equities LLC Operating Agreement

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on October 22, 2021, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. 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 proposes to amend its rules to reflect that Nasdaq, Inc. (“Nasdaq HoldCo”), the Exchange’s sole stockholder, will transfer its entire ownership interest in the Exchange’s subsidiary Nasdaq BX Equities LLC (“BX Equities”) to the Exchange, thereby resulting in the Exchange becoming the 100% direct owner and sole LLC member of BX Equities.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange 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 Exchange 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 purpose of the proposed rule change is to amend the Exchange’s rules to reflect that Nasdaq HoldCo, the Exchange’s sole stockholder, will transfer its entire ownership interest in the Exchange’s subsidiary BX Equities to the Exchange (the “Transfer”), thereby resulting in the Exchange becoming the 100% direct owner and sole LLC member of BX Equities. The Exchange notes that the proposed Transfer is the first part of a two-step process, the second part of which is the upstream merger of BX Equities with and into the Exchange (the “Merger” and together with the Transfer, the “Transactions”).³ The Transactions will ultimately result in the elimination of BX Equities. The Transactions are designed to simplify the corporate structure of Nasdaq

³ The proposed Merger is the subject of a separate rule filing to be filed by the Exchange with the Commission concurrent with this filing. Specifically, the Transfer filing would amend the BX Equities Operating Agreement to reflect Nasdaq HoldCo’s transfer of ownership interest in BX Equities to the Exchange. The Merger filing would then delete the BX Equities Operating Agreement that was amended in the Transfer filing and delete the Delegation Agreement to reflect the Merger. See SR-BX-2021-051 (not yet published).

HoldCo's subsidiaries, specifically the Exchange and BX Equities. The Transactions will not have any effect on Nasdaq HoldCo's direct ownership of the Exchange.

Background

BX Equities was acquired by Nasdaq HoldCo in 2008,⁴ and established as a facility of and controlled subsidiary owned and operated by the Exchange for the listing and trading of cash equity securities.⁵ Today, Nasdaq HoldCo directly owns 100% of the Exchange. The Exchange directly owns 53.21% of BX Equities, and Nasdaq HoldCo directly owns the remaining 46.79% of BX Equities.⁶ The Fifth Amended and Restated Operating Agreement of BX Equities ("Operating Agreement") reflects that the Exchange and Nasdaq HoldCo are the only owners and LLC members of BX Equities. Under Section 8.1 of the Operating Agreement, the Exchange must obtain Commission approval for transfers of ownership interests in BX Equities, including the proposed Transfer. Subject to the Commission's approval of this proposed rule change, the Exchange and Nasdaq HoldCo will enter into a contribution and assignment agreement ("Contribution Agreement") pursuant to which Nasdaq HoldCo will transfer its entire

⁴ See Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02; -23; -25; SR-BSECC-2008-01) ("2008 Acquisition Approval Order"). At the time of the acquisition, the Exchange already owned 53.21% of BX Equities, with the remaining 46.79% owned by several investors. Following the 2008 Acquisition Approval Order, Nasdaq HoldCo purchased and as a result, became the direct owner of the 46.79% interest in BX Equities that was previously held by those investors. See 2008 Acquisition Approval Order at 46950.

⁵ See Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) ("BX Equities Approval Order"). The NASDAQ OMX Group, Inc. (as referenced in both the 2008 Acquisition Approval Order and the BX Equities Approval Order) is now Nasdaq, Inc.

⁶ See supra note 4.

46.79% ownership interest in BX Equities to the Exchange. As a result of the Transfer, the Exchange will directly own 100% of BX Equities. In addition, the Exchange will continue to be 100% owned by Nasdaq HoldCo.

Proposal

As discussed above, BX Equities is currently governed by the Operating Agreement, which provides that the Exchange and Nasdaq HoldCo are the only owners and LLC members of BX Equities. Management of BX Equities, however, is vested solely in the Exchange. Nasdaq HoldCo has no direct management role in the operation of the entity, with the exception of its limited role as “tax matters Member” under Sections 10.9 and 12.6 and in the definitions of “Capital Account” and “Tax Amount,” and its limited rights with regard to dissolution of the entity under Article 11 and capital contributions under Section 7.4.⁷

To effectuate the proposed Transfer, the Exchange and Nasdaq HoldCo will enter into the Contribution Agreement pursuant to which Nasdaq HoldCo will transfer its entire ownership interest in BX Equities, and all of its other rights and obligations arising thereunder (including, without limitation, as tax matters Member of BX Equities), to the Exchange. Accordingly, the Exchange proposes to amend the Operating Agreement to reflect the foregoing, and to remove references throughout to Nasdaq HoldCo. Notably, the Exchange is proposing to make the following amendments:

⁷ As stated in the BX Equities Approval Order, Nasdaq HoldCo remained an LLC member of BX Equities to avoid certain adverse tax consequences that would be associated with contributing its ownership interest to the Exchange. See BX Equities Approval Order at 80469 - 70. Those tax considerations have since expired.

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- Lastly, the introductory paragraphs, the definition of “Member” in Section 1.1, Section 7.2, Schedule 1, and Schedule 2 will be amended to remove references to Nasdaq HoldCo as an LLC member of BX Equities.

Subject to Commission approval, the amended Operating Agreement will be operative immediately upon the Transfer. As noted above, the Exchange is concurrently filing a separate rule change to further amend the Operating Agreement by deleting it in its entirety upon the Merger and elimination of BX Equities.⁸ The Exchange intends to implement the Transactions by the end of Q4 2021. The Exchange anticipates that the Merger will occur immediately after the Transfer.

2. Statutory Basis

The Exchange believes that this proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(1) of the Act,¹⁰ 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 merely seeks to simplify the corporate structure of BX Equities, and the Exchange will operate in a substantially similar manner following the Transfer as it operates today, with the addition of the Exchange’s role as the tax matters

⁸ See supra note 3.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(1).

Member of BX Equities. This is a corporate change, and will have no impact on how the Exchange operates its equities market.

The Exchange also believes that its proposal furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to promote just and equitable principles of trade, 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 proposed rule change would result in the Operating Agreement correctly reflecting the ownership structure of its subsidiary BX Equities upon completion of the Transfer. The Exchange reiterates that it will continue to operate its equities market in the same manner as today following the Transfer.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is concerned solely with the corporate structure of BX Equities.

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

¹¹ 15 U.S.C. 78f(b)(5).

(ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (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 Number SR-BX-2021-050 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BX-2021-050. 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 Commission's 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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-BX-2021-050 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

**NASDAQ BX Equities LLC [Fifth]Sixth Amended and Restated
Operating Agreement****[FIFTH]SIXTH AMENDED AND RESTATED OPERATING AGREEMENT**

This [FIFTH]SIXTH AMENDED AND RESTATED OPERATING AGREEMENT of NASDAQ BX Equities LLC (the “Company”) is made as of [December 30, 2008]_____, 2021 (the “Effective Date”), by [and among The NASDAQ OMX Group, Inc., a Delaware corporation (“NASDAQ OMX”) and] NASDAQ BX, Inc., a Delaware corporation (“BX”) [and wholly-owned subsidiary of NASDAQ OMX] as the sole Member[s] of the Company, for the purpose of recording their agreement regarding the affairs of the Company and the conduct of its business.

RECITALS

WHEREAS, the Certificate of Formation (as amended, the “Certificate”), attached as Exhibit 1 hereto has been filed with the Office of the Secretary of State of the State of Delaware for the purpose of commencing the existence of the Company pursuant to the Act (as defined below) on June 4, 2005, and has been thereafter amended, including to change the name of the Company from “BSX Group LLC” to “NASDAQ BX Equities LLC” and registered agent and office of the Company (each such filing being herein ratified and confirmed);

WHEREAS, prior to the execution of this Sixth Amended and Restated Operating Agreement, BX and BX’s sole stockholder, Nasdaq, Inc. (formerly known as NASDAQ OMX) (“Prior Member”), were the only Members of the Company, and together owned all of Units (which Units constitute the limited liability company ownership interests in the Company);

WHEREAS, BX and the Prior Member entered into a Contribution and Assignment Agreement dated as of _____, 2021 (the “Contribution Agreement), pursuant to which the Prior Member agreed to transfer its entire ownership interest in the Company, and all of its other rights and obligations arising thereunder (including, without limitation, as “tax matters Member” of the Company), to BX;

WHEREAS, BX desires to amend this Agreement to reflect the withdrawal of the Prior Member pursuant to the Contribution Agreement; and

WHEREAS, as a result of the Contribution Agreement and such amendments to this Agreement, BX is the sole Member of the Company;

NOW, THEREFORE, in order to carry out [their]its intent as expressed above and in consideration of the mutual agreements hereinafter contained, the Member[parties] hereby agrees as follows:

Article 1

Definitions

1.1 Certain Defined Terms: As used in this Agreement, the following capitalized terms have the following meanings:

“Act” means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et. seq., as amended and in effect from time to time, and any successor statute.

“Additional Capital Contribution” means any Capital Contribution effected after completion of the Initial Capital Contributions pursuant to Section 7.3 hereof.

“Advisors” means, with respect to any Person, any of such Person’s attorneys, accountants or consultants.

“Affiliate” means, with respect to any Person, any other Person controlling, controlled by or under common control with, such Person. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise with respect to such Person. A Person is presumed to control any other Person, if that Person: (i) is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (ii) directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the Person; or (iii) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the partnership.

“Agreement” means this [~~Fifth~~]Sixth Amended and Restated Operating Agreement, including all exhibits and schedules hereto, as amended, restated or supplemented from time to time.

“Bankruptcy” has the meaning ascribed thereto in Section 18-304 of the Act.

BX” has the meaning set forth in the preamble.

“BX Contribution Schedule” shall mean the Contribution Schedule of BX set forth in Schedule 3.

“Capital Account” means a separate account maintained for each Member in the manner described in this paragraph, which is intended to comply and be interpreted and applied consistent with the Treasury Regulations under §704(b) of the Code. There shall be credited to each Member’s Capital Account (i) its Capital Contributions; (ii) the share

of income and gain of the Company allocated to the Member pursuant to Section 10.1 hereof (including the Member's share of any income and gains of the Company exempt from U.S. federal income tax); (iii) the amount of any liabilities of the Company that are assumed by such Member or that are secured by any property distributed to such Member by the Company; and (iv) any other items required by Treasury Regulations §1.704-1(b)(2)(iv). There shall be charged against each Member's Capital Account (i) the amount of cash and the fair market value of property distributed to it from the Company; (ii) the share of losses and deductions of the Company allocated to the Member pursuant to Section 10 hereof (including the Member's share of any expenditures of the Company not deductible or properly chargeable to capital accounts for U.S. federal income tax purposes); (iii) the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company; and (iv) any other items required by Treasury Regulations § 1.704-1 (b)(2)(iv). In connection with the maintenance of Capital Accounts for the Members, [NASDAQ OMX]BX may make adjustments consistent with Treasury Regulations §1.704-1(b)(2)(iv)(f) upon the occurrence of any event described in subparagraph (5) of such Regulations. The Members' Capital Accounts shall be further adjusted in accordance with Treasury Regulations § 1.704-1 (b)(2)(iv)(g) in the event of a revaluation of the Company property pursuant to Treasury Regulations § 1.704-1 (b)(2)(iv)(f), or if required by Treasury Regulations § 1.704-1 (b)(2)(iv)(d)(3).

“Capital Contribution” means the amount of cash and the fair market value of all property (net of any liability secured by such property that the Company is considered to assume, or take subject to Section 752 of the Code) and/or services contributed to the Company by a Member in its capacity as such at any point in time, including any Additional Capital Contributions. All such amounts contributed shall be reflected on the books and records of the Company.

“Certificate” has the meaning set forth in the recitals hereto.

“Code” means the United States Internal Revenue Code of 1986, as amended and in effect from time to time.

“Company” has the meaning set forth in the preamble.

“Company Minimum Gain” means partnership minimum gain with respect to the Company, as determined under Treasury Regulations § 1.704-2(d).

“Confidential Information” means any confidential or proprietary information of the Company

“Distributable Cash” has the meaning set forth in Section 9.1 hereof.

“Effective Date” means the date hereof.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder.

“Facility” shall have the meaning set forth in Section 3(a)(2) of the Exchange Act.

“Fiscal Year” has the meaning set forth in Section 12.3 hereof.

“Funding Date” shall mean any date on which a Member provides a Capital Contribution or Additional Capital Contribution

“Government Authority” means any federal, national, state, municipal, local, foreign, territorial, provincial or other governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, domestic or foreign.

“Indemnitees” has the meaning set forth in Section 14.1 hereof.

“Initial Capital Contributions” has the meaning set forth in Section 7.1.

“Liquidator” has the meaning set forth in Section 11.1(b) hereof.

“Member” means [NASDAQ OMX and] BX, in [each] such Person’s capacity as a member of the Company.

“Member Nonrecourse Deductions” means partner nonrecourse deductions with respect to a Member, as determined under Treasury Regulations § 1.704-2(i)(2).

“Member Nonrecourse Debt Minimum Gain” means partner nonrecourse debt minimum gain with respect to a Member, within the meaning of Treasury Regulations § 1.704-2(i)(2).

“Nonrecourse Debt” means a liability of the Company as to which no Member bears the economic risk of loss as determined under Treasury Regulations § 1.752-2 (including a liability of an entity owned by the Company to the extent such liability is treated as a liability of the Company for U.S. federal income tax purposes and no other owner of such entity bears the economic risk of loss as determined under Treasury Regulations § 1.752-2).

“Nonrecourse Deductions” shall have the meaning as set forth in Treasury Regulations §1.704-2(b)(1) and the amount for the partnership year shall be determined in accordance with the rules of Treasury Regulations § 1.704-2(c).

“Officers” has the meaning set forth in Section 5.1 hereof.

“Percentage Interest” with respect to a Member or Person means the ratio of the number of Units held by the Member or Person to the total of all of the issued Units, expressed as a percentage and determined with respect to each class of Units, whenever applicable.

“Person” shall mean an individual, corporation, association, general or limited partnership, organization, business, firm, limited liability company, joint venture, trust,

estate, or other entity, association or organization, whether constituting a legal entity or not.

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

“SEC” means the United States Securities and Exchange Commission.

“Tax Amount” of a Member for a fiscal year or other period shall mean the product of (a) the Member’s Tax Rate for such fiscal year or other period, and (b) the Member’s Tax Amount Base for such fiscal year or other period, and shall be reduced by (c) any United States federal, state or local income tax credits allocated to the Member by the Company for such fiscal year or other period, all as estimated in good faith by [NASDAQ OMX]BX.

“Tax Amount Base” of a Member for a fiscal year or other period shall mean the taxable income (for U.S. federal income tax purposes) allocated to the Member by the Company for such fiscal year or other period; provided that such taxable income shall be computed (i) without regard to the application of §704 (c) of the Code with respect to any variation between the fair market value and tax basis of any assets at the time such assets were contributed to the Company and (ii) without regard to any taxable income or loss recognized by a Member (other than through its distributive share of income or gain of the Company) in connection with the dissolution, initial public offering, sale of substantially all equity or assets of the Company or any similar event.

“Tax Rate” of a Member for a fiscal year or other period shall mean the highest effective marginal combined United States federal, state and local income tax rate applicable during such fiscal year to business entities of the same type as the Member that do business exclusively in the Commonwealth of Massachusetts, giving proper effect to the federal deduction for state and local income taxes and taking into account any special tax rates (such as special capital gains tax rates) applicable to any portion or portions of the Member’s Tax Amount Base.

“Treasury Regulations” means the regulations promulgated under the Code, as amended and in effect from time to time.

“Units” shall mean equal units of limited liability company interest in the Company, including an interest in the ownership and profits and losses of the Company and the right to receive distributions from the Company as set forth in this Agreement. For the avoidance of doubt, the ownership or possession of Units shall not in and of itself entitle the owner or holder thereof to vote or consent to any action with respect to the Company (which rights, except as otherwise specifically provided in this Agreement with respect to BX, shall be vested in only duly admitted members of the Company), or to

exercise any right of a member of the Company under this Agreement, the Act or other applicable law.

“Unpermitted Deficit” has the meaning set forth in Section 10.3 hereof.

“U.S. Equities” means equity securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan, and NASD’s Over-The-Counter Bulletin Board equity securities.

1.2 Other Definitions

The words “include,” “includes,” and “including” where used in this agreement are deemed to be followed by the words “without limitation.”

Any reference to “Dollars” or “\$” in this Agreement refers to U.S. Dollars.

Except as otherwise provided in this Agreement or unless the context otherwise clearly requires, (a) terms used in this Agreement that are defined in the Act will have the meaning set forth in the Act; (b) all references in this Agreement to one gender also include, where appropriate, the other gender; (c) the singular includes the plural and the plural includes the singular; and (d) references in this Agreement to the preamble, Sections, Schedules, and Exhibits shall be deemed to mean the preamble and sections of, and schedules and exhibits to, this Agreement.

Article 2

Organization

2.1 Formation and Continuation of Company. Each of the parties hereto hereby (a) ratifies the formation of the Company as a limited liability company under the Act, the execution of the Certificate (and each amendment thereto as of the date hereof) and the filing of the Certificate (and each amendment thereto as of the date hereof) in the Office of the Secretary of State of the State of Delaware and (b) agrees that the rights, duties and liabilities of the Members shall be as provided in the Act, except as otherwise provided herein. The name of the Company shall be NASDAQ BX Equities LLC.

2.2 Principal Office; Registered Agent and Office. The principal place of business of the Company shall be such location as shall be determined from time to time by BX. BX may, at any time, change the name or the principal place of business of the Company and shall give notice thereof to the Members. The registered agent for service of process on the Company in the State of Delaware required to be maintained by § 18-104 of the Act shall be The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801 and the registered office of Company in the State of Delaware shall be c/o The Corporation Trust Company at the same address. BX may at any time change the registered agent of the Company or the location of such registered office and shall give notice thereof to the Members.

2.3 Term. The legal existence of the Company shall be perpetual, unless the Company is sooner dissolved as a result of an event specified in the Act or pursuant to a provision of this Agreement.

2.4 Interest of Members; Property of Company. Units held by a Member shall be personal property for all purposes. All real and other property owned by the Company shall be deemed the Company's property owned by the Company as an entity, and no Member, individually, shall own any such property. The name and mailing address of each Member and the number and class of Units held by each and the Percentage Interest represented thereby shall be as listed on Schedule 2 attached hereto. BX shall be required to update said Schedule 2 from time to time as necessary to accurately reflect the information contained therein upon (i) a Member ceasing to be a member of the Company, (ii) the admission of a new Member or (iii) any change in the number or class of Units owned by a Member, in each case pursuant to the terms and conditions specified in this Agreement.

2.5 The Units.

(a) Except as otherwise provided in this Agreement, all Units are identical to each other and accord the holders thereof the same obligations, rights and privileges as are accorded to each other holder thereof. Except as otherwise provided in this Agreement, the Company will not subdivide or combine any Units, or make or pay any distribution on any Units, or accord any other payment, benefit or preference to any Units, except by extending such subdivision, combination, distribution, payment, benefit or preference equally to all Units.

(b) Units have no par value. To the extent that any Units must be cancelled or any Units shall be issued, the amount of such Units shall be rounded to the nearest whole number, to the extent feasible, as determined by BX.

2.6 Intent. It is the intent of the Members that the Company (a) shall always be operated in a manner consistent with its treatment as a partnership for United States federal income tax purposes (and, to the extent possible, for state income tax purposes within the United States), and (b) to the extent not inconsistent with the foregoing clause (a), shall not be operated or treated as a partnership for purposes of §303 of the Federal Bankruptcy Code (11 U.S.C. §303). Neither the Company nor any Member shall take any action inconsistent with the express intent of the parties hereto as set forth in the immediately preceding sentence.

2.7 Article 8 Opt-In. Each limited liability company interest in the Company (including the Units) shall constitute a "security" within the meaning of (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware (the "Delaware UCC") and (ii) the Uniform Commercial Code of any other applicable jurisdiction that now or thereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995 (each, an "Other State UCC"). For

all purposes of Article 8 of the Delaware UCC and any Other State UCC, Delaware law shall constitute the local law of the Company's jurisdiction in the Company's capacity as the issuer of Units.

2.8 Certificates.

(a) All Units shall be represented by one or more certificates (a "Unit Certificate") issued to the registered owner of such Units by the Company. Each such Unit Certificate shall be denominated in terms of the number and class of Units in the Company evidenced by such Unit Certificate and shall be signed by at least one officer of the Company on behalf of the Company. Within fourteen (14) days of a Funding Date, the Company shall issue to each Person one or more Unit Certificates in the name of such Person to represent the Units owned by such Person as of the date hereof.

(b) Upon the issuance of additional Units in the Company to any Person in accordance with the provisions of this Agreement, the Company shall issue to such Person one or more Unit Certificates in the name of such Person. Each such Unit Certificate shall be denominated in terms of the class and number of Units in the Company evidenced by such Unit Certificate and shall be signed by at least one officer of the Company on behalf of the Company.

(c) The Company shall issue a new Unit Certificate in place of any Unit Certificate previously issued if the registered owner of the Units represented by such Unit Certificate, as reflected on the books and records of the Company:

(i) makes proof by affidavit, in form and substance satisfactory to BX in its sole discretion, that such previously issued Unit Certificate has been lost, stolen or destroyed;

(ii) requests the issuance of a new Unit Certificate before the Company has notice that such previously issued Unit Certificate has been acquired by a protected purchaser;

(iii) if requested by BX in its sole discretion, delivers to the Company a bond, in form and substance satisfactory to BX in its sole discretion, with such surety or sureties as the Board in its sole discretion may direct, to indemnify the Company against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Unit Certificate; and

(iv) satisfies any other reasonable requirements imposed by BX.

(d) Upon the Transfer in accordance with the provisions of this Agreement by any Person of any or all of its Units represented by a Unit Certificate, such Person shall deliver such Unit Certificate to the Company for cancellation (endorsed thereon or endorsed on a separate document), and any officer of the Company shall thereupon cause to be issued a new Unit Certificate to such Person's permitted transferee or such Person, as applicable, for the class and number of Units being transferred or converted and, if applicable, cause to be issued to such Person a new Unit Certificate for that class and

number of Units that were represented by the canceled Unit Certificate and that are not being transferred or converted; provided, however, the Company shall have no duty to register the Transfer unless the requirements of Section 8-401 of the Delaware UCC are satisfied.

(e) Legends.

(i) Each Unit Certificate issued by the Company shall include the following legend:

“THE RIGHTS, POWERS, PREFERENCES, RESTRICTIONS (INCLUDING TRANSFER RESTRICTIONS) AND LIMITATIONS OF THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED BY THIS CERTIFICATE ARE SET FORTH IN, AND THIS CERTIFICATE AND THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY ARE ISSUED AND SHALL IN ALL RESPECTS BE SUBJECT TO, THE TERMS AND PROVISIONS OF, THE [FIFTH]~~SIXTH~~ AMENDED AND RESTATED OPERATING AGREEMENT OF NASDAQ BX EQUITIES LLC (THE “COMPANY”), DATED AS OF [DECEMBER 30, 2008]_____, 2021, AS THE SAME MAY BE AMENDED AND/OR RESTATED FROM TIME TO TIME (THE “AGREEMENT”). THE TRANSFER, SALE, ALIENATION, ASSIGNMENT, EXCHANGE, PARTICIPATION, SUBPARTICIPATION, ENCUMBRANCE, OR DISPOSITION IN ANY MANNER, WHETHER DIRECT OR INDIRECT, VOLUNTARY OR INVOLUNTARY, BY OPERATION OF LAW OR OTHERWISE, OF THIS CERTIFICATE AND THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY ARE RESTRICTED AS DESCRIBED IN THE AGREEMENT. THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED BY THIS CERTIFICATE MAY NOT BE SOLD, ASSIGNED OR TRANSFERRED BY THE HOLDER HEREOF UNLESS SUCH SALE, ASSIGNMENT, OR TRANSFER HAS BEEN FILED WITH AND APPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION UNDER SECTION 19 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND THE RULES PROMULGATED THEREUNDER.

EACH LIMITED LIABILITY COMPANY INTEREST REPRESENTED HEREBY SHALL CONSTITUTE A “SECURITY” WITHIN THE MEANING OF (I) ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE (INCLUDING SECTION 8-102(A)(15) THEREOF) AS IN EFFECT FROM TIME TO TIME IN THE STATE OF DELAWARE (THE “DELAWARE UCC”) AND (II) THE UNIFORM COMMERCIAL CODE OF ANY OTHER APPLICABLE JURISDICTION THAT NOW OR HEREAFTER SUBSTANTIALLY INCLUDES THE 1994 REVISIONS TO ARTICLE 8 THEREOF AS ADOPTED BY THE AMERICAN LAW INSTITUTE AND THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND APPROVED BY THE AMERICAN BAR ASSOCIATION ON FEBRUARY 14, 1995 (EACH, AN “OTHER STATE UCC”). FOR ALL PURPOSES OF

ARTICLE 8 OF THE DELAWARE UCC AND ANY OTHER STATE UCC, DELAWARE SHALL CONSTITUTE THE LOCAL LAW OF THE COMPANY'S JURISDICTION IN THE COMPANY'S CAPACITY AS THE ISSUER OF THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY."

(ii) In addition, unless counsel to the Company has advised Company that such legend is no longer needed, each Unit Certificate shall bear a legend in substantially the following form:

"THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY HAVE NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAWS, AND SUCH SECURITIES MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS THE SAME ARE REGISTERED AND QUALIFIED IN ACCORDANCE WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR IN THE OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED."

Article 3

Purposes and Powers

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

3.2 Powers. The Company, and BX and the Officers of the Company on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 3.1 and (ii) shall have and

exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

Article 4

Management

4.1 Management by BX. In accordance with Section 18-402 of the Act, management of the Company shall be vested in BX. BX shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members of a limited liability company under the laws of the State of Delaware. BX has the authority to bind the Company. BX may delegate any of its powers as permitted by the Act. Notwithstanding any other provision of this Agreement (but subject to Section 4.2), BX is authorized to execute and deliver any document on behalf of the Company without any vote or consent of any other Person.

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

Article 5

Officers

5.1 In General. Except as provided herein, BX may, from time to time as it deems advisable, select natural persons who are officers of BX and designate them as officers of the Company (the "Officers") and assign titles (including, without limitation, President, Vice President, Secretary and Treasurer) to any such person. Officers of the Company must also be officers of BX. Any number of offices may be held by the same person. BX may appoint such Officers as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by BX. The salaries of all Officers of the Company shall be fixed by or in the manner prescribed by BX. The Officers of the Company shall hold office until their successors are chosen and qualified. Any vacancy occurring in any office of the Company shall be filled by BX. Unless otherwise determined by BX, any officer of BX upon designation by BX shall automatically and without any action by any Person be appointed as an Officer of the Company with the

same title and powers with respect to the Company as such Officer has with respect to BX.

5.2 Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of BX not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business, and the actions of the Officers taken in accordance with such powers shall bind the Company.

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

Article 6

Operating Budget

The Company's operating budget for each Fiscal Year must be approved by BX.

Article 7

Members; Financing Company

7.1 Initial Capital Contributions – Units.

(a) Subject to the BX Contribution Schedule, the Initial Capital Contribution by, and the date such Initial Capital Contribution was made or shall be made to the Company, as the case may be, by each Member is set forth opposite their respective names on Schedule 1 hereto, as amended from time to time.

(b) The number of Units (and class designation) held by, and Percentage Interest of, each Member is set forth in Schedule 2 hereto, as amended from time to time.

(c) The value assigned to each Initial Capital Contribution is equal to the amount of cash and the fair market value of all other assets, services and/or properties contributed by such Member, determined as set forth on Schedule 1.

(d) In the event of any dispute as to the fair market value of any Capital Contribution made through the provision of services or the contribution of assets or property, the fair market value of such Capital Contribution shall be finally determined by an independent accounting firm of national prominence that has no current business relationship with any of the disputing Members or the Company or as the Members shall otherwise agree.

7.2 Members; Capital. [NASDAQ OMX and] BX hereby continues as sole Member[s] of the Company upon [their] execution of the Agreement. The Capital Contributions of the Members shall be set forth on the books and records of the Company. No interest shall be paid on any Capital Contribution to the Company. No Member shall have any personal liability for the repayment of the Capital Contribution of any Member, and no Member shall have any obligation to fund any deficit in its Capital Account. Each Member hereby waives, for the term of the Company, any right to partition the property of the Company or to commence an action seeking dissolution of the Company under the Act.

7.3 Additional Capital Contributions.

BX shall, at its sole discretion, determine the capital needs of the Company. If at any time, or from time to time after the Effective Date, the Board shall determine that additional capital is required in the interests of the Company, additional working capital shall be raised in such manner as determined by BX, including but not limited to the following: (i) if filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder, the issuance of new Units to third parties; (ii) the issuance of convertible debt; (iii) borrowing funds from new sources; (iv) borrowing funds from existing Members or deferring payment for services performed by then-existing Members; and (v) the issuance of additional Units to then-existing Members. In all cases, BX shall pursue those financing alternatives deemed non-dilutive to the existing Members before all other financing alternatives.

7.4 Borrowings and Loans. If any Member shall lend any monies to the Company, the amount of any such loan shall not constitute an increase in the amount of such Member's Capital Contribution unless specifically agreed to by the [the] Member[s]. The terms of such loans and the interest rate(s) thereon shall be commercially reasonable terms and rates, as determined by BX.

7.5 General. Except as otherwise provided in this Agreement, any Member and its Affiliate may lend money to, borrow money from, act as surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with the Company and, subject to applicable law, shall have the same rights and obligations with respect thereto as a Person who is not a Member in the Company. Any such transactions with a Member or an Affiliate of a Member shall be on the terms approved by BX from time to time

7.6 Liability of the Members Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or

otherwise, will be solely the debts, obligations and liabilities of the Company and not that of any Member

Article 8

Transferability of Units

8.1 Restrictions on Transfer.

No Person shall directly or indirectly, whether voluntarily, involuntarily, by operation of law or otherwise, transfer, dispose of, sell, lend, pledge, hypothecate, encumber, assign, exchange, participate, subparticipate, or otherwise transfer in any manner (each, a "Transfer") all or any portion of its Units, or any rights arising under, out of or in respect of this Agreement, unless such Transfer shall be filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder .

8.2 Continuation of LLC.

The liquidation, dissolution, bankruptcy, insolvency, death, or incompetency of any Member shall not terminate the business of the Company or, in and of itself, dissolve the Company, which shall continue to be conducted upon the terms of this Agreement by the other Members and by the personal representatives and successors in interest of such Member.

8.3 No Retroactive Effect.

No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Board may, at the time an additional Member is admitted, close the Company books (as though the Company's Fiscal Year has ended) or make pro-rata allocations of loss, income and expense deductions to an additional Member for that portion of the Company's Fiscal Year in which an additional Member was admitted in accordance with the provisions of §706(d) of the Code.

Article 9

Distributions

9.1 **Current Distributions.** If at any time and from time to time BX determines that the Company has cash that is not required for the operations of the Company, the payment of liabilities or expenses of the Company, or the setting aside of reserves to meet the anticipated cash needs of the Company ("Distributable Cash"), then:

(a) Within 10 days after the end of each fiscal quarter, the Company shall make distributions ("Tax Distributions") to the Members of their respective Tax Amounts for such fiscal quarter (or, in the event that Distributable Cash is less than the total of all such Tax Amounts, the Company shall distribute the Distributable Cash in proportion to such Tax Amounts). If after the end of any fiscal year it is determined that

a Member's Tax Amount for the fiscal year exceeds the sum of the Tax Distributions made to the Member hereunder and the distributions made to such member under Section 9.1(b) for such fiscal year (any such excess, a "Shortfall Amount"), then the Company shall, on or before the 75th day of the next fiscal year, make an additional Tax Distribution to the members of their respective Shortfall Amounts (or, in the event that Distributable Cash is less than the total of all such Shortfall Amounts, the Company shall distribute the Distributable Cash in proportion to such Shortfall Amounts). If the aggregate Tax Distributions to any Member pursuant to this subsection for a fiscal year exceed the Member's Tax Amount for such fiscal year, such excess shall be deducted from the Member's Tax Amount when calculating the Tax Distributions to be made to such Member for each subsequent fiscal year until the excess has been fully accounted for. All Tax Distributions to a Member shall be treated as advances against any subsequent distributions to be made to such Member under Section 9.1(b) or Section 11.2. Subsequent distributions made to the Member pursuant to Sections 9.1(b) and Section 11.2 shall be adjusted so that when aggregated with all prior distributions to the Member pursuant to those provisions, and with all prior Tax Distributions to the Member, the amount distributed shall be equal, as nearly as possible, to the aggregate amount that would have been distributable to such member pursuant to Section 9.1(b) and Section 11.2 if this Agreement contained no provision for Tax Distributions.

(b) After making the Tax Distributions described in subsection (a) hereof, BX may distribute all or any portion of remaining Distributable Cash to the Members in proportion to their Percentage Interests, unless the distribution is a liquidating distribution, which shall be made in the manner set out in Section 11.1(b).

9.2 Limitation. The Company, and BX on behalf of the Company, shall not make a distribution to any Member on account of its interest in the Company if and to the extent such distribution would violate the Act or other applicable law. Distributions shall not be paid using Regulatory Funds.

9.3 Withholdings Treated as Distributions. Any amount that the Company is required to withhold and pay over to any governmental authority on behalf of a Member shall be treated as a distribution made to such Member pursuant to Section 9.1(a), 9.1(b) or 11.2, and shall be deducted from the amounts next distributable to such Member pursuant to any of those provisions until the withholding has been fully accounted for. To the extent that such an amount is treated, pursuant to the previous sentence, as a distribution under Section 9.1(a), it shall also be treated as a Tax Distribution, with the consequences described in Section 9.1(a).

Article 10

Allocations of Profits and Losses

10.1 Allocations of Profits; General. Except as provided in Sections 10.3 through 10.9 below, all profits and credits of the Company (for both accounting and tax purposes) for each fiscal year shall be allocated to the Members from time to time (but no less often than once annually and before making any distribution to the Members) first, in

proportion to any prior allocations of losses under Section 10.2 not previously taken into account pursuant to this clause first, to the extent of such losses, and second, in proportion to their Percentage Interest.

10.2 Allocations of Losses; General. (a) Except as provided in Sections 10.3 through 10.9 below, all net losses of the Company for each fiscal year (for both accounting and tax purposes), and all Nonrecourse Deductions, shall be allocated to the Members from time to time (but no less often than once annually and before making any distribution to the Members) first, in proportion to any prior allocations of profits under Section 10.1 not previously taken into account pursuant to this clause first, to the extent of such profits, second, in proportion to the Members' Capital Contributions, to the extent thereof, and third, in proportion to their Percentage Interest.

(b) Allocations of Nonrecourse Deductions shall be made pursuant to Treasury Regulation Section 1.752-3(a).

10.3 Limitation. Notwithstanding anything otherwise provided in Section 10.2, no Member will be allocated any losses not attributable to Nonrecourse Debt to the extent such allocation (without regard to any allocations based on Nonrecourse Debt), and after taking into account any reductions to the Member's Capital Account required by Treasury Regulations § 1.704-1 (b)(2)(ii)(d)(4), (5), or (6) results in a deficit in such Member's Capital Account in excess of such Member's actual or deemed obligation, if any, to restore deficits on the dissolution of the Company (any such excess, an "Unpermitted Deficit"). Any losses not allocable to a Member under this sentence shall be allocated to the other Members. In the event any Member's Capital Account is adjusted (by way of distribution, allocation or otherwise) to create an Unpermitted Deficit, the Company shall allocate to such Member, as soon as possible thereafter, items of income or gain sufficient to eliminate the Unpermitted Deficit. In the event that upon liquidation of the Company or the liquidation of a Member's interest, such Member's Capital Account has an Unpermitted Deficit, the Member must make a Capital Contribution to such Member's Capital Account so as to cure the Unpermitted Deficit.

10.4 Qualified Income Offset. In the event any Member unexpectedly receives adjustments, allocations, or distributions described in Treasury Regulations § 1.704-1 (b)(2)(ii)(d)(4), (5) or (6), items of income and gain of the Company shall be specially allocated to such Member in an amount and manner sufficient to eliminate the deficit balance in such Member's Capital Account created by such adjustments, allocations or distributions as promptly as possible. The preceding sentence is intended to comply with the "qualified income offset" requirement in Treasury Regulations § 1.704-1 (b)(2)(ii)(d), and shall be interpreted consistently therewith.

10.5 Nonrecourse Debt and Chargebacks. If at the end of any fiscal year of the Company, after taking into account all distributions made and to be made in respect of such year but prior to any allocation of profits and losses for such year except the allocations required by Section 10.3, any Member shall have a negative Capital Account by reason (and to the extent) of allocations of items of loss or deduction attributable in whole or part to Nonrecourse Debt secured by any of the assets of the Company, such

Member shall be allocated (or if more than one Member has such a negative Capital Account, all such Members shall be allocated ratably among them in accordance with the respective proportions of such negative balances as are attributable to such deductions or losses) that portion of any items of income and gain for such year as may be equal to the amount by which the negative balance of such Member's Capital Account exceeds the sum of (A) such Member's allocable share of the aggregate Minimum Gain with respect to all of the Company's assets securing such Nonrecourse Debt plus (B) such Member's allocable share of aggregate Company debt which is not Nonrecourse Debt, such allocable share to be determined in accordance with the provisions of Section 752 of the Code and the Treasury Regulations thereunder. In addition, if there is a net decrease in the Company's aggregate Minimum Gain with respect to all of its assets for a taxable year, each Member shall be allocated items of income and gain ratably in an amount equal to that Member's share of such net decrease in the manner and to the extent required by Treasury Regulations Section 1.704-2(f) or any successor regulation. The preceding sentence is intended to comply with the minimum gain chargeback requirement of Treasury Regulations § 1.704-2(f), and shall be interpreted and applied in a manner consistent therewith.

10.6 Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Member that (in its capacity, directly or indirectly, as lender, guarantor, or otherwise) bears the economic risk of loss with respect to the loan to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations § 1.704-2(i). If, during any fiscal year or other period, there is a net decrease in Member Nonrecourse Debt Minimum Gain, that decrease shall be charged back among the Members in accordance with Treasury Regulations § 1.704-2(i) (4). The preceding sentence is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement of Treasury Regulations § 1.704-2(i)(4), and shall be interpreted and applied in a manner consistent therewith.

10.7 Calculation of Profits and Losses. Net Profit and Net Loss shall be computed for each Fiscal Year as an amount equal to the Company's taxable income or loss for such Fiscal Year determined in accordance with Code Section 703(a), including pursuant to Code Section 703(a)(1), all items of income, gain loss or deduction required to be stated separately and with adjustments as follows: (a) In computing Net Profit or Net Loss pursuant to this Section, there shall be added any income of the Company exempt from federal income tax and not otherwise taken into account in computing the Company's taxable income or loss; (b) Any expenditure of the Company, that was not otherwise taken into account in computing Net Profit or Net Loss, which is described in Code Section 705(a)(2)(B) or that pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i) is treated as an expenditure that is described in Code Section 705(a)(2)(B), shall be subtracted from such taxable income or loss; (c) To the extent that the net book value of any asset of the Company is adjusted to equal such asset's fair market value or to the extent that the net book value of any asset of the Company is adjusted as a result of a distribution in kind to any Member, where such distribution equals to the fair market value of such asset on the date of distribution, then such adjustment shall be taken into account as gain or loss from the disposition of such asset for the purposes of computing Net Profit or Net Loss; (d) To the extent that any gain or loss is recognized for federal

income tax purposes as a result of the disposition of any asset of the Company, such gain or loss for the purposes of this Section, such gain or loss will be computed by reference to the net book value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its net book value; and (e) Any items allocated pursuant to Section 10.2(b) Allocations of Nonrecourse Deductions, or Section 10.3 Limitation, or Section 10.4 Qualified Income Offset, or Section 10.5 Nonrecourse Debt and Chargebacks shall not be taken into account in computing Net Profit or Net Loss.

10.8 Section 704(c) and Capital Account Revaluation Allocations. The Members agree that to the fullest extent possible with respect to the allocation of depreciation and gain for U.S. federal income tax purposes, Section 704(c) of the Code shall apply with respect to non-cash property contributed to the Company by any Member. For purposes hereof, any allocation of income, loss, gain or any item thereof to a Member pursuant to Section 704(c) of the Code shall affect only its tax basis in its Percentage Interest and shall not affect its Capital Account. In addition to the foregoing, if the Company's assets are reflected in the Capital Accounts of the Members at a book value that differs from the adjusted tax basis of the assets (e.g., because of a revaluation of the Members' Capital Accounts under Treasury Regulations § 1.704-1 (b)(2)(iv)(f)), allocations of depreciation, amortization, income, gain or loss with respect to such property shall be made among the Members in a manner consistent with the principles of Section 704(c) of the Code and this Section 10.8.

10.9 Offset of Regulatory Allocations. The allocations required by Sections 10.3 through 10.6 and Section 10.8 are intended to comply with certain requirements of the Treasury Regulations. [NASDAQ OMX]BX may, in its discretion and to the extent not inconsistent with Section 704 of the Code, offset any or all such regulatory allocations either with other regulatory allocations or with special allocations of income, gain, loss or deductions pursuant to this section in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the regulatory allocations were not part of this Agreement.

10.10 Terminating and Special Allocations. Notwithstanding the foregoing allocation provisions, any profits or losses resulting from a liquidation, merger or consolidation of the Company, the sale of substantially all the assets of the Company in one or a series of related transactions, or any similar event (and, if necessary, specific items of gross income, gain, loss, or deduction incurred by the Company in the fiscal year of such transaction(s)) shall be allocated among the Members so that after such allocations and the allocations required by Section 11.3, and immediately before the making of any liquidating distributions to the Members under Section 11.2, the Members' Capital Accounts equal, as nearly as possible, the amounts of the respective distributions to which they are entitled under Section 11.2.

Article 11

Dissolution and Winding Up

11.1 (a) The Company shall be dissolved and its affairs shall be wound up upon:

(i) the election to dissolve the Company made by the [the] consent of [both]the Member[s]; or

(ii) the entry of a decree of judicial dissolution under § 18-802 of the Act; or

(iii) the termination of the legal existence of the last remaining Member or the occurrence of any other event which terminates the continued membership of the last remaining Member in the Company, unless the Company is continued without dissolution in accordance with the Act; or

(iv) the occurrence of any other event that causes the dissolution of a limited liability company under the Act unless the Company is continued without dissolution in accordance with the Act.

Notwithstanding any other provision of this Agreement, the Bankruptcy of a Member shall not cause the Member to cease to be a Member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(b) Upon dissolution of the Company, the business of the Company shall continue for the sole purpose of winding up its affairs. The winding up process shall be carried out by all of the Members unless the dissolution is caused by the sole remaining Member's ceasing to be a member of the Company, in which case a liquidating trustee may be appointed for the Company by the personal representative of the last remaining Member (the Members or such liquidating trustee is referred to herein as the "Liquidator"). In winding up the Company's affairs, every effort shall then be made to dispose of the assets of the Company in an orderly manner, having regard to the liquidity, divisibility and marketability of the Company's assets. If the Liquidator determines that it would be imprudent to dispose of any non-cash assets of the Company, such assets may be distributed in kind to the Members, in lieu of cash, proportionately to their rights to receive cash distributions hereunder; provided, that the Liquidator shall in its sole discretion determine the relative shares of the Members of each kind of those assets that are to be distributed in kind. The Liquidator shall not be entitled to be paid by the Company any fee for services rendered in connection with the liquidation of the Company, but the Liquidator (whether one or more Members or a liquidating trustee) shall be reimbursed by the Company for all third-party costs and expenses incurred by it in connection therewith and shall be indemnified by the Company with respect to any action brought against it in connection therewith by applying, *mutatis mutandis*, the provisions of Article 14.

11.2 Application and Distribution of Assets.

(a) The assets of the Company in winding up at any time shall be applied or distributed as follows: first, to creditors of the Company, including Members who are creditors, to the extent otherwise permitted by law, whether by payment or the

making of reasonable provision for the payment thereof, and including any contingent, conditional and unmatured liabilities of the Company, taking into account the relative priorities thereof; second, to the Members and former Members in satisfaction of liabilities under the Act for distributions to such Members and former Members; and third, to the Members, for the return of their Capital Contributions and then in proportion to their respective Percentage Interests.

(b) Reserve. A reasonable reserve for contingent, conditional and unmatured liabilities in connection with the winding up of the business of the Company shall be retained by the Company until such winding up is completed or such reserve is otherwise deemed no longer necessary by the Liquidator.

11.3 Capital Account Adjustments. For purposes of determining a Member's Capital Account, if, on liquidation and dissolution, some or all of the assets of the Company are distributed in kind, the Company profits (or losses) shall be increased by the profits (or losses) that would have been realized had such assets been sold for their fair market value on the date of dissolution of the Company, as determined by the Liquidator. Such increase shall: (i) be allocated to the Members in accordance with Article 10 hereof and (ii) increase (or decrease) the Members' Capital Account balances accordingly, it being the general intent that the adjustments contemplated by this subsection shall have the effect, as nearly as possible, of causing the Members' Capital Account balances to be in proportion to their Percentage Interests.

11.4 Termination of the LLC. Subject to Section 18.10 of this Agreement, the separate legal existence of the Company shall terminate when all assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Members in the manner provided for in this Article 11, and a Certificate of Cancellation shall have been filed in the manner required by the Act.

Article 12

Books, Records and Accounting

12.1 Books of Account. BX shall cause to be entered in appropriate books, kept at the Company's principal place of business, which must be in the United States, all transactions of or relating to the Company. Each Member shall have access to and the right, at such Member's sole cost and expense, to inspect and copy such books and all other the Company records during normal business hours; provided that the inspecting Member shall be responsible for any out-of-pocket costs or expenses incurred by the Company in making such books and records available for inspection. Notwithstanding the foregoing, the books and records of the Company shall be subject at all times to inspection and copying by the BSE and the SEC at no additional cost to the BSE or the SEC. The books, records, premises, officers, directors, agents, and employees of the Company shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the BSE and its Affiliates for the purpose of and subject to oversight pursuant to the Exchange Act. .

12.2 Deposits of Funds. All funds of the Company shall be deposited in its name in such checking, money market, or other account or accounts as BX may from time to time designate; withdrawals shall be made therefrom on such signature or signatures as BX shall determine.

12.3 Fiscal Year. The fiscal year of the Company shall begin on January 1st and end on December 31st (the "Fiscal Year").

12.4 Financial Statements; Reports to Members. The Company, at its cost and expense, shall prepare and furnish to each of the Members, within 90 days after the close of each taxable year, financial statements of the Company, and all other information necessary to enable such Member to prepare its tax returns, including without limitation a statement showing the balance in such Member's Capital Account.

12.5 Tax Elections. The Members may, by unanimous agreement and in their absolute discretion, make all tax elections (including, but not limited to, elections relating to depreciation and elections pursuant to Section 754 of the Code) as they deem appropriate. Notwithstanding anything contained in Article 10 of this Agreement, any adjustments made pursuant to Section 754 of the Code shall affect only the successor in interest to the transferring Member. Each Member will furnish the Company with all information necessary to give effect to any such election and will pay the costs of any election applicable as to it.

12.6 Tax Matters Member. [NASDAQ OMX]BX shall be the tax matters Member of the Company for purposes of the Code, and shall be entitled to take such actions on behalf of the Company in any and all proceedings with the Internal Revenue Service as it, in its absolute discretion, deems appropriate without regard to whether such actions result in a settlement of tax matters favorable to some Members and adverse to other Members. Notwithstanding the foregoing, [NASDAQ OMX]BX shall (a) promptly deliver to the other Members copies of any notices, letters or other documents received by [NASDAQ OMX]BX as the tax matters Member of the Company, (b) keep the other Members informed with respect to all matters involving [NASDAQ OMX]BX as the tax matters Member of the Company, and (c) consult with the other Members and obtain the approval of the other Members prior to taking any actions as the tax matters Member of the Company. The tax matters Member shall not be entitled to be paid by the Company any fee for services rendered in connection with any tax proceeding, but shall be reimbursed by the Company for all costs and expenses incurred by it in connection with any such proceeding and shall be indemnified by the Company with respect to any action brought against it in connection with the settlement of any such proceeding by applying, *mutatis mutandis*, the provisions of Article 14.

Article 13

Reserved

Article 14

Exculpation and Indemnification

14.1 Members Generally. Except as set forth in the second sentence of this Section 14.1, no Member, nor any Affiliate of a Member, nor any of Member or Affiliate's respective shareholders, directors, employees, Advisors or other agents, nor any officers, agents, Advisors or employees of the Company (collectively, the "Indemnitees"), shall have any liability to the Company, to any other Member, or to any third party for any loss suffered by the Company, such other Member or such third party that arises out of any action or inaction of such Member (or any other Indemnitee), (a) with respect to its activities under this Agreement or (b) otherwise in its capacity as a Member, if such Member or such other Indemnitee, in good faith, determined that such course of conduct was in the best interests of the Company or not inconsistent with the best interests of the Company and such course of conduct did not constitute gross negligence or willful misconduct of such Member (or other Indemnitees) or a material breach by such Member of this Agreement. To the fullest extent permitted by law, each Member (and such other Indemnitees) shall be indemnified by the Company against any losses, judgments, liabilities, expenses (including, without limitation, reasonable attorneys' fees and court costs) and amounts paid in settlement of any claims sustained by it arising out of any action or inaction of such Member (or any other Indemnitee), (a) with respect to its activities under this Agreement or (b) otherwise in its capacity as a Member, provided that the same were not the result of gross negligence or willful misconduct of such Member (or such other Indemnitee) or a breach by such Member of this Agreement. Any Person claiming reimbursement of expenses under this Article 14 shall be paid amounts to which he or it would be entitled hereunder as such expenses are incurred upon presentation of appropriate documentation to the Company, subject to providing a written undertaking to repay any such amounts to which such Person ultimately turns out not to be entitled under the standards herein set forth. The indemnification and advancement of expenses provided by this Article shall continue as to an Indemnitee who has ceased to be a Member (or otherwise an Indemnitee), and shall inure to the benefit of the heirs, executors, administrators, and successors of such Member (and the other Indemnitees). Any indemnification pursuant to this Section 14.1 shall be solely out of the assets of the Company and shall not be a personal obligation of any Member.

14.2 Duties of Indemnitee. To the extent that, at law or in equity, an Indemnitee has duties (including fiduciary duties) and liabilities relating thereto to the Company or to the Members, the Members and any other Indemnitee acting in connection with the Company's business or affairs shall not be liable to the Company or to any Member for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of an Indemnitee otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Indemnitee.

Article 15**Reserved****Article 16****Confidentiality and Related Matters**

Confidential Regulatory Information. To the fullest extent permitted by applicable law, all Confidential Information pertaining to the self-regulatory function of BX or the business of BX related to the trading of U.S. Equities (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Company shall: (a) not be made available to any person (other than as provided in the proviso at the end of this sentence) other than to those officers, employees and agents of the Company who have a reasonable need to know the contents thereof; (b) be retained in confidence by the Company and the officers, employees and agents of the Company; and (c) not be used for any commercial purposes; provided, that nothing in this sentence shall be interpreted so as to limit or impede the rights of the Commission or BX 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, employees or agents of the Company to disclose such Confidential Information to the Commission or BX.

Article 17**Reserved****Article 18****General**

18.1 **Entire Agreement; Integration, Amendments.** This Agreement contains the sole and entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. This Agreement may only be changed, amended or supplemented by an agreement in writing executed and delivered by the Members. Any proposed amendment to this Agreement shall be submitted to the BX Board of Directors for review and, if 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 SEC before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

18.2 **Binding Agreement.** The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective representatives, successors in interest and permitted assigns.

18.3 Notices. Any and all notices contemplated by this Agreement shall be deemed adequately given if in writing and delivered in hand, or upon receipt when sent by telecopy confirmed by one of the other methods for providing notice set forth herein, or one (1) business day after being sent, postage prepaid, by nationally recognized overnight courier (e.g., Federal Express), or 5 days after being sent by certified or registered mail, return receipt requested, postage prepaid, to the party or parties for whom such notices are intended. All such notices to Members shall be addressed to the last address of record on the books of the Company; all such notices to the Company shall be addressed to the Company at the address set forth in Section 2.1 or at such other address as the Company may have designated by notice given in accordance with the terms of this subsection.

18.4 Captions. Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this agreement or the intent of any provisions hereof.

18.5 Governing Law, Etc. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, all rights and remedies being governed by such laws, without regard to its conflict of laws rules.

18.6 Member Books, Records, and Jurisdiction.

[(a) NASDAQ OMX acknowledges that to the extent they are related to the Company's activities, the books, records, premises, officers, directors, agents, and employees of NASDAQ OMX shall be deemed to be the books, records, premises, officers, directors, agents, and employees of BX for the purpose of and subject to oversight pursuant to the Exchange Act.]

[(b)a] The Company and its Members, officers, agents, and employees, as well as the officers, directors, agents and employees of Members irrevocably submit to the exclusive jurisdiction of the U.S. federal courts, the SEC, and BX, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws or the rules or regulations thereunder, arising out of, or relating to, the Company's activities [or Section 18.6(a)] (except that such jurisdictions shall also include Delaware for any such matter relating to the organization or internal affairs of the Company), and hereby 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 they are not personally subject to the jurisdiction of the U.S. federal courts, SEC, or BX, 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 hereof may not be enforced in or by such courts or agency, and, to the fullest extent permitted by laws, waive the defense or application of any foreign secrecy or blocking statutes or regulations with respect to the Members, their officers, directors, agents and employees, that relate to the Company's activities or their participation therein or in connection therewith.

[(c)b] With respect to Article 16 and Sections 4.2, 12.1 and 18.6, each Member shall take such action as is necessary to insure that such Member's officers,

directors, agents, and employees consent in writing to the applicability of these provisions with respect to the Company related activities.

18.7 Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

18.8 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof or thereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

18.9 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18.10 Survival. The provisions of Articles 14, 16, and 18 shall survive the termination of this Agreement for any reason. All other rights and obligations of the Members shall cease upon the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of [December 30, 2008]_____, 2021.

NASDAQ BX, INC.

By: _____

Name:

Title:

[THE NASDAQ OMX GROUP, INC.

By: _____

Name:

Title:]

Exhibit 1**AMENDED AND RESTATED CERTIFICATE OF FORMATION
OF
BSX GROUP LLC**

THIS Amended and Restated Certificate of Formation of BSX Group LLC (the "Company"), dated as of December 30, 2008, has been duly executed and is being filed by the undersigned, as an authorized person, in accordance with the provisions of 6 Del. C. §18-208, to amend and restate the original Certificate of Formation of the Company, which was filed on June 4, 2004, with the Secretary of State of the State of Delaware, as heretofore amended (the "Certificate"), to form a limited liability company under the Delaware Limited Liability Company Act (6 Del. C. §18-101, et seq.).

The Certificate is hereby amended and restated in its entirety to read as follows:

1. Name. The name of the limited liability company formed and continued hereby is Nasdaq OMX BX Equities LLC.
2. Registered Office. The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.
3. Registered Agent. The name and address of the registered agent for service of process on the Company in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

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

Nasdaq OMX BX, Inc., its manager and
authorized person

Name: Joan C. Conley
Title: Secretary

SCHEDULE 1**Capital Contributions**

Member	Cash Contribution	Other Contribution	Date of Contribution	Additional Capital on 3/14/2007	Total Contribution
BX		\$35,000,000	Initial Funding Date	Business Confidential	Business Confidential
[NASDAQ OMX]	[Business Confidential]		[Various]		[Business Confidential]
Total:		\$35,000,000		Business Confidential	Business Confidential

SCHEDULE 2**Name and Address of Members, Number of Units, and Percentage Interests**

Name and Address of Member	Number of Units	Percentage Interest
Nasdaq OMX BX, Inc. 100 Franklin Street Boston, Massachusetts 02110	[69,095] <u>129,860</u>	[53.21] <u>100%</u>
[The NASDAQ OMX Group, Inc. One Liberty Plaza New York, New York 10006]	[60,765]	[46.79%]
Total:	129,860	100%

SCHEDULE 3**BX CONTRIBUTION SCHEDULE**

1. CONTRIBUTION.

1.1. Contribution. Pursuant to the terms and conditions contained herein, BX has assigned, transferred and conveyed to the Company as a contribution to capital (the valuation of \$35,000,000 includes items (a) – (d):

- (a) BX's existing book of business and customer base related to the trading of U.S. Equities (the "BX Equities Business").
- (b) All assets and liabilities related to the BX Equities Business, excluding BOX Units, and assets and liabilities related to the BX's SRO and regulatory function.
- (c) All goodwill, contract rights and intangible property (including any intellectual property rights that BX may have in its BEACON System) related to the BX Equities Business, excluding items related to BX's SRO and regulatory function.
- (d) The exclusive right to operate a Facility for the trading of equity securities at BX.

BX agrees to transfer to the Company (i) all revenue streams resulting directly from the BX's participation in the CTA Plan, the CQS Plan, the Nasdaq UTP Plan, or any other national market plan related to the BX Equities Business from time to time to the extent that they relate to any equity securities, and (ii) all other revenue streams and other benefits or items of value generated by or through the BX Equities Business (excluding items related to BX's SRO and regulatory function).