

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 228 SECURITIES AND EXCHANGE COMMISSION File No.* SR - 2017 - * 37
 WASHINGTON, D.C. 20549 Form 19b-4 Amendment No. (req. for Amendments *)

Filing by Nasdaq GEMX, LLC
 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"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	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	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
 Provide a brief description of the action (limit 250 characters, required when Initial is checked *).
 Proposal to adopt new organizational documents that set forth a corporate governance framework and related processes substantially similar to those of the Nasdaq Exchanges.

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

First Name * Sun Last Name * Kim
 Title * Assistant General Counsel
 E-mail * Sun.Kim@nasdaq.com
 Telephone * (212) 231-5106 Fax

Signature
 Pursuant to the requirements of the Securities Exchange Act of 1934,
 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.
 (Title *)
 Date 08/07/2017 Executive Vice President and General Counsel
 By Edward S. Knight edward.knight@nasdaq.com
 (Name *)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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 *

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance 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, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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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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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 GEMX, LLC (“GEMX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is hereby filing with the U.S. Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change (the “Proposed Rule Change”) in connection with the proposed merger (the “Merger”) with a newly-formed Delaware limited liability company under the Exchange’s ultimate parent, Nasdaq, Inc., resulting in the Exchange as the surviving entity. Following the Merger, the Exchange’s board and committee structure, and all related corporate governance processes, will be harmonized with that of the three other registered national securities exchanges and self-regulatory organizations owned by Nasdaq, Inc., namely: The NASDAQ Stock Market LLC (“NSM”), NASDAQ PHLX LLC (“Phlx”), and NASDAQ BX, Inc. (“BX” and together with NSM and Phlx, the “Nasdaq Exchanges”).

In connection with the Merger and as discussed more fully below, the Exchange proposes to adopt new organizational documents that set forth a corporate governance framework and related processes that are substantially similar in all material respects to those of the Nasdaq Exchanges.

The Exchange intends to implement the Proposed Rule Change no later than by the end of Q4 2017. The Exchange will alert its members in the form of a Regulatory Alert to provide notification of the implementation date.

A notice of the Proposed Rule Change for publication in the Federal Register is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

attached hereto as Exhibit 1 and the text of the Proposed Rule Change is attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved the submission of this Proposed Rule Change on February 1, 2017. This action constitutes the requisite approval under the Exchange's Certificate of Formation, Limited Liability Company Agreement and Constitution.

Questions and comments on the Proposed Rule Change may be directed to:

Sun Kim
Assistant General Counsel
Nasdaq, Inc.
(212) 231-5106

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

a. Purpose

The Exchange was recently acquired by Nasdaq, Inc. ("HoldCo").³ Following the acquisition, the Exchange has continued to operate as a separate self-regulatory organization ("SRO") and continues to have separate rules, membership rosters, and listings, distinct from the rules, membership rosters, and listings of the Nasdaq

³ On June 30, 2016, HoldCo acquired all of the capital stock of U.S. Exchange Holdings, Inc., the Exchange's indirect parent company (the "Acquisition"). As a result, the Exchange, in addition to its affiliates Nasdaq ISE, LLC ("ISE") and Nasdaq MRX, LLC ("MRX"), became a wholly-owned subsidiary of HoldCo, and also became an affiliate of NSM, Phlx, and BX through common, ultimate ownership by HoldCo. HoldCo is the ultimate parent of the Exchange. See Securities Exchange Act Release No. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR-ISEGemini-2016-05).

Exchanges as well as from ISE and MRX. The Exchange now proposes to harmonize the corporate governance framework of the Exchange with that of the Nasdaq Exchanges, and submits this Proposed Rule Change to seek the Commission's approval of various changes to the Exchange's organizational documents and Rules that are necessary in connection with the Merger, as described below.

The proposed changes consist of: (1) deleting the Exchange's current Second Amended and Restated Limited Liability Company Agreement (the "Current LLC Agreement") in its entirety and replacing it with a new limited liability company agreement (the "LLC Agreement") that is based on the limited liability company agreement of NSM, (2) deleting the Exchange's current Constitution ("Current Constitution" and together with the Current LLC Agreement, the "Current Governing Documents") in its entirety and replacing it with a new set of by-laws (the "Bylaws" and together with the LLC Agreement, the "New Governing Documents") that is based on the by-laws of NSM, and (3) making minor clarifying changes to its rules, as discussed below.⁴

All of the proposed changes are designed to align the Exchange's corporate governance framework to the existing structure at the Nasdaq Exchanges, particularly as it relates to board and committee structure, nomination and election processes, and related governance practices.⁵ The Exchange is not proposing any amendments to its

⁴ The Exchange's affiliates, ISE and MRX, have submitted or will submit nearly identical proposed rule changes. See Securities Exchange Release No. 81263 (July 31, 2017), 82 FR 36497 (August 4, 2017) (SR-ISE-2017-32) (ISE Approval Order).

⁵ The new LLC Agreement and Bylaws are based in form and substance on The NASDAQ Stock Market LLC's Second Amended Limited Liability Company Agreement (the "NSM LLC Agreement") and By-Laws (the "NSM Bylaws").

ownership structure and International Securities Exchange Holdings, Inc. (“ISE Holdings”) will remain as the Exchange’s sole limited liability company member (“Sole LLC Member”) and owner of 100% of the Exchange’s limited liability company interests. Furthermore, the Exchange is not proposing any amendments to its trading rules at this time relating to the Merger other than the minor clarifying changes and technical amendments as noted below.

A. The Merger

In order to effectuate the proposed changes above, the Exchange proposes to merge with a Delaware limited liability company (“NewCo”), newly-formed as a wholly-owned subsidiary of ISE Holdings, resulting in the Exchange as the surviving entity. Specifically, pursuant to the Delaware Limited Liability Company Act, as amended from time to time (the “LLC Act”), NewCo would be formed under ISE Holdings upon filing a certificate of formation with the Secretary of State of the State of Delaware (“DE Secretary of State”). Subsequently, the Exchange would enter into an agreement and plan of merger with NewCo (the “Merger Agreement”), under which NewCo would merge into the Exchange, with the Exchange surviving the Merger. The Merger Agreement contemplates that the merged limited liability company (i.e. the Exchange) would have a new LLC Agreement and new Bylaws, which would be attached to the Merger Agreement. Then, a certificate of merger would be filed with the DE Secretary of State, which will effectuate the Merger at the time of filing. The new LLC Agreement

Additionally, the majority of provisions in the organizational documents of Phlx and BX were also based on those of NSM with differences that relate mainly to disciplinary processes (for Phlx) or to corporate structure (for BX). Notwithstanding, the vast majority of the new governance framework and processes proposed herein are materially identical to those of all three Nasdaq Exchanges.

and the new Bylaws would also become effective at the time of filing the certificate of merger. Under the LLC Act, the Merger is subject to approval by the Exchange Board and by ISE Holdings as the Sole LLC Member. The Exchange represents that it has obtained or will obtain the necessary approvals prior to filing the certificate of merger with the DE Secretary of State.

Following the Merger, the Exchange proposes to be governed by the New Governing Documents in accordance with the LLC Act. The specific changes effected by the New Governing Documents to the current documents are discussed in the following sections.

B. Limited Liability Company Agreement

Following the Merger, the Exchange proposes to adopt the LLC Agreement,⁶ which would replace the Current LLC Agreement.⁷ The proposed LLC Agreement reflects the expectation that the Exchange will be operated with a governance structure substantially similar to that of the Nasdaq Exchanges, and substantially mirrors the provisions found in the NSM LLC Agreement other than as specifically noted herein.⁸ Schedule B of the LLC Agreement describes the proposed ownership of the Exchange's

⁶ The proposed LLC Agreement was filed as part of the Proposed Rule Change as Exhibit 5B.

⁷ The Current LLC Agreement was filed as part of the Proposed Rule Change as Exhibit 5A.

⁸ See the Second Amended Limited Liability Company Agreement of The NASDAQ Stock Market LLC (the "NSM LLC Agreement"). The Second Amended Limited Liability Company Agreement of NASDAQ PHLX LLC (the "Phlx LLC Agreement") is also based on and is substantially similar to the NSM LLC Agreement. BX is a Delaware corporation and is governed by a Certificate of Incorporation, not an LLC Agreement. However, the board structure is identical across the Nasdaq Exchanges and therefore, BX's Second Restated Certificate of Incorporation (the "BX COI") contains substantially similar governance provisions as the NSM LLC Agreement and Phlx LLC Agreement.

limited liability company interests, which ownership structure is identical to that currently in place. ISE Holdings would remain as the Sole LLC Member (and a member of the Exchange within the meaning of the LLC Act) and the sole owner of 100% of the limited liability company interests of the Exchange. Except as specified below, the proposed changes do not affect the manner of the Exchange's operations or governance structure.

Section 1 of the LLC Agreement, titled "Name," specifies the name of the surviving entity of the Merger as the name of the Exchange. Section 2 of the LLC Agreement, titled "Principal Business Office," provides for the principal business office of the Exchange and such other location as may hereafter be determined by the Board.⁹

Sections 3 and 4 of the LLC Agreement, titled "Registered Office" and "Registered Agent," specifies the place of the Exchange's registered office and the entity acting as its registered agent, which is the same place and entity used by the Nasdaq Exchanges.¹⁰ The Exchange proposes to replace its current registered office and agent set forth in Section 1.5 of the Current LLC Agreement with the registered office and agent used by the Nasdaq Exchanges for administrative efficiency. This change will not have any material substantive effect on the current operations or the governance of the Exchange.

⁹ In June 2017, the Exchange relocated its office from 60 Broad Street in New York to One Liberty Plaza in New York. Accordingly, Section 2 of the proposed LLC Agreement now reflects the new One Liberty Plaza address as the principal business office of the Exchange instead of the old 60 Broad address. Similarly, Schedule B of the proposed LLC Agreement, which includes the mailing address of the Exchange's Sole LLC Member, also reflects the new One Liberty Plaza address instead of 60 Broad as the Sole LLC Member's mailing address.

¹⁰ See NSM LLC Agreement, Sections 3 and 4; Phlx LLC Agreement, Section 3; and BX COI, Article Second.

Section 5 of the LLC Agreement, titled “Sole LLC Member,” provides that the mailing address of the Sole LLC Member is set forth on Schedule B of the LLC Agreement. As noted above, ISE Holdings will remain as the Sole LLC Member of the Exchange.

Section 6 of the LLC Agreement, titled “Certificates,” refers to the filing of the Certificate of Merger with respect to the Merger. Such provision acknowledges and confirms that such filings, which were necessary for the merger to be effected, were authorized by the Exchange. This Section additionally sets forth those person(s) who have the authority to file any other certificates with the Delaware Secretary of State on behalf of the Exchange pursuant to the LLC Act. This provision is purely administrative in nature and therefore will have no material substantive effect on the current operations or the governance of the Exchange.

Section 7 of the LLC Agreement, titled “Purposes,” discusses the Exchange’s business purpose, which provides that the Exchange may engage in any lawful act or activity for which limited liability companies may be formed under the LLC Act and any and all activities necessary or incidental to the foregoing. Without limiting these general powers, proposed Section 7 also specifically provides that the Exchange’s business would include actions that support its regulatory responsibilities under the Act, including: (i) supporting the operation, regulation, and surveillance of the national securities exchange operated by the Exchange, (ii) preventing fraudulent and manipulative acts and practices, promoting just and equitable principles of trade, fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removing impediments to and

perfecting the mechanisms of a free and open market and a national market system, and, in general, protecting investors and the public interest, (iii) supporting the various elements of the national market system pursuant to Section 11A of the Act and the rules thereunder, (iv) fulfilling the Exchange's self-regulatory responsibilities as set forth in the Act, and (v) supporting such other initiatives as the Board may deem appropriate. Section 7 mirrors the Section 7 of the NSM LLC Agreement, and is similar to the language in Section 1.3 of the Current LLC Agreement of the Exchange.

Section 8 of the LLC Agreement, titled "Powers," discusses the general powers of the Exchange, the Board and the officers of the Exchange. Specifically, the Exchange, the Board and the officers on behalf of the Exchange (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 of the LLC Agreement and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the LLC Act. Section 8 is based on Section 8 of the NSM LLC Agreement, and is similar to the provisions in the Current LLC Agreement and the Current Bylaws.¹¹

Section 9 of the LLC Agreement, titled "Management," sets forth the proposed management structure of the Exchange. Section 9(a) pertains to the Board of the Exchange and provides that the Board will manage the Exchange's business and affairs, similar to the provisions in Section 5.1 of the Current LLC Agreement.¹² By adopting new Section 9(a), the Exchange proposes to mirror the board structure of the Nasdaq

¹¹ See Current LLC Agreement, Sections 5.1 and 5.7 and Current Constitution, Sections 3.1 and 4.1

¹² See also Current Constitution, Section 3.1.

Exchanges.¹³ The Exchange proposes to add language to indicate that the Sole LLC Member may determine at any time in its sole and absolute discretion the number of Directors¹⁴ to constitute the Board.¹⁵ The authorized number of Directors may be increased or decreased by the Sole LLC Member at any time in its sole and absolute discretion, upon notice to all Directors, but no decrease in the number of Directors shall shorten the term of any incumbent Member Representative Director. This language mirrors Section 9(a) of the NSM LLC Agreement. In addition, the exact composition of the Board is subject to the requirements in the Bylaws relating to independence and fair representation of members, which are described in detail below.

Fair Representation of Members

The Exchange proposes in Section 9(a), similar to the Nasdaq Exchanges, that at least 20% of the Directors would be Member Representative Directors.¹⁶ Member Representative Directors are elected or appointed after having been nominated by a Member

¹³ See NSM LLC Agreement, Section 9; Phlx LLC Agreement, Section 8; and BX COI, Article Fifth.

¹⁴ “Director” will be defined as the persons elected or appointed to the board of directors from time to time in accordance with the LLC Agreement and the Bylaws, in their capacity as managers of the Exchange. See proposed Bylaw Article I(j), which is based on NSM Bylaw Article I(i).

¹⁵ See proposed LLC Agreement, Section 9(a). In contrast, the Current Governing Documents have specific limits on the size of the Board in that the Exchange is required to have no less than eight and no more than sixteen directors. See Current LLC Agreement, Section 5.2 and Current Constitution, Section 3.2(a).

¹⁶ See NSM LLC Agreement, Section 9; Phlx LLC Agreement, Section 8; BX Bylaws, Section 4.3. “Member Representative Director” will be defined as a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by an Exchange Member. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member. See proposed Bylaw Article I(r), which is based on NSM Bylaw Article I(q).

Nominating Committee¹⁷ composed of representatives of the Exchange members or by Exchange members in the manner described in the proposed Bylaws.¹⁸ Currently, there are six directors on the Board who are officers, directors or partners of Exchange members, and are elected by a plurality of the holders of Exchange Rights¹⁹ (the “Exchange Directors”),²⁰ of which at least: (i) one must be elected by a plurality of the holders of Primary Market Maker (“PMM”) Exchange Rights, (ii) one must be elected by a plurality of holders of Competitive Market Maker (“CMM”) Exchange Rights, and (iii) one must be elected by a plurality of holders of Electronic Access Member (“EAM”) Exchange Rights; provided, however, that the number of each type of Exchange Director will always be equal to one another.²¹ The Exchange adopted the current board structure as it relates to Exchange

¹⁷ See proposed Section 6(b) of Bylaw Article III. “Member Nominating Committee” will be defined as the Member Nominating Committee appointed pursuant to the Bylaws. See proposed Bylaw Article I(q), which is based on NSM Bylaw Article I(p).

¹⁸ The Commission has previously found that the requirement in the NSM LLC Agreement that 20% of the directors shall be “Member Representative Directors” and the means by which they are elected by the members provides for the fair representation of members in the selection of directors and administration of NSM consistent with the requirement in Section 6(b) of the Act. See Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (January 23, 2006) (Order Granting Registration as a National Securities Exchange).

¹⁹ See Rule 300 Series. “Exchange Rights” means the PMM Rights, CMM Rights and EAM Rights collectively. See Rule 100(a)(17). PMM Rights, CMM Rights and EAM Rights have the meaning set forth in Article VI of the Current LLC Agreement. See Rules 100(a)(12), 100(a)(15) and 100(a)(36). See also Current Constitution, Section 13.1(n). PMMs, CMMs, and EAMs represent the three classes of membership on the Exchange. See Current Constitution, Sections 13.1(f), 13.1(j) and 13.1(y).

²⁰ These directors are defined as “Industry Directors” in Section 3.2(b)(i) of the Current Constitution, but will be referred to herein as “Exchange Directors.”

²¹ See Current Constitution, Section 3.2(b). Section 3.2(b) further requires that the Board be composed of at least 30% Exchange Directors.

Directors to comply with Section 6(b) of the Act, which provides that the Exchange must, among other things, assure fair representation of its members (here, the PMMs, CMMs, and EAMs) in the selection of its directors and administration of its affairs (the “fair representation requirement”).²² Therefore, the Exchange believes that the Exchange Directors serve the same function on the current Board as “Member Representative Directors” on the boards of the Nasdaq Exchanges in that the Exchange Directors give members a voice in the Exchange’s use of self-regulatory authority.²³ The Exchange further believes that the new Board structure will still provide for the fair representation of its members because the new structure is well-established as meeting the fair representation requirement.²⁴

By adopting the new Board structure set forth in the New Governing Documents, the Exchange is proposing to replace the Exchange Director positions and all related concepts thereto,²⁵ with Member Representative Director positions and all related concepts that will be further discussed below. In particular, there are a number of provisions related to the

²² See Section 6(b)(3) of the Act, 15 U.S.C. 78f(b)(3). Upon granting the Exchange’s application for registration as a national securities exchange, the Commission found that the board composition requirements related to the Exchange Directors satisfied the principles of fair representation as required by Section 6(b) the Act. See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (Order Granting Registration as a National Securities Exchange) (hereinafter, “GEMX Approval Order”).

²³ Currently, the six Exchange Directors comprise 37.5% of the sixteen-member Board.

²⁴ See note 18 above.

²⁵ Related concepts include: “CMM Right,” “Competitive Market Maker,” “EAM Right,” “Electronic Access Member,” “Exchange Rights,” “Industry Directors” (defined herein as “Exchange Directors”), “PMM Rights,” “Primary Market Maker,” and “Voting Rights.” See Current Constitution, Section 13 for the definitions.

Exchange Rights set forth in the Current Governing Documents that will not carry over into the New Governing Documents because they relate to the trading rights and privileges of the Exchange members.²⁶ It should be noted that on GEMX, the Exchange Rights do not convey any ownership rights, and only provide for voting rights for representation on the Board (i.e., through the Exchange Directors) and confers the ability to transact on the Exchange.²⁷ Because the Exchange Director positions will not be reflected in the New Governing Documents for the reasons discussed above, the Exchange believes that the remaining provisions in the Current Governing Documents that relate to the trading rights of its members are more appropriately located in the Rules than in its organizational documents. Already, all of the provisions governing the trading privileges associated with the Exchange Rights that are located in the Current Governing Documents are also substantially set forth in the Rules,²⁸ and the Exchange is not proposing any changes to

²⁶ See Current LLC Agreement, Article VI and Current Constitution, Article XII. The Exchange also notes that it is not carrying over the termination provisions in Section 6.4 of the Current LLC Agreement into the New Governing Documents as these generally relate to the voting rights associated with the Exchange Rights, and therefore will no longer be applicable for the reasons discussed above.

²⁷ See Current LLC Agreement, Sections 6.1 and 6.3 and Rules 300 and 302(c); see also GEMX Approval Order.

²⁸ For example, Exchange members holding PMM and CMM Rights may seek appointment to become market makers in one or more options classes traded on the Exchange, which entitles them to enter quotations and orders into the Exchange's trading system. See Rules 100(a)(34), 100(a)(42) and Rule 800 series; see also Sections 12.1(a) and 12.2(a) of the Current Constitution. Exchange members holding EAM Rights are entitled to enter orders into the Exchange's trading system and clear Exchange transactions. See Rules 100(a)(9) and 100(a)(34); see also Section 12.3(a) of the Current Constitution. The Exchange Rights may not be leased and are not transferable except in the event of a change in control of an Exchange member or corporate reorganization involving an Exchange member. See Rule 302(c); see also Current LLC Agreement, Section 6.4 and Current Constitution, Sections 12.1(b), 12.2(b), and 12.3(b).

those rules or to any of its trading rules in connection with the Merger except as noted below. As described in more detail below, the Exchange will amend its Rules only (i) to clarify any Rules that refer back to the Current LLC Agreement or the Current Constitution in the rule text or (ii) to relocate in the rulebook any provisions in the Current Governing Documents related to the trading privileges of the Exchange Rights holders that are not expressly set forth in the Rules. As such, the holders of Exchange Rights will continue to have the same trading privileges they currently hold as PMMs, CMMs and EAMs under the Exchange Rules and the proposed Board structure of the Exchange will not change any trading privileges. Virtually all of the proposed changes regarding the removal of Exchange Director positions and related concepts from the Exchange's organizational documents are corporate in nature, and are intended simply to conform the organizational documents with those of the Nasdaq Exchanges in order to harmonize the Exchange's board structure with its affiliates. The proposed changes will primarily affect current board composition requirements, the current nomination and election processes of the directors and the current committee composition requirements. These provisions are outlined in detail in the proposed Bylaws of the Exchange, which will be discussed below.

New Section 9(a) of the LLC Agreement also proposes that all Directors other than the Member Representative Directors shall be elected by the Sole LLC Member in the manner described in the proposed Bylaws. Mirroring Section 9(a) of the NSM LLC Agreement, each Director elected, designated or appointed by the Sole LLC Member shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal. As noted above, Member Representative Directors shall

There is no limit on the number of Exchange Rights issued by GEMX. See Rule 300(a); see also Current LLC Agreement, Section 6.1.

be elected in accordance with the Bylaws. Each Director shall execute and deliver an instrument accepting such appointment and agreeing to be bound by all the terms and conditions of the LLC Agreement and the Bylaws. A Director need not be an Exchange member.

The Exchange is also proposing to adopt substantially similar provisions set forth in Section 9 of the NSM LLC Agreement with respect to the Powers of the Board, the By-Laws, the Meeting of the Board of Directors, Quorum; LLC Acts of the Board and Electronic Communications.²⁹ The section discussing the Powers of the Board is similar to the current provisions in the Current Constitution in that the Board is vested with the power to do any and all acts necessary or for the furtherance of the purposes described in the LLC Agreement, including all powers, statutory or otherwise.³⁰ The Board also has the power to bind the Exchange and delegate powers.³¹ As discussed in the Bylaws section below, the Bylaws proposed to be adopted by the Exchange, the Sole LLC Member and the Board in Section 9(c) of the LLC Agreement will replace the Current Constitution of the Exchange.

The Meeting of the Board of Directors subsection contains standard Delaware limited liability company provisions governing regular and special meetings of the board, and related notice provisions. Similar language is found in Section 3.6 of the Current Constitution, and the Exchange is proposing to streamline these administrative procedures across the Nasdaq Exchanges. The Exchange also proposes to add a provision in this

²⁹ See proposed Sections 9(b) through (f) of the Exchange's LLC Agreement.

³⁰ See Current Constitution, Section 3.1.

³¹ See Current LLC Agreement, Section 2.2 (providing that the Sole LLC Member does not have the power to bind the Exchange, said power being vested solely and exclusively in the Board) and Current Constitution, Sections 3.1, 4.12 and 5.1.

subsection that all meetings of the Board of Directors of the Exchange (and any committees of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters) or relating to the structure of the market which the Exchange regulates shall be closed to all persons other than members of the Board of Directors and officers, staff, counsel or other advisors whose participation is necessary or appropriate to the proper discharge of such regulatory functions and any representatives of the Commission. The proposed language also prohibits members of the Sole LLC Member's board of directors who are not also members of the Exchange's board of directors or any officers, staff, counsel or advisors of the Sole LLC Member who are not also officers, staff, counsel or advisors of the Exchange from participating in such meetings.³²

The subsections, Quorum; LLC Acts of the Board and Electronic Communications, contain standard Delaware limited liability company provisions governing quorum rules for Board actions, Board action by unanimous written consent, and how Board and committee members may participate in Board and committee meetings, as applicable. The Exchange notes that these provisions are similar in all material respects to those in the Current Governing Documents³³ and relate primarily to the administrative processes of the Board. Therefore, the Exchange is proposing to streamline these processes across the Nasdaq Exchanges for the sake of efficiency.

Section 9(g) of the LLC Agreement generally discusses the standing committees and provides that the Board may designate one or more committees. By adopting new Section

³² The proposed language on board and committee meeting participation in Section 9(d) is not in the governing documents of the Nasdaq Exchanges, but is retained from Section 3.2(d) of the Current Constitution and is intended to help maintain the independence of the Exchange's self-regulatory functions.

³³ See Current Constitution, Sections 3.6 and 3.7.

9(g), the Exchange is proposing to delete the current committees set forth in Article V of the Current Constitution and adopt the standing committees similar to those of the Nasdaq Exchanges. Article V of the Current Constitution provides for the following committees: an Executive Committee, a Corporate Governance Committee, a Finance and Audit Committee, a Compensation Committee, and such other additional committees as may be established by Board resolution. Article V also provides for a nominating committee, which is a committee of the Exchange and not the Board, and nominates the Exchange Directors for election to the Board (the “Exchange Director Nominating Committee”). The Exchange proposes to replace these rules with “Committees Composed Solely of Directors” and “Committees Not Composed Solely of Directors” at newly proposed and named Bylaw Article III. The details of those committees will be discussed below in the Bylaws section.

The Exchange proposes to adopt substantially similar provisions set forth in Section 9(g) of the NSM LLC Agreement with respect to the standing committees.³⁴ First, as set forth in proposed subsection (g)(i), the Board may designate one or more Directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee. Second, in proposed subsection (g)(ii), the Committee members shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a committee may be removed from such committee only by the Board. Vacancies shall be filled by the Board. Third, in proposed subsection (g)(iii), each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each

³⁴ See proposed LLC Agreement, Section 9(g)(i) – (v).

committee shall be required to keep regular minutes of its meetings and report the same to the Board when required. Fourth, in proposed subsection (g)(iv), a majority of the committee shall constitute a quorum and the vote of a majority present shall be an act of the committee. Finally, in proposed subsection (g)(v), to the extent provided in the resolution of the Board, any committee that consists solely of one or more Directors shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange. The Exchange also proposes in subsection (g)(v) to limit such committee from having the powers of the Board with respect to approving any matters pertaining to the self-regulatory function of the Exchange or relating to the structure of the market which the Exchange regulates.³⁵ Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. Further, in the absence or disqualification of a member of a committee composed solely of Directors, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. The foregoing provisions are similar to the language found in Section 5.1 of the Current Constitution.

Similar to Section 3.9 of the Current Constitution, proposed Section 9(h) provides that the compensation of Directors shall be fixed by the Board. This language mirrors the provisions in Section 9(h) of the NSM LLC Agreement. The Removal and Resignation

³⁵ This limitation is based on substantially similar language in Section 5.2(ii) of ISE Mercury's current Constitution, and is intended to assure the fair administration and governance of the Exchange. The Exchange does not have this limitation in Section 5.2 of its Current Constitution with respect to any Board committees set up by Board resolution, and is therefore proposing to follow the more current ISE Mercury standard.

of Directors language in proposed Section 9(i) also mirrors Section 9(i) of the NSM LLC Agreement, and is similar to the resignation and removal language in Section 5.4 of the Current LLC Agreement and Sections 3.4 and 3.5 of the Current Constitution. The Directors as Agents language in proposed Section 9(j) provides that the Directors are agents of the Exchange and mirrors Section 9(j) of the NSM LLC Agreement.

Section 10, titled “Officers,” the Exchange proposes to adopt identical language regarding officer appointments found in Section 10 of the NSM LLC Agreement, which provisions are similar in nature to the existing provisions in Article IV of the Current Constitution.

Section 11, titled “Limited Liability,” contains standard Delaware limited liability company language on the limitation of liability of the Sole LLC Member and the Directors in the manner permitted under the LLC Act. The proposed language is similar to the limitation of liability language found in the Current LLC Agreement³⁶ and mirrors Section 11 of the NSM LLC Agreement.

Sections 12 through 14 of the LLC Agreement, which are virtually identical to Sections 12 through 14 of the NSM LLC Agreement, are equity-related provisions that encompass the topics of capital contributions, additional capital contributions, and allocations of profits and losses. These provisions set forth the basic economic arrangement of the Sole LLC Member and remain consistent with the economic arrangement under the Current Governing Documents.³⁷ Proposed Section 15, which relates to distributions, provides that ISE Holdings, as the Sole LLC Member, is generally

³⁶ See Current LLC Agreement, Sections 2.3 and 5.8.

³⁷ See Current LLC Agreement, Sections 3.1 and 3.2.

entitled to all distributions made by the Exchange. Similar to Section 3.3 of the Current LLC Agreement, however, proposed Section 15 also contains a stipulation that (i) the Exchange shall not be required to make a distribution to the Sole LLC Member on account of its interest in the Exchange if such distribution would violate the LLC Act or any other applicable law or is otherwise required to fulfill the regulatory functions or responsibilities of the Exchange, and (ii) Regulatory Funds shall not be used for non-regulatory purposes, but rather shall be used to fund the legal, regulatory and surveillance operations of the Exchange and the Exchange shall not make a distribution to the Sole LLC Member using Regulatory Funds.³⁸ “Regulatory Funds” means fees, fines, or penalties derived from the regulatory operations of the Exchange. “Regulatory Funds” shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Exchange, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Exchange.³⁹ This provision is designed to preclude the Exchange from using its authority to raise Regulatory Funds for the purpose of benefitting its Sole LLC Member.

Similar to Section 4.1 of the Current LLC Agreement, Section 16 of the LLC Agreement, titled “Books and Records,” sets forth certain information relating to general administrative matters with respect to the books and records of the Exchange.

Specifically, the Board shall keep or cause to be kept complete and accurate books of

³⁸ The Nasdaq Exchanges will each separately file proposed rule changes to harmonize the distribution provisions in their respective governing documents with the language the Exchange proposes for Section 15, specifically to add the language imported from Section 3.3 of the Exchange’s Current LLC Agreement.

³⁹ See proposed LLC Agreement, Schedule A.

account and records with respect to the Exchange's business. The books of the Exchange shall at all times be maintained by the Board. The Exchange's books of account shall be kept using the method of accounting determined by the Sole LLC Member. Further, the Exchange's independent auditor shall be an independent public accounting firm selected by the Board.⁴⁰ Finally, the Exchange proposes to retain some of the existing concepts on books and records from Section 4.1(b) of the Current LLC Agreement in the new Section 16.⁴¹ First, the books of account and records with respect to the Exchange's business must be kept within the United States. Second, other than as provided in Section 16 with respect to the Commission, all confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange shall: (i) not be made available to any persons other than to those officers, directors, employees and agents of the Exchange that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Exchange and the officers, directors, employees and agents of the Exchange; and (iii) not be used for any

⁴⁰ See Section 16 of the NSM LLC Agreement for substantially similar provisions.

⁴¹ These concepts are generally not in the governing documents of the Nasdaq Exchanges, and relate to where the Exchange's books and records must be maintained and who may access such books and records, in particular those that contain confidential information pertaining to the self-regulatory function of the Exchange. While Phlx has a requirement under Section 15 of the Phlx LLC Agreement to keep its books and records in the United States, neither BX nor NSM has this requirement under their respective governing documents. Furthermore, none of the Nasdaq Exchanges have in their governing documents a provision that explicitly sets forth the Commission's right to access their books and records. The Nasdaq Exchanges will each separately file proposed rule changes to harmonize the books and records provisions in their respective governing documents with the language the Exchange proposes for Section 16.

non-regulatory purposes.⁴² Nothing in the LLC Agreement shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit and impede the ability of any officers, directors, employees or agents of the Exchange to disclose such confidential information to the Commission.

Section 17, titled “Reports,” is being added to mirror the language of the NSM LLC Agreement, and requires the Board, after the end of each fiscal year, to use reasonable efforts to cause the Exchange’s independent accountants, if any, to prepare and transmit to the Sole LLC Member any tax information that the Sole LLC Member may reasonably need to prepare its federal, state and local income tax returns for such fiscal year.⁴³ Section 18, titled “Other Business,” is standard language in the Delaware limited liability company context and merely states that the Sole LLC Member and any Director, officer, employee or agent of the Exchange may engage in other business and that the Exchange has no rights to such other business or the proceeds derived therefrom. The Exchange is proposing to mirror the language found in Section 18 of the NSM LLC Agreement.

Section 19, titled “Exculpation and Indemnification,” is based on Section 19 of the NSM LLC Agreement. Similar to the provisions in Article VI of the Current

⁴² The proposed language that all confidential information pertaining to the self-regulatory function of the Exchange not be used for any non-regulatory purposes is copied from Section 4.1(b)(iii) of ISE Mercury’s current LLC Agreement. In contrast, Section 4.1(b)(iii) of the Exchange’s Current LLC Agreement prohibits the usage of such information for any non-commercial purposes. The Exchange is proposing to use the more current ISE Mercury standard to emphasize the independence of the Exchange’s regulatory function from its commercial interests.

⁴³ See Section 17 of the NSM LLC Agreement for identical provisions.

Constitution, the language provides for the exculpation and indemnification of ISE Holdings and any officer, Director, employee or agent of the Exchange or of the affiliate of ISE Holdings. Section 20, titled Assignment, is based on Section 20 of the NSM LLC Agreement, but retains similar transfer restrictions from Section 7.1 of the Current LLC Agreement on any assignments by the Sole LLC Member and prohibits the Sole LLC Member from transferring or assigning its limited liability company interest in the Exchange, unless the Commission approves such transfer or assignment pursuant to a rule filing under Section 19 of the Act.⁴⁴ Section 21, titled “Dissolution,” sets forth the events which will cause the dissolution of the Exchange, as prescribed by mandatory provisions of the LLC Act or as otherwise agreed among the parties, and is based on Section 21 of the NSM LLC Agreement. The proposed language is similar to the language currently in Section 7.2 of the Current LLC Agreement.

Sections 22 through 28 of the proposed LLC Agreement contain general provisions which are relatively standard in Delaware limited liability company agreements.⁴⁵ These provisions include: a benefits of agreement clause, a severability clause, an entire agreement clause, a binding agreement clause, a governing law clause, an amendment provision and a notice provision. The Exchange notes that its members

⁴⁴ BX has a similar provision in Section 9.4(c) of the BX Bylaws, which restricts HoldCo, as BX’s sole shareholder, from transferring any shares of stock to any entity unless such transfer is filed and approved by the Commission pursuant to a rule filing. In contrast, Section 20 of the NSM LLC Agreement allows HoldCo, as NSM’s sole LLC member, to assign NSM’s limited liability company interest solely to an affiliate of HoldCo, but does not require approval by the Commission for such assignments. Phlx follows the NSM model. As such, Phlx and NSM will each separately file a proposed rule change to harmonize their assignment provisions with the Exchange’s proposal hereunder.

⁴⁵ For example, see Sections 22 through 28 of the NSM LLC Agreement and Sections 22 through 28 of the Phlx LLC Agreement.

are acknowledged in proposed Section 22 as holding rights under the LLC Agreement and included as third-party beneficiaries to the LLC Agreement as is similarly provided in Section 22 of the NSM LLC Agreement.

Section 27, titled “Amendments,” provides that the LLC Agreement may be amended by a resolution adopted by the Board and a written agreement executed and delivered by the Sole LLC Member, and further provides that all such amendments to the LLC Agreement will not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Exchange Act and the rules promulgated thereunder.⁴⁶

The Exchange proposes to add a new Schedule A to the LLC Agreement, which contains key definitions used in the LLC Agreement. The Exchange also proposes a section on rules of construction further explaining the definitions in proposed Schedule A.

C. Bylaws

The Exchange proposes to adopt the Bylaws,⁴⁷ which would replace the

⁴⁶ This provision is based in concept on Section 6-9 of the Phlx Bylaws, which requires Phlx to file any amendments to the Phlx Bylaws with the Commission. The Phlx LLC Agreement, however, does not have a similar requirement for amendments to the Phlx LLC Agreement. As well, neither BX nor NSM has filing requirements for amendments in their respective governing documents. Therefore, the Nasdaq Exchanges will each separately file proposed rule changes with the Commission to add this requirement in (as applicable): the Phlx LLC Agreement, the BX COI, the BX Bylaws, the NSM LLC Agreement and the NSM Bylaws.

⁴⁷ The proposed Bylaws were filed as part of the Proposed Rule Change as Exhibit 5D.

Exchange's Current Constitution.⁴⁸ The Bylaws reflect the expectation that the Exchange will be operated with governance structures similar to those of the Nasdaq Exchanges. Accordingly, the Exchange proposes to adopt Bylaws that set forth the same corporate governance framework and related processes as those contained in the Bylaws of the Nasdaq Exchanges. Article I of the Bylaws, titled "Definitions," contains key definitions used in the Bylaws, and are based on the defined terms used in NSM Bylaw Article I.

Nomination and Election Process

Article II of the Bylaws, titled "Annual Election of Member Representative Directors and Other Actions by Exchange Members," mirrors the language in NSM Bylaw Article II,⁴⁹ and contains key provisions regarding the processes for the nomination and election of Member Representative Directors. As discussed in the LLC Agreement section above, the Exchange is proposing to replace the Exchange Directors with Member Representative Directors to harmonize its board structure with the Nasdaq Exchanges. The proposed nomination and election process for Member Representative Directors described in new Article II would replace the current processes for the Exchange Directors set forth in the Current Governing Documents.

Current Nomination and Election Process

Under the current nomination and election process, nominees for election of the Exchange Directors are selected each year by the Exchange Director Nominating Committee (which is not a Board committee but composed of three Exchange member

⁴⁸ The Current Constitution was filed as part of the Proposed Rule Change as Exhibit 5C.

⁴⁹ Phlx and BX also have the identical nomination and election processes for their Member Representative Directors. See Phlx Bylaw Article II and Section 4.4 of the BX Bylaws.

representatives).⁵⁰ A petition process will also allow holders of the Exchange Rights to nominate alternate candidates for consideration as Exchange Directors.⁵¹ At an annual meeting of the holders of Exchange Rights, the Exchange Directors are elected by a plurality of the votes cast at the meeting by the holders of Exchange Rights entitled to vote thereon.⁵² Following the full nomination, petition, and voting process, each Exchange Director holds

⁵⁰ See Current Constitution, Section 3.10(a). With respect to the Exchange Director Nominating Committee process, the Secretary of the Exchange, on behalf of the Exchange Director Nominating Committee, will circulate a memorandum to all holders of Exchange Rights soliciting interest in presenting Exchange Director candidates to the Exchange Director Nominating Committee. Shortly after the receipt of candidate submissions, the Exchange Director Nominating Committee will conduct a short interview with each candidate. Following all interviews, the Exchange Director Nominating Committee, by majority vote, will select its Exchange Director candidates and the Secretary of the Exchange will inform the holders of Exchange Rights of the Exchange Director Nominating Committee's selections.

⁵¹ See Current Constitution, Section 3.10(a). Specifically, in addition to the Exchange Director nominees named by the Nominating Committee, persons eligible to serve as such may be nominated for election to the Board by a petition, signed by the holders of not less than 5% of the outstanding Exchange Rights of the series entitled to elect such person if there are more than eighty (80) Exchange Rights in the series entitled to vote, ten percent (10%) of the outstanding rights of such series entitled to elect such person if there are between eighty (80) and forty (40) Exchange Rights in the series entitled to vote, and twenty-five percent (25%) of the outstanding Exchange Rights of such series entitled to elect such person if there are less than forty (40) Exchange Rights in the series entitled to vote. For purposes of determining whether a person has been nominated for election by petition by the requisite percentage, no Exchange member, alone or together with its affiliates, may account for more than fifty percent (50%) of the signatures of the holders of outstanding Exchange Rights of the series entitled to elect such person, and any such signatures by such Exchange members, alone or together with its affiliates, in excess of such fifty percent (50%) limitation shall be disregarded. Id.

⁵² See Current Constitution, Sections 2.1 and 2.5. A holder of Exchange Rights, together with any affiliate, may not exercise the voting rights (i.e., voting to elect the Exchange Directors) associated with more than twenty percent (20%) of the outstanding Exchange Rights. See Current LLC Agreement, Section 6.3(b).

office for a term of two years.⁵³

Specifically pursuant to Section 3.2(c) of the Current Constitution, the Exchange Directors are divided into two classes, designated as Class I and Class II directors. Each of Class I and Class II is comprised of half of the Exchange Directors. The Exchange Directors of each class holds office until their successors are duly elected and qualified. At each annual meeting of the holders of Exchange Rights, the successors of the class of Exchange Directors whose term expires at that meeting will be elected by the Exchange Rights holders to hold office for a term expiring at the annual meeting held in the second year following the year of their election, and until their successors are elected and qualified.⁵⁴ No Exchange Director may serve more than three consecutive terms, and after a two-year hiatus, may be eligible to serve as an Exchange Director again.⁵⁵

Proposed Nomination and Election Process

The Exchange is proposing to adopt identical nomination and election processes as the Nasdaq Exchanges as set forth in proposed Bylaw Article II, Section 1 so that Member Representative Directors would be elected to the Board on an annual basis.⁵⁶ For each annual election, the Board would select a Record Date⁵⁷ and an Election Date.⁵⁸

⁵³ See Current Constitution, Section 3.2(c).

⁵⁴ Id.

⁵⁵ See Current Constitution, Sections 3.2(e). The Exchange does not impose term limits on Non-Industry Directors.

⁵⁶ See Section 1 of NSM Bylaw Article II, Section 2-1 of the Phlx Bylaws and Section 4.4 of the BX Bylaws. Currently, the Exchange Directors are elected for two-year terms.

⁵⁷ “Record Date” will be defined as a date selected by the Board for the purpose of determining the Exchange members entitled to vote for the election of Member

The Record Date would be at least 10 days but not more than 60 days prior to the Election Date. The Member Nominating Committee, consisting of representatives of the Exchange members, would create a list of one or more candidates for each Member Representative Director position (the “List of Candidates”) on the Board to be elected on the Election Date. Promptly after selection of the Election Date, in a notice transmitted to the Exchange members and in a prominent location on a publicly accessible website, the Exchange (i) shall announce the Election Date and the List of Candidates, and (ii) shall describe the procedures for Exchange members to nominate candidates for election at the next annual meeting. In the event of a Contested Election, the Exchange shall also send its members the List of Candidates and a formal notice of the Election Date, which notice shall be sent by the Exchange at least 10 days but no more than 60 days prior to the Election Date to the Exchange members that were Exchange members on the Record Date, by any means, including electronic transmission, as determined by the Board or committee thereof.

An additional candidate may be added to the List of Candidates by any Exchange member that submits a timely and duly executed written nomination to the Secretary of the Exchange. To be timely, an Exchange member’s notice would have to be delivered to

Representative Directors on an Election Date in the event of a Contested Election. See proposed Bylaw Article I(bb), which is based on NSM Bylaw Article I(aa).

“Contested Election” will be defined as an election for one or more Member Representative Directors for which the number of candidates on the List of Candidates exceeds the number of positions to be elected. See proposed Bylaw Article I(g), which is based on NSM Bylaw Article I(ee).

⁵⁸ “Election Date” will be defined as a date selected by the Board on an annual basis, on which the Exchange members may vote with respect to Member Representative Directors in the event of a contested election. See proposed Bylaw Article I(k), which is based on NSM Bylaw Article I(j).

the Secretary at the principal executive offices of the Exchange not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's Election Date, provided however that in the event that the Election Date is more than 30 days before or more than 70 days after such anniversary date, notice by the Exchange member must be so delivered not earlier than the close of business on the 120th day prior to such Election Date and not later than the close of business on the later of the 90th day prior to such Voting Election or the tenth day following the day on which public announcement of such Election Date is first made by the Exchange. Such Exchange member's notice shall set forth: (i) as to the person whom the Exchange member proposes to nominate for election as a Member Representative Director, all information relating to that person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Act and the rules thereunder (and such person's written consent to be named in the List of Candidates as a nominee and to serving as a Director if elected); (ii) a petition in support of the nomination duly executed by the Executive Representatives⁵⁹ of 10% or more of all

⁵⁹ "Executive Representative" will be defined as an individual appointed by an Exchange member to represent, vote, and act for the Exchange member in all the affairs of the Exchange; provided, however, that other representatives of an Exchange member may also serve on the Board or committees of the Exchange or otherwise take part in the affairs of the Exchange. If an Exchange member is also a member of FINRA, the Exchange executive representative shall be the same person appointed to serve as the FINRA executive representative. An Exchange member may change its executive representative or appoint a substitute for its executive representative upon giving notice thereof to the Exchange Secretary via electronic process or such other process as the Exchange may prescribe. An executive representative of an Exchange member or a substitute shall be a member of senior management and registered principal of the Exchange member. Each executive representative shall maintain an Internet electronic mail account

Exchange members; and (iii) the name and address of the Exchange members making the nomination. The Exchange may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a Member Representative Director.

For purposes of determining whether a person has been nominated for election by petition by the requisite percentage, no Exchange member, alone or together with its affiliates, may account for more than 50% of the signatures endorsing a particular candidate, and any such signatures by such Exchange member, alone or together with its affiliates, in excess of such 50% limitation shall be disregarded.⁶⁰

If by the date on which an Exchange member may no longer submit a timely nomination, there is only one candidate for each Member Representative Director position to be elected on the Election Date, the Member Representative Directors will be elected by ISE Holdings as the Sole LLC Member from the List of Candidates. In the event of a Contested Election, the Exchange would conduct a vote to determine the candidates on the List of Candidates in accordance with proposed Section 2 of Bylaw Article II, which mirrors the language found in Section 2 of the NSM Bylaw Article II.

for communication with the Exchange and shall update firm contact information as prescribed by the Exchange. Each member shall review and, if necessary, update its executive representative designation and contact information in the manner prescribed by the Exchange. See proposed Bylaw Article I(l), which is based on NSM Bylaw Article I(k) and NSM Rule 1150.

⁶⁰ This 50% limitation is not in the governing documents of the Nasdaq Exchanges but is based on the existing 50% limitation found in Section 3.10(a)(ii) of the Current Constitution. The existing 50% limitation caps the signature count by member class (i.e., 50% of the signatures of the holders of Exchange Rights of the series entitled to elect such person). Because the fair representation directors will no longer be elected separately by each member class but by the Exchange members as a whole, it is also no longer necessary to apply a separate 50% limitation on each class of members.

If there is a Contested Election, each Exchange member would have the right to cast one vote for each Member Representative Director position to be filled; provided, however, that any such vote must be cast for a person on the List of Candidates. However, an Exchange member, either alone or together with its affiliates, may not cast votes representing more than 20% of the votes cast for a candidate, and any votes cast by the Exchange member, either alone or together with its affiliates, in excess of such 20% limitation would be disregarded.⁶¹ The votes would be cast by written ballot, electronic transmission or any other means as set forth in a notice to the Exchange members sent by the Exchange prior to the Election Date. Only votes received prior to 11:59 p.m. Eastern Time on the Election Date would count for the election of a Member Representative Director. The persons on the List of Candidates who receive the most votes would be elected to the Member Representative Director positions.

New Section 3 of Bylaw Article II proposes that if a Member Representative Director position becomes vacant prior to the expiration of such person's term, or it an increase in the size of the Board results in the creation of a new Member Representative Director position, the Sole LLC Member will elect a person from a list of candidates prepared by the Member Nominating Committee to fill such vacancy, except that if the remaining term of office for the vacant Director position is less than six months, no replacement will be required. The proposal would replace the current process for filling Exchange Director vacancies on the Board,⁶² and mirrors Section 3 of NSM Bylaw Article II. Finally, new Section 4 of Bylaw Article II, copied from Section 4 of NSM

⁶¹ This is the same as the 20% voting limitation included in Section 6.3(b) of the Exchange's Current LLC Agreement. See note 52 above.

⁶² See Current Constitution, Section 3.3.

Bylaw Article II, proposes that the Exchange will not be required to hold meetings of the Exchange members.⁶³

Related to the proposed changes to the Exchange's nomination and election process described above, the Exchange also proposes to create a Member Nominating Committee, which would replace the current Exchange Director Nominating Committee in nominating candidates for director positions that meet the fair representation requirement (i.e., the proposed Member Representative Directors). In addition, the new Member Nominating Committee would nominate candidates for committee positions that meet the fair representation requirement (i.e., the "Member Representative members").⁶⁴ Similar to the Member Representative Directors on the Board, the function of Member Representative members is to provide members a voice in the administration of the Exchange's affairs, specifically on certain committees that are responsible for providing advice on any matters pertaining to the Exchange's self-regulatory function or relating to the market structure which the Exchange regulates. The Exchange will therefore require that at least 20% of the persons serving on any such committees be individuals who will have been appointed by the Member Nominating Committee and be representative of the Exchange's membership in order to ensure that its members have the opportunity to

⁶³ In contrast, the Current Constitution requires that an annual meeting of the holders of Exchange Rights be held for the purpose of electing Exchange Directors to fill expiring terms. See Current Constitution, Section 2.1. As noted above for the proposed process, the Exchange members may vote in the event of a Contested Election, through a balloting process without a formal meeting.

⁶⁴ "Member Representative member" will be defined as a member of any committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to the Bylaws. See proposed Bylaw Article I(s), which is based on NSM Bylaw Article I(r).

formally provide input on matters that are important to them.⁶⁵ New Section 6(b) of Bylaw Article III, which is copied from Section 6(b) of NSM Bylaw Article III, proposes that the Member Nominating Committee would nominate candidates for each Member Representative Director position on the Board, and would also nominate candidates for appointment by the Board for positions on any committees with positions reserved for Member Representative members. The Member Nominating Committee would consist of no fewer than three and no more than six members. All members of the Member Nominating Committee would be a current associated person of a current Exchange member. The Board would appoint such individuals after appropriate consultation with the Exchange members. Member Nominating Committee members would be appointed annually by the Board and may be removed by a majority vote of the Board.

The Exchange believes that the proposed process for selecting Member Representative Directors, together with the requirement in the proposed LLC Agreement that the Board be comprised of at least 20% Member Representative Directors as discussed in the LLC Agreement section above, will continue to provide for a fair representation of its members on the Board. Similar to the nomination and election process currently in place, proposed Bylaw Article II includes a process by which members can directly petition and vote for representation on the Board. The Exchange also believes that proposed process for selecting Member Representative members, together with requirements in the proposed Bylaws that certain committees such as the Quality of Markets Committee be composed of at least 20% Member Representative

⁶⁵ Under the Proposed Rule Change, the new Quality of Markets Committee, whose primary function is to provide advice on industry-wide market issues, will be required to be composed of at least 20% Member representative members. The Quality of Markets Committee is discussed in detail below.

members, will continue to provide for fair representation of its members in the administration of the Exchange's affairs. In addition, the proposed Member Nominating Committee would be composed solely of persons associated with Exchange members, similar to the current Exchange Director Nominating Committee, and is selected after consultation with representatives of Exchange members. The Commission has previously approved rule changes for substantially similar board nomination and election processes for the Nasdaq Exchanges.⁶⁶

Board Composition

The Exchange is proposing to adopt Article III of the Bylaws, titled "Board of Directors," which is based on NSM Bylaw Article III. Section 1 of Bylaw Article III proposes that if any Director position other than a Member Representative Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee (discussed below) shall nominate, and the Sole LLC Member shall select, a person satisfying the classification (Industry, Non-Industry, or Public Director), if applicable, for the directorship to fill such vacancy.

Section 2(a) of Bylaw Article III sets forth the proposed Board composition requirements and provides that a Director may not be subject to a statutory disqualification. The Exchange is proposing to replace the current Board qualification requirements with the ones set forth in the new Section 2(a), which mirrors the

⁶⁶ See e.g. Securities Exchange Act Release No. 53128 (Jan. 13, 2006), see note 18 above; Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02, -23, -25, SR-BSECC-2001-01) (Order Approving a Proposal by BX to Amend and Restate its COI and its Constitution to Reflect its Acquisition by the NASDAQ OMX Group); and Securities Exchange Act Release No. 59794 (April 20, 2009), 74 FR 18761 (April 24, 2009) (SR-Phlx-2009-17) (Order Approving Proposed Rule Change Relating to the Nomination and Election of Candidates for Governor and Independent Governor).

qualifications language in Section 2(a) of NSM Bylaw Article III. This proposed change to the current Board composition is in addition to the proposal discussed in the LLC Agreement section above to give the Sole LLC Member discretion to determine the size of the Board from time to time.⁶⁷

Currently, the number of directors on the Board must be no less than eight and no more than sixteen⁶⁸ and in no event shall the number of Exchange Directors constitute less than 30% of the members of Board and in no event shall the number of directors who meet the qualifications of “non-industry representatives” as set forth in the Current Constitution⁶⁹ constitute less than the number of Exchange Directors.⁷⁰ Furthermore, the Board must be composed as follows: (i) at least 50% directors who meet the qualifications of “non-industry representatives”⁷¹ and elected by ISE Holdings as the Sole LLC Member,

⁶⁷ See proposed Section 9(a) of the LLC Agreement.

⁶⁸ See Current Constitution, Section 3.2(a). Currently, the Board is comprised of sixteen directors.

⁶⁹ The term “non-industry representative” means any person who would not be considered an “industry representative,” as well as (i) a person affiliated with a broker or dealer that operates solely to assist the securities-related activities of the business of non-member affiliates, or (ii) an employee of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who is primarily engaged in the business of the non-member entity. See Current Constitution, Section 13.1(u).

The term “industry representative” means a person who is an officer, director or employee of a broker or dealer or who has been employed in any such capacity at any time within the prior three (3) years, as well as a person who has a consulting or employment relationship with or has provided professional services to the Exchange and a person who had any such relationship or provided any such services to the Exchange at any time within the prior three (3) years. See Current Constitution, Section 13.1(r).

⁷⁰ See Current Constitution, Section 3.2(a).

⁷¹ See Current Constitution, Section 3.2(b).

at least one (1) of whom must meet the qualifications of “Public Director,”⁷² (ii) one (1) director, who is the President and Chief Executive Officer of the Exchange (the “CEO Director”),⁷³ (iii) at least 30% Exchange Directors, as described above, and (iv) one (1) Former Employee Director , who may be elected by the Sole LLC Member in its sole and absolute discretion.⁷⁴

The Exchange is proposing to replace the aforementioned Board composition with the board structure in place at the Nasdaq Exchanges. As is the case with the Nasdaq Exchanges, the proposed Board composition would be required to reflect a balance among “Industry Directors,” “Member Representative Directors,” and “Non-Industry Directors,” including “Public Directors.”⁷⁵ The new Board structure would be as follows:

- At least twenty percent (20%) of the directors on the Board would be “Member

⁷² “Public Director” means is a non-industry representative who has no material relationship with a broker or dealer or any affiliate of a broker or dealer or the Exchange or any affiliate of the Exchange. See Current Constitution, Section 3.2(b) and Sections 13.1(z) and (aa).

⁷³ See Current Constitution, Section 3.2(b). The President and Chief Executive Officer of the Exchange is elected by the Board and will be nominated by the Board for a directorship by virtue of his or her office. See Current Constitution, Section 4.6(a). The President and Chief Executive Officer will only serve on the Board for so long as such person remains the President and Chief Executive Officer. See Current Constitution, Section 3.2(e).

⁷⁴ The Former Employee Director is a director who meets the requirements of a “non-industry representative,” except that such person was employed by the Exchange at any time during the three (3) year period prior to his or her initial election. The Exchange is not required under its Current Constitution to fill this director position. See Current Constitution, Section 3.2(b).

⁷⁵ See Section 2(a) of NSM Bylaw Article III, Section 3-2(a) of Phlx Bylaws and Section 4.3 of BX Bylaws.

Representative Directors;”⁷⁶

- The number of “Non-Industry Directors”⁷⁷ would equal or exceed the sum of the number of “Industry Directors”⁷⁸ and “Member Representative Directors”⁷⁹

⁷⁶ See proposed LLC Agreement, Section 9(a). “Member Representative Director” will be defined as a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by an Exchange Member. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange member. See proposed Bylaws, Article I(r), which is based on NSM Bylaw Article I(q).

⁷⁷ “Non-Industry Director” will be defined as a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer, director, or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry Director. See proposed Bylaws, Article I(w), which is based on NSM Bylaw Article I(v).

⁷⁸ An “Industry Director” will be a person with direct ties to the securities industry as a result of connections to a broker-dealer, the Exchange or its affiliates, FINRA, or certain service providers to such entities. Specifically, an “Industry Director” will be defined as a Director (excluding Staff Directors), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director’s firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director’s, officer’s, or employee’s professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director’s or member’s firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. See proposed Bylaws Article I(m), which is based on NSM Bylaw Article I(l).

- The Board would include at least one “Public Director”⁸⁰ and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives);
- Up to two officers of the Exchange (“Staff Directors”) may be elected to the Board.⁸¹

Under Section 2(b) of the proposed Bylaws, which mirrors Section 2(b) of NSM Bylaw Article III, a Director would be disqualified and removed immediately upon a determination by the Board, by a majority vote of the remaining Directors, (a) that the Director no longer satisfies the classification for which the Director was elected; and (b) that the Director’s continued service as such would violate the compositional requirements of the Board set forth in proposed Section 2(a). Thus, for example, if a Public Director became employed by a broker-dealer and the Board thereby had an inadequate number of Public Directors, the Director would be disqualified and removed. If a Director is disqualified and removed, and the remaining term of office of such Director at the time of termination is not more than 6 months, a replacement for the Director is not required until the next annual meeting. Analogous disqualification provisions exist for committee members.⁸²

⁷⁹ See proposed Section 2(a) of Bylaw Article III.

⁸⁰ Id. “Public Director” will be defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. See proposed Bylaw Article I(z), which is based on NSM Bylaw Article I(y).

⁸¹ See proposed Bylaw Article I(m). Staff Directors will not be considered as either Industry or Non-Industry Directors.

⁸² See proposed Section 4(b) of Bylaw Article III, which mirrors the language in Section 4(b) of NSM Bylaw Article III.

Upon the Acquisition, there were a number of harmonizing changes to the Board,⁸³ which resulted in a complete overlap of directors on the boards of the Exchange, NSM, Phlx and BX. Specifically, there were eight (8) directors meeting the qualifications of “non-industry representatives” under the Current Constitution and “Non-Industry Directors” under each of the Nasdaq Exchanges’ Bylaws.⁸⁴ Furthermore, two of these directors also met the compositional requirements of “Public Directors” under the Current Constitution and under the Bylaws of each Nasdaq Exchange.⁸⁵ The Chief Executive Officer appointed upon the Acquisition by the Sole LLC Member became a Board member by virtue of his office under the current Constitution, and also met the qualifications of “Staff Director” under each of the Nasdaq Exchange Bylaws. Five of the six Exchange Directors serving on the Board immediately prior to the Acquisition remained on the Board post-Acquisition. One Exchange Director was appointed by the Exchange Director Nominating Committee and elected to the Board upon the Acquisition due to his predecessor being term limited out under the Current Constitution. The Board therefore satisfied the composition requirements in the Current Constitution that at least 50% of directors be “non-industry representatives,”

⁸³ These changes consisted of the resignations of all directors, other than the Exchange Directors, sitting on the Board immediately prior to the consummation of the Acquisition, and the appointments of Nasdaq designees to fill these vacancies on the Board. The changes were effected through a series of unanimous written consents by the Board, as well as unanimous written consents by the Exchange Director Nominating Committee and the Corporate Governance Committee. The Exchange represents that these changes were effected in accordance with the Current Governing Documents.

⁸⁴ These eight directors also sat on the three Nasdaq Exchange boards immediately prior to the Acquisition.

⁸⁵ In addition, the current Board also satisfies the requirement under the Nasdaq Exchange Bylaws that the board be composed of at least one Public Director and at least one (or two, if the board consists of ten or more directors) issuer representatives.

and at least 30% be Exchange Directors. The six Exchange Directors also served as “Member Representative Directors” on the Nasdaq Exchange boards, therefore satisfying the 20% Member Representative Director requirement under their Bylaws. Finally, one additional director was appointed to the “Former Employee Director” seat of the Board by the Sole LLC Member, meeting the qualifications for such directorship and also meeting the qualifications of “Staff Director” under each of the Nasdaq Exchange Bylaws. As such, the post-Acquisition Board satisfied the composition requirements contained both in the Current Constitution and in the proposed Bylaws.

The terms of the directors on the post-Acquisition Board ended at the 2017 annual meeting of the Exchange Members and Sole LLC Member (“2017 Annual Election”), which was held on June 19, 2017 to elect the current Board and coincided with the 2017 annual elections of the Nasdaq Exchange boards. The Exchange held the 2017 Annual Election to elect the current Board in accordance with the nomination, petition and voting processes set forth in the Current Governing Documents. Once the New Governing Documents become operative, no additional actions will be required under the LLC Act with respect to the current Board. All of the directors on the current Board are existing directors who served on the post-Acquisition Board and, similar to the post-Acquisition Board as described above, the current Board satisfies the board composition requirements both in the Current Governing Documents and in the New Governing Documents.⁸⁶ Even though the current Board was not nominated or voted upon in accordance with New Governing Documents, the Exchange believes that the current Board is consistent with the Act in that it still provides for the fair representation of members and has one or more

⁸⁶ See Current Constitution, Section 3.2; proposed LLC Agreement, Section 9(a); and proposed Bylaw Article III, Section 2(a).

directors that are representative of issuers and investors and not associated with a member of the exchange, broker, or dealer. First, six Exchange Directors, who are officers, directors or partners of Exchange members as required by Section 3.2(b) of the Current Constitution, were nominated by the Exchange Director Nominating Committee and elected to the current Board by a plurality of the holders of the Exchange Rights. These Exchange Directors were subject to the full petition and voting process by membership in accordance with Articles II and III of the Current Constitution, which process the Commission has already found as satisfying the principles of fair representation as required by Section 6(b) of the Act.⁸⁷ Furthermore as noted above, the Exchange believes that the Exchange Directors serve the same function as the Member Representative Directors under the proposed board structure in that both directorships give Exchange members a voice in the Exchange's use of self-regulatory authority. The Exchange notes that only the corporate governance structure is changing under the Proposed Rule Change, and that the Exchange's membership has remained substantially the same both before and after the 2017 Annual Election.

Second, eight directors who meet the requirements of non-industry representatives under the Current Constitution as well as Non-Industry Directors under the proposed Bylaws were nominated by the existing Corporate Governance Committee and elected by the Sole LLC Member to the current Board. Further, at least three of these directors are Public Directors or issuer representatives, consistent with the composition requirements under the Current Constitution and proposed Bylaws. The current Board therefore reflects a balance among the six Exchange Directors (i.e., Member Representative

⁸⁷ See GEMX Approval Order.

Directors) and the eight non-industry representative directors (i.e., Non-Industry Directors, including Public Directors or issuer representatives). The Exchange's Chief Executive Officer was also elected to the current Board by the Sole LLC Member, thereby satisfying the composition requirements of CEO Director and Staff Director under the Current Constitution and proposed Bylaws.

For the annual elections starting in 2018 and subject to approval by the Commission, the Exchange will hold its annual elections in accordance with the processes contemplated in the New Governing Documents and as such, the 2017 Board will serve until the 2018 annual election. Specifically upon the Merger, the 2017 Board will appoint a Nominating Committee (as discussed in detail below) and a Member Nominating Committee, and such committees would nominate candidates for the 2018 annual election pursuant to the procedures set forth in proposed Bylaw Article I (for Member Representative Directors) and in proposed Section 9(a) of the LLC Agreement and proposed Bylaw Article III (for all other Directors).

Section 3 of Bylaw Article III, which is copied from Section 3 of NSM Bylaw Article III, contains standard provisions for a Delaware limited liability company governing the appropriateness of reliance by Directors upon the records of the Exchange. Section 3 also recognizes the Exchange's status as an SRO by providing that the Board, when evaluating any proposal, shall, to the fullest extent permitted by applicable law, take into account all factors that the Board deems relevant, including, without limitation, (i) the potential impact thereof on the integrity, continuity and stability of the national securities exchange operated by the Exchange and the other operations of the Exchange, on the ability to prevent fraudulent and manipulative acts and practices and on investors

and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system. Taken together, these provisions are designed to reinforce the notion that the Exchange is not solely a commercial enterprise but rather an SRO registered pursuant to the Act and subject to the obligations imposed by the Act.

Standing Committees

The proposed new Sections 4, 5 and 6 of Bylaw Article III, which are based on Sections 4, 5 and 6 of the NSM Bylaw Article III, would include provisions governing the composition and authority of various standing committees established by the Board. Proposed new Section 4 of Bylaw Article III would require prospective committee members, who are not Directors, to provide the Secretary of the Exchange with certain information to classify a committee member as an Industry member,⁸⁸ a Member

⁸⁸ “Industry member” will be defined as a member of any committee appointed by the Board who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member’s firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director’s, officer’s, or employee’s professional capacity and constitute 20 percent or more

Representative member,⁸⁹ a Non-Industry member,⁹⁰ or a Public member.⁹¹ Analogous new provisions are also proposed for prospective Directors.⁹²

Sections 5 and 6 of proposed Bylaw Article III, titled “Committees Composed Solely of Directors” and “Committees Not Composed Solely of Directors,” establishes several standing committees and delineates their general duties and responsibilities. The proposed committee structure is modeled substantially on the committee structures of the Nasdaq Exchanges, and are copied to the extent such committees are relevant to the Exchange.⁹³

of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member’s firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. See proposed Bylaw Article I(n), which is based on NSM Bylaw Article I(m).

⁸⁹ “Member Representative member” will be defined as a member of any committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to the Bylaws. See proposed Bylaw Article I(s), which is based on NSM Bylaw Article I(r).

⁹⁰ “Non-Industry member” will be defined as a member of any committee appointed by the Board who is (i) a Public member; (ii) an officer or employee of an issuer of securities listed on the national securities exchange operated by the Exchange; or (iii) any other individual who would not be an Industry member. See proposed Bylaw Article I(x), which is based on NSM Bylaw Article I(w).

⁹¹ “Public member” will be defined as a member of any committee appointed by the Board who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. See proposed Bylaw Article I(aa), which is based on NSM Bylaw Article I(z).

⁹² See proposed Section 6(b)(v) of Bylaw Article III, which is based on Section 6(b)(v) of NSM Bylaw Article III.

⁹³ For example, the Exchange does not propose to establish an Exchange Listing and Hearing Review Council because the Exchange does not offer any original listings. Similarly, the Exchange does not propose to establish an Arbitration and

Currently, the standing Board committees of the Exchange are: an Executive Committee, a Corporate Governance Committee, a Finance and Audit Committee, a Compensation Committee, and such other additional committees as may be established by Board resolution.⁹⁴ As discussed above, the Exchange also has an Exchange Director Nominating Committee, which is a committee of the Exchange and not the Board. All committee appointments are made by the Board, and each appointee serves for one year or until his or her successor is duly appointed.

Proposed Committees Composed Solely of Directors

New Section 5 of Bylaw Article III, which copies the language in Section 5 of NSM Bylaw Article III, provides for an Executive Committee, a Finance Committee, and a Regulatory Oversight Committee.

Creation of an Executive Committee

The Exchange proposes to adopt new Section 5(a), which provides that the Board may appoint an Executive Committee and delineates its composition and functions. In particular, the proposed Executive Committee may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange between meetings of the Board. The number of Non-Industry Directors on the Executive Committee must equal or exceed the number of Industry Directors on the Executive Committee. The percentage of Public Directors on the Executive Committee must be at

Mediation Committee as the Exchange's arbitration and mediation program is operated by the Financial Industry Regulatory Authority ("FINRA") in accordance with the FINRA rules pursuant to a regulatory services agreement dated June 10, 2013, as amended ("RSA"). Under the RSA, FINRA provides a comprehensive dispute resolution program for Exchange members.

⁹⁴ See Current Constitution, Article V.

least as great as the percentage of Public Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee must be at least as great as the percentage of Member Representative Directors on the whole Board. Currently, the Executive Committee is a permanent standing committee of the Board.⁹⁵ Under the new Section 5(a), the Executive Committee would be an optional committee, to be appointed only if deemed necessary by the Board. The Exchange's proposal is similar to all three Nasdaq Exchanges where the Exchange Committee is optional, at the discretion of the Board.⁹⁶

Elimination of the Current Finance and Audit Committee

The Exchange also proposes to adopt new Section 5(b), which provides that the Board may appoint a Finance Committee and delineates its composition and functions. In particular, the Finance Committee will advise the Board with respect to the oversight of the financial operations and conditions of the Exchange, including recommendations for the Exchange's annual operating and capital budgets and proposed changes to the rates and fees charged by the Exchange. By adopting new Section 5, the Exchange is proposing to eliminate the current Finance and Audit Committee, and have all of its duties and functions performed at the Board level, assigned to other proposed Board

⁹⁵ The Executive Committee (consisting of six directors, and with the number of non-industry representatives equaling or exceeding the number of Exchange Directors) on behalf of the Board and subject to its control, has all of the powers of the Board except the power to approve any merger, consolidation, sale or dissolution of the Exchange. See Current Constitution, Section 5.2.

⁹⁶ See Section 5(a) of NSM Bylaw Article III, Section 4.13(a) of the BX Bylaws and Section 5-2(a) of the Phlx Bylaws.

committees or to the HoldCo audit committee (the “HoldCo Audit Committee”).⁹⁷

Pursuant to its current charter, the Finance and Audit Committee⁹⁸ is primarily charged with: (i) oversight of financial operations of the Exchange; (ii) oversight of the Exchange’s financial reporting process; (iii) oversight of the systems of internal controls established by management and the Board, and for monitoring compliance with laws and regulations; (iv) evaluation of independent external auditors; and (v) direction and oversight of the internal audit function. Under the new Section 5(b), the Board would retain oversight of the financial operations of the Exchange instead of delegating these functions to standing committee, and would have to option to appoint a Finance Committee at the Board’s discretion. The Exchange’s proposal is similar to all three Nasdaq Exchanges where the Finance Committee is optional, at the discretion of the Board.⁹⁹

Furthermore, the HoldCo Audit Committee also covers the functions of the current Finance and Audit Committee. The HoldCo Audit Committee is composed of at least three directors, all of whom must satisfy the standards for independence set forth in Section 10A(m) of the Act¹⁰⁰ and Rule 5605 of NSM’s listing rules. All committee

⁹⁷ See Article IV, Section 4.13(g) of the HoldCo By-Laws. See also the HoldCo Audit Committee Charter (available at <http://ir.nasdaq.com/corporate-governance-document.cfm?DocumentID=195>).

⁹⁸ The current Finance and Audit Committee must be composed of at least three (3) and not more than five (5) directors, all of whom must be non-industry representatives. See Current Constitution, Section 5.5. In addition, committee members must be “financially literate” as determined by the Board.

⁹⁹ See Section 5(b) of NSM Bylaw Article III, Section 4.13(b) of the BX Bylaws and Section 5-2(b) of the Phlx Bylaws.

¹⁰⁰ See U.S.C. 78j-1(m).

members must be able to read and understand financial statements, and at least one member must have past employment experience in finance or accounting, requisite professional certification in accounting or any other comparable experience or background that results in the individual's financial sophistication.

The HoldCo Audit Committee has broad authority to review the financial information that will be provided to shareholders of HoldCo and others, systems of internal controls, and audit, financial reporting and legal and compliance processes. Because HoldCo's financial statements are prepared on a consolidated basis that includes the financial results of HoldCo's subsidiaries, including the Exchange and the other Nasdaq Exchange subsidiaries, HoldCo's audit committee purview necessarily includes these subsidiaries. The Exchange notes that unconsolidated financial statements of the Exchange will still be prepared for each fiscal year in accordance with the requirements set forth in its application for registration as a national securities exchange.¹⁰¹ To the extent the current Finance and Audit Committee oversees the Exchange's financial reporting process, its activities are duplicative of the activities of the HoldCo Audit Committee, which is also charged with providing oversight over financial reporting and independent auditor selection for HoldCo and all of its subsidiaries, including the Exchange and the other Nasdaq Exchange subsidiaries. Similarly, the HoldCo Audit Committee has general responsibility for oversight over internal controls, and direction and oversight over the internal audit function for HoldCo and all of its subsidiaries. Thus, the responsibilities of the Exchange's Finance and Audit Committee as it relates to the functions set forth in clauses (ii) – (v) above are fully duplicated by the

¹⁰¹ See GEMX Approval Order.

responsibilities of the HoldCo Audit Committee. Accordingly, the Exchange is proposing to allow the elimination of its Finance and Audit Committee. The Commission has previously approved similar proposals by the Nasdaq Exchanges to eliminate their respective audit committees.¹⁰²

Creation of a Regulatory Oversight Committee

The Exchange believes, however, that even in light of the HoldCo Audit Committee's overall responsibilities for internal controls and the internal audit function, it is nevertheless important for the Board to maintain its own independent oversight over the Exchange's controls and internal audit matters relating to the Exchange's operations. Therefore, the Exchange is proposing to create a Regulatory Oversight Committee ("ROC") so that regulatory oversight functions formerly performed by the Finance and Audit Committee may be assumed by the new committee.¹⁰³ Like the ROCs of the Nasdaq Exchanges, the new committee will have broad authority to oversee the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities, and will therefore be able to maintain oversight over controls in tandem with the HoldCo Audit Committee's overall oversight responsibilities.

Similarly, it is already a formal practice of HoldCo's Internal Audit Department, which performs internal audit functions for all HoldCo subsidiaries, to report to the

¹⁰² See Securities Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (SR-NASDAQ-2009-042); Securities Exchange Act Release No. 60247 (July 6, 2009), 74 FR 33495 (July 13, 2009) (SR-BX-2009-021); and Securities Exchange Act Release No. 60687 (September 18, 2009), 74 FR 49060 (September 25, 2009) (SR-Phlx-2009-59).

¹⁰³ See proposed Section 5(c) of Bylaw Article III. The Nasdaq Exchanges also have Regulatory Oversight Committees, which have the same authority in all material respects to the proposed ROC. See Section 5(c) of NSM Bylaw Article III, Section 4.13(c) of the BX Bylaws and Section 5-2(c) of the Phlx Bylaws.

Nasdaq Exchange boards on all Nasdaq Exchange-related internal audit matters and to direct such reports to the ROCs of the Nasdaq Exchanges.¹⁰⁴ The Exchange proposes that the HoldCo Internal Audit Department would also similarly report to the Exchange Board and direct such reports to the new ROC. In addition, to ensure that the Exchange Board retains authority to direct the Department's activities with respect to the Exchange, the Department's written procedures will stipulate that the Exchange's ROC may, at any time, direct the Department to conduct an audit of a matter of concern to it and report the results of the audit both to the Exchange ROC and the HoldCo Audit Committee. The Internal Audit Department is currently required to conduct such audits upon the request of the Nasdaq Exchange ROCs.

To effectuate this change, the Exchange proposes to adopt the new Section 5(c) providing for a ROC and delineating its composition and functions. In particular, the proposed ROC's responsibilities will be to: (i) oversee the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities; (ii) assess the Exchange's regulatory performance; and (iii) assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Exchange's regulatory functions. In furtherance of its functions, the ROC shall: (A) review the Exchange's regulatory budget and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (B) meet regularly with the Exchange's Chief Regulatory Officer in executive session; and (C) be informed about the compensation and promotion or termination of the Chief Regulatory Officer and the

¹⁰⁴ See the Regulatory Oversight Committee Charter of NSM, Phlx and BX (available at <http://ir.nasdaq.com/corporate-governance-document.cfm?DocumentID=1097>).

reasons therefor. The Exchange proposes that the ROC shall consist of three members, each of whom shall be a Public Director and an “independent director” as defined in Rule 5605 of the Rules of The NASDAQ Stock Market, LLC.

Given the expansive regulatory and internal oversight of the proposed ROC and HoldCo Audit Committee, coupled with the oversight and responsibilities of the full Board and HoldCo’s Internal Audit Department, the Exchange believes that all of the duties and functions of the eliminated Finance and Audit Committee would continue to be performed in the new governance structure as proposed herein.

Elimination of the Current Compensation Committee

By adopting the new Board committees in Section 5, the Exchange also proposes to eliminate its current Compensation Committee, and to prescribe that its duties be performed by the HoldCo management compensation committee or the full Board when required. The Compensation Committee¹⁰⁵ is primarily charged with reviewing and approving compensation policies and plans for the Chief Executive Officer and other senior executive officers of the Exchange. Under the Nasdaq governance structure, this function is performed by the HoldCo management compensation committee or the full boards of the Nasdaq Exchanges. The HoldCo By-Laws provide that its management compensation committee (a committee consisting of at least two HoldCo board members meeting the independence and other eligibility standards in the listing rules of NSM) considers and recommends compensation policies, programs, and practices for employees of HoldCo. Because many employees performing work for the Exchange are also

¹⁰⁵ The committee must be composed of at least three and not more than five directors who must all meet the “Non-Industry Director” qualifications under the Current Constitution. See Current Constitution, Section 5.6.

employees of HoldCo, its compensation committee already performs these functions for such employees. Moreover, certain of its senior officers are also officers of HoldCo and other HoldCo subsidiaries because their responsibilities relate to multiple entities within the HoldCo corporate structure. Accordingly, HoldCo pays these individuals and establishes compensation policy for them. Most notably, the current Chief Executive Officer of the Exchange is also an “executive officer” of HoldCo within the meaning of NSM Rule 5605. Under that rule, the compensation of executive officers of an issuer of securities, such as the common stock of HoldCo, that is listed on NSM, must be determined by, or recommended to the board of directors for determination by, a majority of independent directors or a compensation committee comprised solely of independent directors. Accordingly, the HoldCo board of directors and/or its compensation committee is legally required to establish the compensation for this individual.

To the extent that policies, programs, and practices must also be established for any Exchange officers or employees who are not also HoldCo officers or employees, the Board would perform such actions without the use of a compensation committee (but subject to the recusal of the Staff Directors).¹⁰⁶ Finally, it should be noted that under the new Section 5(c) of Bylaw Article III, the ROC of the Board would be informed about the compensation and promotion or termination of the Exchange’s Chief Regulatory

¹⁰⁶ As discussed in the proposed Board composition section above, “Staff Directors” would be Exchange directors that are also serving as officers. Since the Board would not be responsible for setting the compensation of any Staff Directors who are also officers of HoldCo, they would be permitted to participate in discussions concerning compensation of Exchange employees, but would recuse themselves from a vote on the subject to allow the determination to be made by directors that are not officers or employees of the Exchange. If a Staff Director was an officer or employee of the Exchange but not of HoldCo, that Staff Director would also absent himself or herself from any deliberations regarding his or her compensation.

Officer and the reasons therefor, to allow the ROC to provide oversight over decisions affecting this key officer. Therefore, the Exchange believes that the duties and functions of the eliminated Compensation Committee would continue to be performed and covered in the new corporate governance structure proposed by the New Governing Documents. The Commission has previously approved proposals by the Nasdaq Exchanges to eliminate their respective compensation committees.¹⁰⁷

Elimination of the Current Corporate Governance Committee

Finally, the Exchange also proposes to eliminate the current Corporate Governance Committee, and to prescribe that its duties be performed by the new Nominating Committee (as discussed below), the new ROC or by the full Board when required. The Corporate Governance Committee¹⁰⁸ is primarily charged with: (i) nominating candidates for all vacant or new non-industry representative positions on the Board, (ii) overseeing the Exchange's regulatory activities and program, and (iii) overseeing and evaluating the governance of the Exchange. As discussed below, the Exchange is proposing to establish a new Nominating Committee that would nominate candidates for all vacant or new non-Member Representative Director positions on the Board, and therefore would perform the Non-Industry Director nominating functions of the current Corporate Governance Committee.¹⁰⁹ Furthermore, the new ROC would have to carry out the regulatory oversight tasks currently within purview of the Corporate

¹⁰⁷ See note 102 above.

¹⁰⁸ The committee must consist of at least three directors, all of whom are required to meet the "Non-Industry Director" standards under the Current Constitution. See Current Constitution, Section 5.4.

¹⁰⁹ See proposed Section 6(b) of Bylaw Article III.

Governance Committee. In particular, the new ROC would (i) oversee the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities; (ii) assess the Exchange's regulatory performance; and (iii) assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Exchange's regulatory functions. Its duties would include reviewing the Exchange's regulatory budget and inquiring into the adequacy of resources available in the budget for regulatory activities; meeting regularly with the Exchange's Chief Regulatory Officer in executive session; and having oversight over compensation, hiring and termination decisions affecting this key officer as discussed above.

As it relates to the general supervision over the corporate governance of the Exchange, the full Board would perform such functions without the use of a corporate governance committee, similar to the boards of the Nasdaq Exchanges.¹¹⁰ In particular, the full Board, led by the Chair of the Board,¹¹¹ would perform annual self-assessments, oversee annual formal director and Chair evaluations, and periodically review the allocations of powers between management and the Board. Therefore, the Exchange believes that the duties and functions of the eliminated Corporate Governance Committee would continue to be performed and covered in the new corporate governance structure proposed by the New Governing Documents.

Proposed Committees Not Composed Solely of Directors

In addition to the proposed Board committees discussed above, new Section 6 of

¹¹⁰ See the Corporate Governance Guidelines of NSM, Phlx and BX (available at <http://ir.nasdaq.com/corporate-governance-document.cfm?DocumentID=6027>).

¹¹¹ The Board Chair will be an "independent director" (i.e. person other than an officer or employee of HoldCo or its subsidiaries, including the Exchange) as provided under the listing rules of NSM and SEC requirements.

Bylaw Article III provides for the appointment by the Board of certain standing committees, not composed solely of Directors, to administer various provisions of the rules that the Exchange expects to propose with respect to governance, options trading and member discipline. By adopting Section 6, the Exchange proposes to eliminate certain standing committees and have their relevant functions performed by the new committees, each as described below.

Creation of a Member Nominating Committee

The new Member Nominating Committee, responsible for: (i) the nomination for election of Member Representative Directors to the Board or (ii) the nomination for appointment of Member Representative members to the committees requiring such members, would replace the Exchange Director Nominating Committee. The composition requirements of the Member Nominating Committee are discussed in the Nomination and Election Process section above.

Creation of a Nominating Committee

The new Nominating Committee will nominate candidates for all other vacant or new Director positions on the Board, and therefore, would perform the non-industry representative nomination function currently assigned to the Corporate Governance Committee. The Nominating Committee will consist of no fewer than six and no more than nine members, and the number of Non-Industry members (i.e. committee members not associated with broker-dealers) shall equal or exceed the number of Industry members on the Nominating Committee. If the Nominating Committee consists of six members, at least two shall be Public members. If the Nominating Committee consists of seven or more members, at least three shall be Public members. No officer or employee of the Exchange shall serve as a member of the Nominating Committee in any voting or

non-voting capacity. No more than three of the Nominating Committee members and no more than two of the Industry members shall be current Directors. A Nominating Committee member may not simultaneously serve on the Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee. Nominating Committee members will be appointed annually by the Board and may be removed by a majority vote of the Board.¹¹²

Creation of a Quality of Markets Committee

The new Quality of Markets Committee (the “QMC”), which is modeled off of the QMCs of the Nasdaq Exchanges,¹¹³ will have the following functions: (i) to provide advice and guidance to the Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of the Exchange from the perspective of investors, both individual and institutional, retail firms, market making firms and other market participants; and (ii) to advise the Board with respect to national market system plans and linkages between the facilities of the Exchange and other markets. The QMC shall include broad representation of participants in the Exchange, including investors, market makers, retail firms, and order entry firms. The QMC shall include a number of Member Representative members that is equal to at least 20% of the total number of members of the QMC. The number of Non-Industry

¹¹² See Section 6(b) of NSM Bylaw Article III, Section 4.14(b) of the BX Bylaws and Section 5-3(a) of the Phlx Bylaws for similar provisions related to the Nominating Committee.

¹¹³ See Section 6(c) of NSM Bylaw Article III, Section 4.14(c) of the BX Bylaws and Section 5-3(c) of the Phlx Bylaws.

members on the proposed QMC shall equal or exceed the sum of the number of Industry members and Member Representative members. A quorum of the QMC will consist of a majority of its members, including not less than 50% of its Non-Industry members, unless this requirement is waived pursuant to proposed Section 6(c)(iii) of Bylaw Article III.

Other Proposed Bylaw Provisions

Proposed Section 7 of Bylaw Article III contains standard provisions for a Delaware limited liability company requiring recusal by Directors or committee members subject to a conflict of interest, and providing for the enforceability of contracts in which a Director has an interest if appropriately approved or ratified by disinterested Directors. This language is based on Section 7 of NSM Bylaw Article III. Proposed Section 8 of Bylaw Article III allows for reasonable compensation of the Board and committee members, and mirrors Section 8 of NSM Bylaw Article III.

Bylaw Article IV, titled “Officers, Agents, and Employees,” contains provisions governing the Exchange’s officers, agents and employees, and is based on Article IV of the NSM Bylaws. Proposed Section 1 of Bylaw Article IV provides that the Board may delegate the duties and powers of any officer of the Exchange to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient. Proposed Section 2 discusses how an officer of the Exchange may resign or may be removed. Proposed Sections 3 through 11 each specifically provides for the appointment of a Chair of the Board,¹¹⁴ a Chief Executive Officer, a President, Vice Presidents, a Chief Regulatory Officer, a Secretary, an Assistant Secretary, a Treasurer,

¹¹⁴ The Chair of the Board would be an independent Director as defined in Rule 5605 of the listing rules of The NASDAQ Stock Market, LLC.

and an Assistant Treasurer.¹¹⁵ The Exchange notes that proposed Section 7 of Bylaw Article IV specifically provides for a Chief Regulatory Officer, a position that is not expressly provided for in the Current Governing Documents, who would have general supervision of the regulatory operations of the Exchange, including responsibility for overseeing the Exchange's surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another SRO to which the Exchange is a party. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Exchange in executive session at regularly scheduled meetings of such committee, and at any time upon request of the Chief Regulatory Officer or any member of the Regulatory Oversight Committee. The Chief Regulatory Officer may also serve as the General Counsel of the Exchange. The Exchange notes that while the position of chief regulatory officer has long existed at the Exchange, this position is not expressly in the Current Governing Documents and now proposes to codify this position in the new Bylaws.

Bylaw Article VII, titled "Miscellaneous Provisions," contains standard limited liability company provisions relating to waiver of notice of meetings and the Exchange's contracting ability. Article VIII, titled "Amendments; Emergency By-Laws," authorizes amendments to the By-Laws by either the Sole LLC Member or the vote of a majority of the whole Board,¹¹⁶ as well as the adoption of emergency by-laws by the Board. Other

¹¹⁵ See NSM Bylaw Article IV for substantially similar provisions.

¹¹⁶ As proposed, all such changes must be filed with the Commission under Section 19(b) of the Act, 15 U.S.C. 78s(b), and become effective thereunder before being implemented. See proposed Bylaw Article VIII, Section 1. The BX Bylaws and the NSM Bylaws do not have a similar requirement, but Phlx has a similar requirement in Section 6-9 of the Phlx Bylaws. BX and NSM will each

than as noted above, Articles VII and VIII mirror the language in Articles VII and VIII of the NSM Bylaws.

Article IX, titled “Exchange Authorities,” which mirrors NSM Bylaw Article IX, contains specific authorization for the Board to adopt rules needed to effect the Exchange’s obligations as an SRO, to establish disciplinary procedures and impose sanctions on its members, to establish standards for membership, to impose dues, fees, assessments, and other charges and to take action under emergency or extraordinary market conditions.

D. Rules

The Exchange proposes to amend its current Rules to reflect the changes to its constituent documents through the adoption of the New Governing Documents to replace the Current Governing Documents.¹¹⁷ All of the proposed changes are non-substantive, and primarily reflect the changing terminology from “Constitution” to “By-Laws,”¹¹⁸ or to remove references to the Current LLC Agreement¹¹⁹ as these will become obsolete under the Proposed Rule Change. Furthermore, a number of defined terms used in the Rules refer back to the Current LLC Agreement or the Current Constitution for their meanings. As discussed below, the Exchange proposes to add these defined terms originally contained in the Current Governing Documents as new Rules. In addition, a

separately file proposed rule changes with the Commission to add this requirement in their respective governing documents. See note 46 above.

¹¹⁷ The amended Rules were filed as part of the Proposed Rule Change as Exhibit 5E.

¹¹⁸ In particular, the proposed changes are in Rules 200, 202, 203, 305(a), 307(c), 307(d), and 711(a), as well as in .01(b)(2)(iii) of Supplementary Material to Rule 706.

¹¹⁹ In particular, the proposed changes are in Rules 100(a)(22A), 302(c), and 302(e).

number of existing Rules contain references to the Current Governing Documents, and the Exchange proposes to amend these provisions either by (i) replacing those references with references to the New Governing Documents or (ii) importing language originally found in the Current Governing Documents, as further described below. Finally, the Exchange proposes to make a number of technical amendments to renumber the Rules, which is a result of adding the new definitions as further discussed below.

In Rule 100, titled “Definitions,” the Exchange proposes to make the following changes:

- Rule 100(a) currently refers to Article XIII of the Current Constitution as containing certain defined terms that are also used in the Exchange’s rulebook. The proposed change would replace the reference to Article XIII of the Current Constitution with references to the proposed LLC Agreement and By-Laws.
- Rule 100(a)(5) “board of directors” or “Board” currently refers to Article I of the LLC Agreement. The proposed change reflects that this definition will be set forth in Article I of the new Bylaws.
- Rule 100(a)(12) “CMM Rights” currently refers to Article VI of the Current LLC Agreement. The proposed change would relocate the concept of CMM Rights from the Current LLC Agreement to this Rule, and would state that the term CMM Rights means the non-transferable rights held by a Competitive Market Maker.¹²⁰

¹²⁰ CMM Rights are non-transferable rights in that the holders of CMM Rights may not lease or sell these rights. As discussed in the LLC Agreement section above, all Exchange Rights (i.e., PMM, CMM and EAM Rights) convey voting rights

- New Rule 100(a)(13) “Competitive Market Maker” would be relocated from Section 13.1(f) of the Current Constitution. Currently, this term is used throughout the Exchange’s rulebook, but the definition is only found in the Current Constitution.
- Rules 100(a)(13) – (14) “covered short position” and “discretion,” respectively, would be renumbered as Rules 100(a)(14) – (15).
- Rule 100(a)(15) “EAM Rights” currently refers to Article VI of the Current LLC Agreement. The proposed change would relocate the concept of EAM Rights from the Current LLC Agreement to this Rule, and would state that EAM Rights means the non-transferable rights held by an Electronic Access Member.¹²¹ The Rule would also be renumbered as Rule 100(a)(16).
- New Rule 100(a)(17) “Electronic Access Member” would be relocated from Section 13.1(j) of the Current Constitution. Currently, this term is used throughout the Exchange’s rulebook, but the definition is only found in the Current Constitution.
- Rules 100(a)(16) and (17) “European-style option,” “Exchange Act” and “Exchange Rights,” respectively, would be renumbered as Rules 100(a)(18) – (20).¹²²

and trading privileges on the Exchange. From GEMX’s inception, the voting rights and trading privileges associated with the PMM, CMM, and EAM Rights have never been transferable. See GEMX Approval Order.

¹²¹ See note 120 above.

¹²² “European-style option” and “Exchange Act” are both inadvertently numbered as Rule 100(a)(16) in the current Rules, so the proposed changes will renumber these Rules as Rules 100(a)(18) and (19), respectively.

- New Rule 100(a)(21) “Exchange Transaction” would be relocated from Section 13.1(o) of the Current Constitution. Currently, this term is used throughout the Exchange’s rulebook, but the definition is only found in the Current Constitution.
- Rules 100(a)(18) and (19) “exercise price” and “Federal Reserve Board,” respectively, would be renumbered as Rules 100(a)(22) and (23).
- New Rule 100(a)(24) “good standing” would be relocated from Section 13.1(p) of the Current Constitution. Currently, this term is used throughout the Exchange’s rulebook, but the definition is only found in the Current Constitution.
- Rules 100(a)(20) – (22) “he,” “him” or “his,” “ISE,” and “long position,” respectively, would be renumbered as Rules 100(a)(25) – (27).
- Rule 100(a)(22A) “LLC Agreement” would be deleted as that term would no longer be used in the Rules, as amended by this rule change.
- Rules 100(a)(23) – (35) “Member,” “Membership,” “market makers,” “Market Maker Rights,” “Non-Customer,” “Non-Customer Order,” “offer,” “opening purchase transaction,” “opening writing transaction,” “Voluntary Professional,” “options contract,” “OPRA,” “order” and “outstanding,” respectively, would be renumbered as Rules 100(a)(28) – (40).
- Rule 100(a)(36) “PMM Rights” currently refers to Article VI of the Current LLC Agreement. The proposed change would relocate the concept of PMM Rights from the Current LLC Agreement to this Rule, and would state that PMM Rights means the non-transferable rights held by a Primary Market

Maker.¹²³ The Rule would also be renumbered as Rule 100(a)(41).

- New Rule 100(a)(42) “Primary Market Maker” would be relocated from Section 13.1(y) of the Current Constitution. Currently, this term is used throughout the Exchange’s rulebook, but the definition is only found in the Current Constitution.
- Rules 100(a)(37), (37A), (37B), (37C), (38) – (48) “primary market,” “Priority Customer,” “Priority Customer Order,” “Professional Order,” “Public Customer,” “Public Customer Order,” “put,” “Quarterly Options Series,” “quote” or “quotation,” “Rules of the Clearing Corporation,” “SEC,” “series of options,” “short position,” “Short Term Option Series” and “SRO,” respectively, would be renumbered as Rules 100(a)(43), (43A), (43B), (43C), (44) – (54).
- New Rule 100(a)(55) “System” would be relocated from Section 13.1(dd) of the Current Constitution. Currently, this term is used throughout the Exchange’s rulebook, but the definition is only found in the Current Constitution.
- Rules 100(a)(49) – (51) “type of option,” “uncovered” and “underlying security,” respectively, would be renumbered as Rules 100(a)(56) – (58).

In Rule 304(b), the Exchange is proposing to replace the references to the Current Governing Documents with the proposed Bylaws to state that no Exchange member shall

¹²³

See note 120 above.

exercise voting rights in excess of those permitted under the Bylaws¹²⁴

In Rule 309 “Limitation on Affiliation between the Exchange and Members,” the Exchange proposes to replace references to “Exchange Director” and “Constitution” with “Member Representative Director” and “By-Laws,” respectively, for the reasons discussed above. Lastly, the proposed changes in Rule 713(a) and Rule 720(a)(1) reflect the renumbering of the defined terms “offer,” “quotations,” “Priority Customer Orders,” “Professional Orders,” and “Priority Customer.”

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹²⁵ in general, and furthers the objectives of Section 6(b)(1) of the Act,¹²⁶ 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 Exchange also believes that this proposal furthers the objectives of Section 6(b)(3) and (b)(5) of the Act¹²⁷ in particular, in that it is designed to assure a fair representation of Exchange members in the selection of its directors and administration of its affairs and provide that one or more directors would be representative of issuers and investors and

¹²⁴ See proposed Bylaw Article II, Section 2. An Exchange Member, either alone or together with its affiliates, may not cast votes representing more than 20% of the votes cast for a candidate. A similar 20% voting limitation is also in Section 6.3(b) of the Current LLC Agreement.

¹²⁵ 15 U.S.C. 78f(b).

¹²⁶ 15 U.S.C. 78f(b)(1).

¹²⁷ 15 U.S.C. 78f(b)(3) and (b)(5).

not be associated with a member of the exchange, broker, or dealer; and 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.

The Exchange believes that its proposal to adopt the Board and committee structure and related nomination and election processes set forth in New Governing Documents are consistent with the Act, including Section 6(b)(1) of the Act, which requires, among other things, that a national securities exchange be organized to carry out the purposes of the Act and comply with the requirements of the Act. In general, the proposed changes would make the Exchange's Board and committee composition requirements, and related nomination and election processes, more consistent with those of its affiliates, BX, NSM and Phlx. The Exchange therefore believes that the proposed changes would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and comply with the provisions of the Act by its members and persons associated with members.

Additionally, the Exchange believes that the New Governing Documents support a corporate governance framework that is designed to insulate the Exchange's regulatory functions from its market and other commercial interests so that the Exchange can carry out its regulatory obligations in furtherance of Section 6(b)(1) of the Act. Specifically, the Exchange believes that creation of a ROC, modeled on the approved ROCs of other Nasdaq Exchanges, and the inclusion of the Chief Regulatory Officer in the proposed Bylaws, would underscore the importance of the Exchange's regulatory function and

specifically empower an independent committee of the Board to oversee regulation and meet regularly with the Chief Regulatory Officer. Furthermore, proposed language in the New Governing Documents specifically providing that the Exchange's business and the Board's evaluations would include actions and evaluations that support and take into account its regulatory responsibilities under the Act, reinforce the notion that the Exchange is not solely a commercial enterprise, but an SRO subject to the obligations imposed by the Act. The restriction on using Regulatory Funds to pay dividends to the Sole LLC Member further underscores the independence of the Exchange's regulatory function. Finally, the Exchange believes that the proposed requirements to include Public Directors on the Board (at least two Directors) and that on the ROC (all three Directors) would help to ensure that no single group of market participants will have the ability to systematically disadvantage other market participants through the exchange governance process, and would foster the integrity of the Exchange by providing unique, unbiased perspectives. Accordingly, the Exchange believes that the new board and committee structure contemplated by the proposed New Governing Documents is designed to insulate the Exchange's regulatory functions from its market and other commercial interests so that the Exchange can carry out its regulatory obligations in furtherance of Section 6(b)(1) of the Act.

The Exchange also believes that the proposed 20% requirement for Member Representative Directors and the proposed method for selecting Member Representative Directors would ensure fair representation of Exchange members on the Board and allow members to have a voice in the Exchange's use of its self-regulatory authority. In particular, the Exchange notes that the Member Nominating Committee would be

composed solely of persons associated with Exchange members and is selected after consultation with representatives of Exchange members. In addition, the new Bylaws include a process by which Exchange members can directly petition and vote for representation on the Board. For the foregoing reasons, the Exchange believes that the proposed change to remove the Exchange Director positions and related concepts from its organizational documents is consistent with fair representation requirement under the Act. Specifically, Exchange members will continue to be represented on the Board and on key standing committees, and will have a voice in the selection of Member Representative Directors through the Member Nominating Committee and through their ability to petition and vote on alternate candidates. As noted above, the trading privileges associated with the Exchange Rights, which are currently located in the Exchange's organizational documents, are already substantively in the Exchange's rulebook, and the Rules would be clarified to the extent such Rules refer back to the Current Governing Documents.

The Exchange also believes that the proposed Board and composition requirements set forth in the New Governing Documents is consistent with the requirements of Section 6(b)(3) of the Act, because the Public Director positions on the Board and on the ROC would include the representatives of issuers and investors with no material business relationship with a broker dealer or the Exchange. Further, the Exchange believes that the proposed compositional balance of the proposed committees continues to provide for the fair representation of members in the administration of the affairs of the Exchange. In particular, all members of the new Member Nominating Committee must be associated persons of an Exchange member. In addition, at least 20%

of the new QMC must be composed of Member Representative members. Moreover, the proposed compositional requirements provide that the Nominating Committee and the QMC must be compositionally balanced between Industry members and Non-Industry members. The proposed compositional requirements are designed to ensure that members are protected from unfair, unfettered actions by an exchange pursuant to its rules, and that, in general, an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.

Moreover, the Exchange believes that the new corporate governance framework and related processes proposed by the New Governing Documents are consistent with Section 6(b)(5) of the Act because they are identical to the framework and processes used by the Nasdaq Exchanges, which have been well-established as fair and designed to protect investors and the public interest. The Exchange believes that adopting the New Governing Documents based on the NSM model would streamline the Nasdaq Exchanges' governance process, create equivalent governing standards among HoldCo's SROs and also provide clarity to its members, which is beneficial to both investors and the public interest.

Finally, the proposed amendments to the Rules as discussed above are non-substantive changes to clarify the rule text where the Rule referred only to the Current LLC Agreement or to the Current Constitution, and also the technical amendments to renumber certain Rules.

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

Because the Proposed Rule Change relates to the corporate governance of the Exchange and not to the operations of the Exchange, 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.

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

The Proposed Rule Change is based on The NASDAQ Stock Market LLC's Second Amended Limited Liability Company Agreement and By-Laws. The Proposed Rule Change is also based on NASDAQ PHLX LLC's Second Amended Limited Liability Company Agreement and By-Laws, and NASDAQ BX, Inc.'s Second Restated Certificate of Incorporation and By-Laws.

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.

- A. Second Amended and Restated Limited Liability Company Agreement of Nasdaq GEMX, LLC.
- B. Proposed Limited Liability Company Agreement of Nasdaq GEMX, LLC.
- C. Constitution of Nasdaq GEMX, LLC.
- D. Proposed By-Laws of Nasdaq GEMX, LLC.
- E. Proposed Nasdaq GEMX, LLC Rules.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-GEMX-2017-37)

August __, 2017

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing of Proposed Rule Change to Adopt New Corporate Governance and Related Process Similar to those of the Nasdaq Exchanges

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 August 7, 2017, Nasdaq GEMX, LLC (“GEMX” 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

Exchange’s proposed rule change (the “Proposed Rule Change”) in connection with the proposed merger (the “Merger”) with a newly-formed Delaware limited liability company under the Exchange’s ultimate parent, Nasdaq, Inc., resulting in the Exchange as the surviving entity. Following the Merger, the Exchange’s board and committee structure, and all related corporate governance processes, will be harmonized with that of the three other registered national securities exchanges and self-regulatory organizations owned by Nasdaq, Inc., namely: The NASDAQ Stock Market LLC (“NSM”), NASDAQ PHLX LLC (“Phlx”), and NASDAQ BX, Inc. (“BX” and together with NSM and Phlx,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the “Nasdaq Exchanges”).

In connection with the Merger and as discussed more fully below, the Exchange proposes to adopt new organizational documents that set forth a corporate governance framework and related processes that are substantially similar in all material respects to those of the Nasdaq Exchanges.

The Exchange intends to implement the Proposed Rule Change no later than by the end of Q4 2017. The Exchange will alert its members in the form of a Regulatory Alert to provide notification of the implementation date.

The text of the proposed rule change is available on the Exchange’s Website at www.ise.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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 Exchange was recently acquired by Nasdaq, Inc. (“HoldCo”).³ Following the

³ On June 30, 2016, HoldCo acquired all of the capital stock of U.S. Exchange Holdings, Inc., the Exchange’s indirect parent company (the “Acquisition”). As a result, the Exchange, in addition to its affiliates Nasdaq ISE, LLC (“ISE”) and Nasdaq MRX, LLC (“MRX”), became a wholly-owned subsidiary of HoldCo,

acquisition, the Exchange has continued to operate as a separate self-regulatory organization (“SRO”) and continues to have separate rules, membership rosters, and listings, distinct from the rules, membership rosters, and listings of the Nasdaq Exchanges as well as from ISE and MRX. The Exchange now proposes to harmonize the corporate governance framework of the Exchange with that of the Nasdaq Exchanges, and submits this Proposed Rule Change to seek the Commission’s approval of various changes to the Exchange’s organizational documents and Rules that are necessary in connection with the Merger, as described below.

The proposed changes consist of: (1) deleting the Exchange’s current Second Amended and Restated Limited Liability Company Agreement (the “Current LLC Agreement”) in its entirety and replacing it with a new limited liability company agreement (the “LLC Agreement”) that is based on the limited liability company agreement of NSM, (2) deleting the Exchange’s current Constitution (“Current Constitution” and together with the Current LLC Agreement, the “Current Governing Documents”) in its entirety and replacing it with a new set of by-laws (the “Bylaws” and together with the LLC Agreement, the “New Governing Documents”) that is based on the by-laws of NSM, and (3) making minor clarifying changes to its rules, as discussed below.⁴

and also became an affiliate of NSM, Phlx, and BX through common, ultimate ownership by HoldCo. HoldCo is the ultimate parent of the Exchange. See Securities Exchange Act Release No. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR-ISEGemini-2016-05).

⁴ The Exchange’s affiliates, ISE and MRX, have submitted or will submit nearly identical proposed rule changes. See Securities Exchange Release No. 81263 (July 31, 2017), 82 FR 36497 (August 4, 2017) (SR-ISE-2017-32) (ISE Approval Order).

All of the proposed changes are designed to align the Exchange's corporate governance framework to the existing structure at the Nasdaq Exchanges, particularly as it relates to board and committee structure, nomination and election processes, and related governance practices.⁵ The Exchange is not proposing any amendments to its ownership structure and International Securities Exchange Holdings, Inc. ("ISE Holdings") will remain as the Exchange's sole limited liability company member ("Sole LLC Member") and owner of 100% of the Exchange's limited liability company interests. Furthermore, the Exchange is not proposing any amendments to its trading rules at this time relating to the Merger other than the minor clarifying changes and technical amendments as noted below.

A. The Merger

In order to effectuate the proposed changes above, the Exchange proposes to merge with a Delaware limited liability company ("NewCo"), newly-formed as a wholly-owned subsidiary of ISE Holdings, resulting in the Exchange as the surviving entity. Specifically, pursuant to the Delaware Limited Liability Company Act, as amended from time to time (the "LLC Act"), NewCo would be formed under ISE Holdings upon filing a certificate of formation with the Secretary of State of the State of Delaware ("DE Secretary of State"). Subsequently, the Exchange would enter into an agreement and

⁵ The new LLC Agreement and Bylaws are based in form and substance on The NASDAQ Stock Market LLC's Second Amended Limited Liability Company Agreement (the "NSM LLC Agreement") and By-Laws (the "NSM Bylaws"). Additionally, the majority of provisions in the organizational documents of Phlx and BX were also based on those of NSM with differences that relate mainly to disciplinary processes (for Phlx) or to corporate structure (for BX). Notwithstanding, the vast majority of the new governance framework and processes proposed herein are materially identical to those of all three Nasdaq Exchanges.

plan of merger with NewCo (the “Merger Agreement”), under which NewCo would merge into the Exchange, with the Exchange surviving the Merger. The Merger Agreement contemplates that the merged limited liability company (i.e. the Exchange) would have a new LLC Agreement and new Bylaws, which would be attached to the Merger Agreement. Then, a certificate of merger would be filed with the DE Secretary of State, which will effectuate the Merger at the time of filing. The new LLC Agreement and the new Bylaws would also become effective at the time of filing the certificate of merger. Under the LLC Act, the Merger is subject to approval by the Exchange Board and by ISE Holdings as the Sole LLC Member. The Exchange represents that it has obtained or will obtain the necessary approvals prior to filing the certificate of merger with the DE Secretary of State.

Following the Merger, the Exchange proposes to be governed by the New Governing Documents in accordance with the LLC Act. The specific changes effected by the New Governing Documents to the current documents are discussed in the following sections.

B. Limited Liability Company Agreement

Following the Merger, the Exchange proposes to adopt the LLC Agreement,⁶ which would replace the Current LLC Agreement.⁷ The proposed LLC Agreement reflects the expectation that the Exchange will be operated with a governance structure substantially similar to that of the Nasdaq Exchanges, and substantially mirrors the

⁶ The proposed LLC Agreement was filed as part of the Proposed Rule Change as Exhibit 5B.

⁷ The Current LLC Agreement was filed as part of the Proposed Rule Change as Exhibit 5A.

provisions found in the NSM LLC Agreement other than as specifically noted herein.⁸ Schedule B of the LLC Agreement describes the proposed ownership of the Exchange's limited liability company interests, which ownership structure is identical to that currently in place. ISE Holdings would remain as the Sole LLC Member (and a member of the Exchange within the meaning of the LLC Act) and the sole owner of 100% of the limited liability company interests of the Exchange. Except as specified below, the proposed changes do not affect the manner of the Exchange's operations or governance structure.

Section 1 of the LLC Agreement, titled "Name," specifies the name of the surviving entity of the Merger as the name of the Exchange. Section 2 of the LLC Agreement, titled "Principal Business Office," provides for the principal business office of the Exchange and such other location as may hereafter be determined by the Board.⁹

Sections 3 and 4 of the LLC Agreement, titled "Registered Office" and "Registered Agent," specifies the place of the Exchange's registered office and the entity

⁸ See the Second Amended Limited Liability Company Agreement of The NASDAQ Stock Market LLC (the "NSM LLC Agreement"). The Second Amended Limited Liability Company Agreement of NASDAQ PHLX LLC (the "Phlx LLC Agreement") is also based on and is substantially similar to the NSM LLC Agreement. BX is a Delaware corporation and is governed by a Certificate of Incorporation, not an LLC Agreement. However, the board structure is identical across the Nasdaq Exchanges and therefore, BX's Second Restated Certificate of Incorporation (the "BX COI") contains substantially similar governance provisions as the NSM LLC Agreement and Phlx LLC Agreement.

⁹ In June 2017, the Exchange relocated its office from 60 Broad Street in New York to One Liberty Plaza in New York. Accordingly, Section 2 of the proposed LLC Agreement now reflects the new One Liberty Plaza address as the principal business office of the Exchange instead of the old 60 Broad address. Similarly, Schedule B of the proposed LLC Agreement, which includes the mailing address of the Exchange's Sole LLC Member, also reflects the new One Liberty Plaza address instead of 60 Broad as the Sole LLC Member's mailing address.

acting as its registered agent, which is the same place and entity used by the Nasdaq Exchanges.¹⁰ The Exchange proposes to replace its current registered office and agent set forth in Section 1.5 of the Current LLC Agreement with the registered office and agent used by the Nasdaq Exchanges for administrative efficiency. This change will not have any material substantive effect on the current operations or the governance of the Exchange.

Section 5 of the LLC Agreement, titled “Sole LLC Member,” provides that the mailing address of the Sole LLC Member is set forth on Schedule B of the LLC Agreement. As noted above, ISE Holdings will remain as the Sole LLC Member of the Exchange.

Section 6 of the LLC Agreement, titled “Certificates,” refers to the filing of the Certificate of Merger with respect to the Merger. Such provision acknowledges and confirms that such filings, which were necessary for the merger to be effected, were authorized by the Exchange. This Section additionally sets forth those person(s) who have the authority to file any other certificates with the Delaware Secretary of State on behalf of the Exchange pursuant to the LLC Act. This provision is purely administrative in nature and therefore will have no material substantive effect on the current operations or the governance of the Exchange.

Section 7 of the LLC Agreement, titled “Purposes,” discusses the Exchange’s business purpose, which provides that the Exchange may engage in any lawful act or activity for which limited liability companies may be formed under the LLC Act and any and all activities necessary or incidental to the foregoing. Without limiting these general

¹⁰ See NSM LLC Agreement, Sections 3 and 4; Phlx LLC Agreement, Section 3; and BX COI, Article Second.

powers, proposed Section 7 also specifically provides that the Exchange's business would include actions that support its regulatory responsibilities under the Act, including: (i) supporting the operation, regulation, and surveillance of the national securities exchange operated by the Exchange, (ii) preventing fraudulent and manipulative acts and practices, promoting just and equitable principles of trade, fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removing impediments to and perfecting the mechanisms of a free and open market and a national market system, and, in general, protecting investors and the public interest, (iii) supporting the various elements of the national market system pursuant to Section 11A of the Act and the rules thereunder, (iv) fulfilling the Exchange's self-regulatory responsibilities as set forth in the Act, and (v) supporting such other initiatives as the Board may deem appropriate. Section 7 mirrors the Section 7 of the NSM LLC Agreement, and is similar to the language in Section 1.3 of the Current LLC Agreement of the Exchange.

Section 8 of the LLC Agreement, titled "Powers," discusses the general powers of the Exchange, the Board and the officers of the Exchange. Specifically, the Exchange, the Board and the officers on behalf of the Exchange (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 of the LLC Agreement and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the LLC Act. Section 8 is based on Section 8 of the NSM LLC Agreement, and is similar to the

provisions in the Current LLC Agreement and the Current Bylaws.¹¹

Section 9 of the LLC Agreement, titled “Management,” sets forth the proposed management structure of the Exchange. Section 9(a) pertains to the Board of the Exchange and provides that the Board will manage the Exchange’s business and affairs, similar to the provisions in Section 5.1 of the Current LLC Agreement.¹² By adopting new Section 9(a), the Exchange proposes to mirror the board structure of the Nasdaq Exchanges.¹³ The Exchange proposes to add language to indicate that the Sole LLC Member may determine at any time in its sole and absolute discretion the number of Directors¹⁴ to constitute the Board.¹⁵ The authorized number of Directors may be increased or decreased by the Sole LLC Member at any time in its sole and absolute discretion, upon notice to all Directors, but no decrease in the number of Directors shall shorten the term of any incumbent Member Representative Director. This language mirrors Section 9(a) of the NSM LLC Agreement. In addition, the exact composition of the Board is subject to the requirements in the Bylaws relating to independence and fair representation of members,

¹¹ See Current LLC Agreement, Sections 5.1 and 5.7 and Current Constitution, Sections 3.1 and 4.1

¹² See also Current Constitution, Section 3.1.

¹³ See NSM LLC Agreement, Section 9; Phlx LLC Agreement, Section 8; and BX COI, Article Fifth.

¹⁴ “Director” will be defined as the persons elected or appointed to the board of directors from time to time in accordance with the LLC Agreement and the Bylaws, in their capacity as managers of the Exchange. See proposed Bylaw Article I(j), which is based on NSM Bylaw Article I(i).

¹⁵ See proposed LLC Agreement, Section 9(a). In contrast, the Current Governing Documents have specific limits on the size of the Board in that the Exchange is required to have no less than eight and no more than sixteen directors. See Current LLC Agreement, Section 5.2 and Current Constitution, Section 3.2(a).

which are described in detail below.

Fair Representation of Members

The Exchange proposes in Section 9(a), similar to the Nasdaq Exchanges, that at least 20% of the Directors would be Member Representative Directors.¹⁶ Member Representative Directors are elected or appointed after having been nominated by a Member Nominating Committee¹⁷ composed of representatives of the Exchange members or by Exchange members in the manner described in the proposed Bylaws.¹⁸ Currently, there are six directors on the Board who are officers, directors or partners of Exchange members, and are elected by a plurality of the holders of Exchange Rights¹⁹ (the “Exchange Directors”),²⁰

¹⁶ See NSM LLC Agreement, Section 9; Phlx LLC Agreement, Section 8; BX Bylaws, Section 4.3. “Member Representative Director” will be defined as a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by an Exchange Member. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member. See proposed Bylaw Article I(r), which is based on NSM Bylaw Article I(q).

¹⁷ See proposed Section 6(b) of Bylaw Article III. “Member Nominating Committee” will be defined as the Member Nominating Committee appointed pursuant to the Bylaws. See proposed Bylaw Article I(q), which is based on NSM Bylaw Article I(p).

¹⁸ The Commission has previously found that the requirement in the NSM LLC Agreement that 20% of the directors shall be “Member Representative Directors” and the means by which they are elected by the members provides for the fair representation of members in the selection of directors and administration of NSM consistent with the requirement in Section 6(b) of the Act. See Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (January 23, 2006) (Order Granting Registration as a National Securities Exchange).

¹⁹ See Rule 300 Series. “Exchange Rights” means the PMM Rights, CMM Rights and EAM Rights collectively. See Rule 100(a)(17). PMM Rights, CMM Rights and EAM Rights have the meaning set forth in Article VI of the Current LLC Agreement. See Rules 100(a)(12), 100(a)(15) and 100(a)(36). See also Current Constitution, Section 13.1(n). PMMs, CMMs, and EAMs represent the three classes of membership on the Exchange. See Current Constitution, Sections 13.1(f), 13.1(j) and 13.1(y).

of which at least: (i) one must be elected by a plurality of the holders of Primary Market Maker (“PMM”) Exchange Rights, (ii) one must be elected by a plurality of holders of Competitive Market Maker (“CMM”) Exchange Rights, and (iii) one must be elected by a plurality of holders of Electronic Access Member (“EAM”) Exchange Rights; provided, however, that the number of each type of Exchange Director will always be equal to one another.²¹ The Exchange adopted the current board structure as it relates to Exchange Directors to comply with Section 6(b) of the Act, which provides that the Exchange must, among other things, assure fair representation of its members (here, the PMMs, CMMs, and EAMs) in the selection of its directors and administration of its affairs (the “fair representation requirement”).²² Therefore, the Exchange believes that the Exchange Directors serve the same function on the current Board as “Member Representative Directors” on the boards of the Nasdaq Exchanges in that the Exchange Directors give members a voice in the Exchange’s use of self-regulatory authority.²³ The Exchange further believes that the new Board structure will still provide for the fair representation of its members because the new structure is well-established as meeting the fair representation

²⁰ These directors are defined as “Industry Directors” in Section 3.2(b)(i) of the Current Constitution, but will be referred to herein as “Exchange Directors.”

²¹ See Current Constitution, Section 3.2(b). Section 3.2(b) further requires that the Board be composed of at least 30% Exchange Directors.

²² See Section 6(b)(3) of the Act, 15 U.S.C. 78f(b)(3). Upon granting the Exchange’s application for registration as a national securities exchange, the Commission found that the board composition requirements related to the Exchange Directors satisfied the principles of fair representation as required by Section 6(b) the Act. See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (Order Granting Registration as a National Securities Exchange) (hereinafter, “GEMX Approval Order”).

²³ Currently, the six Exchange Directors comprise 37.5% of the sixteen-member Board.

requirement.²⁴

By adopting the new Board structure set forth in the New Governing Documents, the Exchange is proposing to replace the Exchange Director positions and all related concepts thereto,²⁵ with Member Representative Director positions and all related concepts that will be further discussed below. In particular, there are a number of provisions related to the Exchange Rights set forth in the Current Governing Documents that will not carry over into the New Governing Documents because they relate to the trading rights and privileges of the Exchange members.²⁶ It should be noted that on GEMX, the Exchange Rights do not convey any ownership rights, and only provide for voting rights for representation on the Board (i.e., through the Exchange Directors) and confers the ability to transact on the Exchange.²⁷ Because the Exchange Director positions will not be reflected in the New Governing Documents for the reasons discussed above, the Exchange believes that the remaining provisions in the Current Governing Documents that relate to the trading rights of its members are more appropriately located in the Rules than in its organizational documents. Already, all of the provisions governing the trading privileges associated with

²⁴ See note 18 above.

²⁵ Related concepts include: “CMM Right,” “Competitive Market Maker,” “EAM Right,” “Electronic Access Member,” “Exchange Rights,” “Industry Directors” (defined herein as “Exchange Directors”), “PMM Rights,” “Primary Market Maker,” and “Voting Rights.” See Current Constitution, Section 13 for the definitions.

²⁶ See Current LLC Agreement, Article VI and Current Constitution, Article XII. The Exchange also notes that it is not carrying over the termination provisions in Section 6.4 of the Current LLC Agreement into the New Governing Documents as these generally relate to the voting rights associated with the Exchange Rights, and therefore will no longer be applicable for the reasons discussed above.

²⁷ See Current LLC Agreement, Sections 6.1 and 6.3 and Rules 300 and 302(c); see also GEMX Approval Order.

the Exchange Rights that are located in the Current Governing Documents are also substantially set forth in the Rules,²⁸ and the Exchange is not proposing any changes to those rules or to any of its trading rules in connection with the Merger except as noted below. As described in more detail below, the Exchange will amend its Rules only (i) to clarify any Rules that refer back to the Current LLC Agreement or the Current Constitution in the rule text or (ii) to relocate in the rulebook any provisions in the Current Governing Documents related to the trading privileges of the Exchange Rights holders that are not expressly set forth in the Rules. As such, the holders of Exchange Rights will continue to have the same trading privileges they currently hold as PMMs, CMMs and EAMs under the Exchange Rules and the proposed Board structure of the Exchange will not change any trading privileges. Virtually all of the proposed changes regarding the removal of Exchange Director positions and related concepts from the Exchange's organizational documents are corporate in nature, and are intended simply to conform the organizational documents with those of the Nasdaq Exchanges in order to harmonize the Exchange's board structure with its affiliates. The proposed changes will primarily affect current board composition requirements, the current nomination and election processes of the directors and the current

²⁸ For example, Exchange members holding PMM and CMM Rights may seek appointment to become market makers in one or more options classes traded on the Exchange, which entitles them to enter quotations and orders into the Exchange's trading system. See Rules 100(a)(34), 100(a)(42) and Rule 800 series; see also Sections 12.1(a) and 12.2(a) of the Current Constitution. Exchange members holding EAM Rights are entitled to enter orders into the Exchange's trading system and clear Exchange transactions. See Rules 100(a)(9) and 100(a)(34); see also Section 12.3(a) of the Current Constitution. The Exchange Rights may not be leased and are not transferable except in the event of a change in control of an Exchange member or corporate reorganization involving an Exchange member. See Rule 302(c); see also Current LLC Agreement, Section 6.4 and Current Constitution, Sections 12.1(b), 12.2(b), and 12.3(b). There is no limit on the number of Exchange Rights issued by GEMX. See Rule 300(a); see also Current LLC Agreement, Section 6.1.

committee composition requirements. These provisions are outlined in detail in the proposed Bylaws of the Exchange, which will be discussed below.

New Section 9(a) of the LLC Agreement also proposes that all Directors other than the Member Representative Directors shall be elected by the Sole LLC Member in the manner described in the proposed Bylaws. Mirroring Section 9(a) of the NSM LLC Agreement, each Director elected, designated or appointed by the Sole LLC Member shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal. As noted above, Member Representative Directors shall be elected in accordance with the Bylaws. Each Director shall execute and deliver an instrument accepting such appointment and agreeing to be bound by all the terms and conditions of the LLC Agreement and the Bylaws. A Director need not be an Exchange member.

The Exchange is also proposing to adopt substantially similar provisions set forth in Section 9 of the NSM LLC Agreement with respect to the Powers of the Board, the By-Laws, the Meeting of the Board of Directors, Quorum; LLC Acts of the Board and Electronic Communications.²⁹ The section discussing the Powers of the Board is similar to the current provisions in the Current Constitution in that the Board is vested with the power to do any and all acts necessary or for the furtherance of the purposes described in the LLC Agreement, including all powers, statutory or otherwise.³⁰ The Board also has the power to

²⁹ See proposed Sections 9(b) through (f) of the Exchange's LLC Agreement.

³⁰ See Current Constitution, Section 3.1.

bind the Exchange and delegate powers.³¹ As discussed in the Bylaws section below, the Bylaws proposed to be adopted by the Exchange, the Sole LLC Member and the Board in Section 9(c) of the LLC Agreement will replace the Current Constitution of the Exchange.

The Meeting of the Board of Directors subsection contains standard Delaware limited liability company provisions governing regular and special meetings of the board, and related notice provisions. Similar language is found in Section 3.6 of the Current Constitution, and the Exchange is proposing to streamline these administrative procedures across the Nasdaq Exchanges. The Exchange also proposes to add a provision in this subsection that all meetings of the Board of Directors of the Exchange (and any committees of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters) or relating to the structure of the market which the Exchange regulates shall be closed to all persons other than members of the Board of Directors and officers, staff, counsel or other advisors whose participation is necessary or appropriate to the proper discharge of such regulatory functions and any representatives of the Commission. The proposed language also prohibits members of the Sole LLC Member's board of directors who are not also members of the Exchange's board of directors or any officers, staff, counsel or advisors of the Sole LLC Member who are not also officers, staff, counsel or advisors of the Exchange from participating in such meetings.³²

The subsections, Quorum; LLC Acts of the Board and Electronic Communications,

³¹ See Current LLC Agreement, Section 2.2 (providing that the Sole LLC Member does not have the power to bind the Exchange, said power being vested solely and exclusively in the Board) and Current Constitution, Sections 3.1, 4.12 and 5.1.

³² The proposed language on board and committee meeting participation in Section 9(d) is not in the governing documents of the Nasdaq Exchanges, but is retained from Section 3.2(d) of the Current Constitution and is intended to help maintain the independence of the Exchange's self-regulatory functions.

contain standard Delaware limited liability company provisions governing quorum rules for Board actions, Board action by unanimous written consent, and how Board and committee members may participate in Board and committee meetings, as applicable. The Exchange notes that these provisions are similar in all material respects to those in the Current Governing Documents³³ and relate primarily to the administrative processes of the Board. Therefore, the Exchange is proposing to streamline these processes across the Nasdaq Exchanges for the sake of efficiency.

Section 9(g) of the LLC Agreement generally discusses the standing committees and provides that the Board may designate one or more committees. By adopting new Section 9(g), the Exchange is proposing to delete the current committees set forth in Article V of the Current Constitution and adopt the standing committees similar to those of the Nasdaq Exchanges. Article V of the Current Constitution provides for the following committees: an Executive Committee, a Corporate Governance Committee, a Finance and Audit Committee, a Compensation Committee, and such other additional committees as may be established by Board resolution. Article V also provides for a nominating committee, which is a committee of the Exchange and not the Board, and nominates the Exchange Directors for election to the Board (the “Exchange Director Nominating Committee”). The Exchange proposes to replace these rules with “Committees Composed Solely of Directors” and “Committees Not Composed Solely of Directors” at newly proposed and named Bylaw Article III. The details of those committees will be discussed below in the Bylaws section.

The Exchange proposes to adopt substantially similar provisions set forth in

³³ See Current Constitution, Sections 3.6 and 3.7.

Section 9(g) of the NSM LLC Agreement with respect to the standing committees.³⁴

First, as set forth in proposed subsection (g)(i), the Board may designate one or more Directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee. Second, in proposed subsection (g)(ii), the Committee members shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a committee may be removed from such committee only by the Board. Vacancies shall be filled by the Board. Third, in proposed subsection (g)(iii), each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall be required to keep regular minutes of its meetings and report the same to the Board when required. Fourth, in proposed subsection (g)(iv), a majority of the committee shall constitute a quorum and the vote of a majority present shall be an act of the committee. Finally, in proposed subsection (g)(v), to the extent provided in the resolution of the Board, any committee that consists solely of one or more Directors shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange. The Exchange also proposes in subsection (g)(v) to limit such committee from having the powers of the Board with respect to approving any matters pertaining to the self-regulatory function of the Exchange or relating to the structure of the market which the Exchange regulates.³⁵ Such committee

³⁴ See proposed LLC Agreement, Section 9(g)(i) – (v).

³⁵ This limitation is based on substantially similar language in Section 5.2(ii) of ISE Mercury's current Constitution, and is intended to assure the fair administration and governance of the Exchange. The Exchange does not have this limitation in Section 5.2 of its Current Constitution with respect to any Board committees set up by Board resolution, and is therefore proposing to follow the more current ISE Mercury standard.

or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. Further, in the absence or disqualification of a member of a committee composed solely of Directors, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. The foregoing provisions are similar to the language found in Section 5.1 of the Current Constitution.

Similar to Section 3.9 of the Current Constitution, proposed Section 9(h) provides that the compensation of Directors shall be fixed by the Board. This language mirrors the provisions in Section 9(h) of the NSM LLC Agreement. The Removal and Resignation of Directors language in proposed Section 9(i) also mirrors Section 9(i) of the NSM LLC Agreement, and is similar to the resignation and removal language in Section 5.4 of the Current LLC Agreement and Sections 3.4 and 3.5 of the Current Constitution. The Directors as Agents language in proposed Section 9(j) provides that the Directors are agents of the Exchange and mirrors Section 9(j) of the NSM LLC Agreement.

Section 10, titled “Officers,” the Exchange proposes to adopt identical language regarding officer appointments found in Section 10 of the NSM LLC Agreement, which provisions are similar in nature to the existing provisions in Article IV of the Current Constitution.

Section 11, titled “Limited Liability,” contains standard Delaware limited liability company language on the limitation of liability of the Sole LLC Member and the Directors in the manner permitted under the LLC Act. The proposed language is similar

to the limitation of liability language found in the Current LLC Agreement³⁶ and mirrors Section 11 of the NSM LLC Agreement.

Sections 12 through 14 of the LLC Agreement, which are virtually identical to Sections 12 through 14 of the NSM LLC Agreement, are equity-related provisions that encompass the topics of capital contributions, additional capital contributions, and allocations of profits and losses. These provisions set forth the basic economic arrangement of the Sole LLC Member and remain consistent with the economic arrangement under the Current Governing Documents.³⁷ Proposed Section 15, which relates to distributions, provides that ISE Holdings, as the Sole LLC Member, is generally entitled to all distributions made by the Exchange. Similar to Section 3.3 of the Current LLC Agreement, however, proposed Section 15 also contains a stipulation that (i) the Exchange shall not be required to make a distribution to the Sole LLC Member on account of its interest in the Exchange if such distribution would violate the LLC Act or any other applicable law or is otherwise required to fulfill the regulatory functions or responsibilities of the Exchange, and (ii) Regulatory Funds shall not be used for non-regulatory purposes, but rather shall be used to fund the legal, regulatory and surveillance operations of the Exchange and the Exchange shall not make a distribution to the Sole LLC Member using Regulatory Funds.³⁸ “Regulatory Funds” means fees, fines, or penalties derived from the regulatory operations of the Exchange. “Regulatory Funds”

³⁶ See Current LLC Agreement, Sections 2.3 and 5.8.

³⁷ See Current LLC Agreement, Sections 3.1 and 3.2.

³⁸ The Nasdaq Exchanges will each separately file proposed rule changes to harmonize the distribution provisions in their respective governing documents with the language the Exchange proposes for Section 15, specifically to add the language imported from Section 3.3 of the Exchange’s Current LLC Agreement.

shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Exchange, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Exchange.³⁹ This provision is designed to preclude the Exchange from using its authority to raise Regulatory Funds for the purpose of benefitting its Sole LLC Member.

Similar to Section 4.1 of the Current LLC Agreement, Section 16 of the LLC Agreement, titled “Books and Records,” sets forth certain information relating to general administrative matters with respect to the books and records of the Exchange. Specifically, the Board shall keep or cause to be kept complete and accurate books of account and records with respect to the Exchange’s business. The books of the Exchange shall at all times be maintained by the Board. The Exchange’s books of account shall be kept using the method of accounting determined by the Sole LLC Member. Further, the Exchange’s independent auditor shall be an independent public accounting firm selected by the Board.⁴⁰ Finally, the Exchange proposes to retain some of the existing concepts on books and records from Section 4.1(b) of the Current LLC Agreement in the new Section 16.⁴¹ First, the books of account and records with respect to the Exchange’s

³⁹ See proposed LLC Agreement, Schedule A.

⁴⁰ See Section 16 of the NSM LLC Agreement for substantially similar provisions.

⁴¹ These concepts are generally not in the governing documents of the Nasdaq Exchanges, and relate to where the Exchange’s books and records must be maintained and who may access such books and records, in particular those that contain confidential information pertaining to the self-regulatory function of the Exchange. While Phlx has a requirement under Section 15 of the Phlx LLC Agreement to keep its books and records in the United States, neither BX nor NSM has this requirement under their respective governing documents. Furthermore, none of the Nasdaq Exchanges have in their governing documents a

business must be kept within the United States. Second, other than as provided in Section 16 with respect to the Commission, all confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange shall: (i) not be made available to any persons other than to those officers, directors, employees and agents of the Exchange that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Exchange and the officers, directors, employees and agents of the Exchange; and (iii) not be used for any non-regulatory purposes.⁴² Nothing in the LLC Agreement shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit and impede the ability of any officers, directors, employees or agents of the Exchange to disclose such confidential information to the Commission.

Section 17, titled “Reports,” is being added to mirror the language of the NSM LLC Agreement, and requires the Board, after the end of each fiscal year, to use reasonable efforts to cause the Exchange’s independent accountants, if any, to prepare

provision that explicitly sets forth the Commission’s right to access their books and records. The Nasdaq Exchanges will each separately file proposed rule changes to harmonize the books and records provisions in their respective governing documents with the language the Exchange proposes for Section 16.

⁴² The proposed language that all confidential information pertaining to the self-regulatory function of the Exchange not be used for any non-regulatory purposes is copied from Section 4.1(b)(iii) of ISE Mercury’s current LLC Agreement. In contrast, Section 4.1(b)(iii) of the Exchange’s Current LLC Agreement prohibits the usage of such information for any non-commercial purposes. The Exchange is proposing to use the more current ISE Mercury standard to emphasize the independence of the Exchange’s regulatory function from its commercial interests.

and transmit to the Sole LLC Member any tax information that the Sole LLC Member may reasonably need to prepare its federal, state and local income tax returns for such fiscal year.⁴³ Section 18, titled “Other Business,” is standard language in the Delaware limited liability company context and merely states that the Sole LLC Member and any Director, officer, employee or agent of the Exchange may engage in other business and that the Exchange has no rights to such other business or the proceeds derived therefrom. The Exchange is proposing to mirror the language found in Section 18 of the NSM LLC Agreement.

Section 19, titled “Exculpation and Indemnification,” is based on Section 19 of the NSM LLC Agreement. Similar to the provisions in Article VI of the Current Constitution, the language provides for the exculpation and indemnification of ISE Holdings and any officer, Director, employee or agent of the Exchange or of the affiliate of ISE Holdings. Section 20, titled Assignment, is based on Section 20 of the NSM LLC Agreement, but retains similar transfer restrictions from Section 7.1 of the Current LLC Agreement on any assignments by the Sole LLC Member and prohibits the Sole LLC Member from transferring or assigning its limited liability company interest in the Exchange, unless the Commission approves such transfer or assignment pursuant to a rule filing under Section 19 of the Act.⁴⁴ Section 21, titled “Dissolution,” sets forth the

⁴³ See Section 17 of the NSM LLC Agreement for identical provisions.

⁴⁴ BX has a similar provision in Section 9.4(c) of the BX Bylaws, which restricts HoldCo, as BX’s sole shareholder, from transferring any shares of stock to any entity unless such transfer is filed and approved by the Commission pursuant to a rule filing. In contrast, Section 20 of the NSM LLC Agreement allows HoldCo, as NSM’s sole LLC member, to assign NSM’s limited liability company interest solely to an affiliate of HoldCo, but does not require approval by the Commission for such assignments. Phlx follows the NSM model. As such, Phlx and NSM

events which will cause the dissolution of the Exchange, as prescribed by mandatory provisions of the LLC Act or as otherwise agreed among the parties, and is based on Section 21 of the NSM LLC Agreement. The proposed language is similar to the language currently in Section 7.2 of the Current LLC Agreement.

Sections 22 through 28 of the proposed LLC Agreement contain general provisions which are relatively standard in Delaware limited liability company agreements.⁴⁵ These provisions include: a benefits of agreement clause, a severability clause, an entire agreement clause, a binding agreement clause, a governing law clause, an amendment provision and a notice provision. The Exchange notes that its members are acknowledged in proposed Section 22 as holding rights under the LLC Agreement and included as third-party beneficiaries to the LLC Agreement as is similarly provided in Section 22 of the NSM LLC Agreement.

Section 27, titled “Amendments,” provides that the LLC Agreement may be amended by a resolution adopted by the Board and a written agreement executed and delivered by the Sole LLC Member, and further provides that all such amendments to the LLC Agreement will not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Exchange Act and the rules promulgated thereunder.⁴⁶

will each separately file a proposed rule change to harmonize their assignment provisions with the Exchange’s proposal hereunder.

⁴⁵ For example, see Sections 22 through 28 of the NSM LLC Agreement and Sections 22 through 28 of the Phlx LLC Agreement.

⁴⁶ This provision is based in concept on Section 6-9 of the Phlx Bylaws, which requires Phlx to file any amendments to the Phlx Bylaws with the Commission. The Phlx LLC Agreement, however, does not have a similar requirement for amendments to the Phlx LLC Agreement. As well, neither BX nor NSM has

The Exchange proposes to add a new Schedule A to the LLC Agreement, which contains key definitions used in the LLC Agreement. The Exchange also proposes a section on rules of construction further explaining the definitions in proposed Schedule A.

C. Bylaws

The Exchange proposes to adopt the Bylaws,⁴⁷ which would replace the Exchange's Current Constitution.⁴⁸ The Bylaws reflect the expectation that the Exchange will be operated with governance structures similar to those of the Nasdaq Exchanges. Accordingly, the Exchange proposes to adopt Bylaws that set forth the same corporate governance framework and related processes as those contained in the Bylaws of the Nasdaq Exchanges. Article I of the Bylaws, titled "Definitions," contains key definitions used in the Bylaws, and are based on the defined terms used in NSM Bylaw Article I.

Nomination and Election Process

Article II of the Bylaws, titled "Annual Election of Member Representative Directors and Other Actions by Exchange Members," mirrors the language in NSM

filing requirements for amendments in their respective governing documents. Therefore, the Nasdaq Exchanges will each separately file proposed rule changes with the Commission to add this requirement in (as applicable): the Phlx LLC Agreement, the BX COI, the BX Bylaws, the NSM LLC Agreement and the NSM Bylaws.

⁴⁷ The proposed Bylaws were filed as part of the Proposed Rule Change as Exhibit 5D.

⁴⁸ The Current Constitution was filed as part of the Proposed Rule Change as Exhibit 5C.

Bylaw Article II,⁴⁹ and contains key provisions regarding the processes for the nomination and election of Member Representative Directors. As discussed in the LLC Agreement section above, the Exchange is proposing to replace the Exchange Directors with Member Representative Directors to harmonize its board structure with the Nasdaq Exchanges. The proposed nomination and election process for Member Representative Directors described in new Article II would replace the current processes for the Exchange Directors set forth in the Current Governing Documents.

Current Nomination and Election Process

Under the current nomination and election process, nominees for election of the Exchange Directors are selected each year by the Exchange Director Nominating Committee (which is not a Board committee but composed of three Exchange member representatives).⁵⁰ A petition process will also allow holders of the Exchange Rights to nominate alternate candidates for consideration as Exchange Directors.⁵¹ At an annual

⁴⁹ Phlx and BX also have the identical nomination and election processes for their Member Representative Directors. See Phlx Bylaw Article II and Section 4.4 of the BX Bylaws.

⁵⁰ See Current Constitution, Section 3.10(a). With respect to the Exchange Director Nominating Committee process, the Secretary of the Exchange, on behalf of the Exchange Director Nominating Committee, will circulate a memorandum to all holders of Exchange Rights soliciting interest in presenting Exchange Director candidates to the Exchange Director Nominating Committee. Shortly after the receipt of candidate submissions, the Exchange Director Nominating Committee will conduct a short interview with each candidate. Following all interviews, the Exchange Director Nominating Committee, by majority vote, will select its Exchange Director candidates and the Secretary of the Exchange will inform the holders of Exchange Rights of the Exchange Director Nominating Committee's selections.

⁵¹ See Current Constitution, Section 3.10(a). Specifically, in addition to the Exchange Director nominees named by the Nominating Committee, persons eligible to serve as such may be nominated for election to the Board by a petition, signed by the holders of not less than 5% of the outstanding Exchange Rights of

meeting of the holders of Exchange Rights, the Exchange Directors are elected by a plurality of the votes cast at the meeting by the holders of Exchange Rights entitled to vote thereon.⁵² Following the full nomination, petition, and voting process, each Exchange Director holds office for a term of two years.⁵³

Specifically pursuant to Section 3.2(c) of the Current Constitution, the Exchange Directors are divided into two classes, designated as Class I and Class II directors. Each of Class I and Class II is comprised of half of the Exchange Directors. The Exchange Directors of each class holds office until their successors are duly elected and qualified. At each annual meeting of the holders of Exchange Rights, the successors of the class of Exchange Directors whose term expires at that meeting will be elected by the Exchange Rights holders to hold office for a term expiring at the annual meeting held in the second year following the year of their election, and until their successors are elected and

the series entitled to elect such person if there are more than eighty (80) Exchange Rights in the series entitled to vote, ten percent (10%) of the outstanding rights of such series entitled to elect such person if there are between eighty (80) and forty (40) Exchange Rights in the series entitled to vote, and twenty-five percent (25%) of the outstanding Exchange Rights of such series entitled to elect such person if there are less than forty (40) Exchange Rights in the series entitled to vote. For purposes of determining whether a person has been nominated for election by petition by the requisite percentage, no Exchange member, alone or together with its affiliates, may account for more than fifty percent (50%) of the signatures of the holders of outstanding Exchange Rights of the series entitled to elect such person, and any such signatures by such Exchange members, alone or together with its affiliates, in excess of such fifty percent (50%) limitation shall be disregarded. Id.

⁵² See Current Constitution, Sections 2.1 and 2.5. A holder of Exchange Rights, together with any affiliate, may not exercise the voting rights (i.e., voting to elect the Exchange Directors) associated with more than twenty percent (20%) of the outstanding Exchange Rights. See Current LLC Agreement, Section 6.3(b).

⁵³ See Current Constitution, Section 3.2(c).

qualified.⁵⁴ No Exchange Director may serve more than three consecutive terms, and after a two-year hiatus, may be eligible to serve as an Exchange Director again.⁵⁵

Proposed Nomination and Election Process

The Exchange is proposing to adopt identical nomination and election processes as the Nasdaq Exchanges as set forth in proposed Bylaw Article II, Section 1 so that Member Representative Directors would be elected to the Board on an annual basis.⁵⁶ For each annual election, the Board would select a Record Date⁵⁷ and an Election Date.⁵⁸ The Record Date would be at least 10 days but not more than 60 days prior to the Election Date. The Member Nominating Committee, consisting of representatives of the Exchange members, would create a list of one or more candidates for each Member Representative Director position (the “List of Candidates”) on the Board to be elected on

⁵⁴ Id.

⁵⁵ See Current Constitution, Sections 3.2(e). The Exchange does not impose term limits on Non-Industry Directors.

⁵⁶ See Section 1 of NSM Bylaw Article II, Section 2-1 of the Phlx Bylaws and Section 4.4 of the BX Bylaws. Currently, the Exchange Directors are elected for two-year terms.

⁵⁷ “Record Date” will be defined as a date selected by the Board for the purpose of determining the Exchange members entitled to vote for the election of Member Representative Directors on an Election Date in the event of a Contested Election. See proposed Bylaw Article I(bb), which is based on NSM Bylaw Article I(aa).

“Contested Election” will be defined as an election for one or more Member Representative Directors for which the number of candidates on the List of Candidates exceeds the number of positions to be elected. See proposed Bylaw Article I(g), which is based on NSM Bylaw Article I(ee).

⁵⁸ “Election Date” will be defined as a date selected by the Board on an annual basis, on which the Exchange members may vote with respect to Member Representative Directors in the event of a contested election. See proposed Bylaw Article I(k), which is based on NSM Bylaw Article I(j).

the Election Date. Promptly after selection of the Election Date, in a notice transmitted to the Exchange members and in a prominent location on a publicly accessible website, the Exchange (i) shall announce the Election Date and the List of Candidates, and (ii) shall describe the procedures for Exchange members to nominate candidates for election at the next annual meeting. In the event of a Contested Election, the Exchange shall also send its members the List of Candidates and a formal notice of the Election Date, which notice shall be sent by the Exchange at least 10 days but no more than 60 days prior to the Election Date to the Exchange members that were Exchange members on the Record Date, by any means, including electronic transmission, as determined by the Board or committee thereof.

An additional candidate may be added to the List of Candidates by any Exchange member that submits a timely and duly executed written nomination to the Secretary of the Exchange. To be timely, an Exchange member's notice would have to be delivered to the Secretary at the principal executive offices of the Exchange not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's Election Date, provided however that in the event that the Election Date is more than 30 days before or more than 70 days after such anniversary date, notice by the Exchange member must be so delivered not earlier than the close of business on the 120th day prior to such Election Date and not later than the close of business on the later of the 90th day prior to such Voting Election or the tenth day following the day on which public announcement of such Election Date is first made by the Exchange. Such Exchange member's notice shall set forth: (i) as to the person whom the Exchange member proposes to nominate for election as a Member

Representative Director, all information relating to that person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Act and the rules thereunder (and such person's written consent to be named in the List of Candidates as a nominee and to serving as a Director if elected); (ii) a petition in support of the nomination duly executed by the Executive Representatives⁵⁹ of 10% or more of all Exchange members; and (iii) the name and address of the Exchange members making the nomination. The Exchange may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a Member Representative Director.

For purposes of determining whether a person has been nominated for election by petition by the requisite percentage, no Exchange member, alone or together with its affiliates, may account for more than 50% of the signatures endorsing a particular candidate, and any such signatures by such Exchange member, alone or together with its

⁵⁹ "Executive Representative" will be defined as an individual appointed by an Exchange member to represent, vote, and act for the Exchange member in all the affairs of the Exchange; provided, however, that other representatives of an Exchange member may also serve on the Board or committees of the Exchange or otherwise take part in the affairs of the Exchange. If an Exchange member is also a member of FINRA, the Exchange executive representative shall be the same person appointed to serve as the FINRA executive representative. An Exchange member may change its executive representative or appoint a substitute for its executive representative upon giving notice thereof to the Exchange Secretary via electronic process or such other process as the Exchange may prescribe. An executive representative of an Exchange member or a substitute shall be a member of senior management and registered principal of the Exchange member. Each executive representative shall maintain an Internet electronic mail account for communication with the Exchange and shall update firm contact information as prescribed by the Exchange. Each member shall review and, if necessary, update its executive representative designation and contact information in the manner prescribed by the Exchange. See proposed Bylaw Article I(l), which is based on NSM Bylaw Article I(k) and NSM Rule 1150.

affiliates, in excess of such 50% limitation shall be disregarded.⁶⁰

If by the date on which an Exchange member may no longer submit a timely nomination, there is only one candidate for each Member Representative Director position to be elected on the Election Date, the Member Representative Directors will be elected by ISE Holdings as the Sole LLC Member from the List of Candidates. In the event of a Contested Election, the Exchange would conduct a vote to determine the candidates on the List of Candidates in accordance with proposed Section 2 of Bylaw Article II, which mirrors the language found in Section 2 of the NSM Bylaw Article II.

If there is a Contested Election, each Exchange member would have the right to cast one vote for each Member Representative Director position to be filled; provided, however, that any such vote must be cast for a person on the List of Candidates.

However, an Exchange member, either alone or together with its affiliates, may not cast votes representing more than 20% of the votes cast for a candidate, and any votes cast by the Exchange member, either alone or together with its affiliates, in excess of such 20% limitation would be disregarded.⁶¹ The votes would be cast by written ballot, electronic transmission or any other means as set forth in a notice to the Exchange members sent by the Exchange prior to the Election Date. Only votes received prior to 11:59 p.m. Eastern

⁶⁰ This 50% limitation is not in the governing documents of the Nasdaq Exchanges but is based on the existing 50% limitation found in Section 3.10(a)(ii) of the Current Constitution. The existing 50% limitation caps the signature count by member class (i.e., 50% of the signatures of the holders of Exchange Rights of the series entitled to elect such person). Because the fair representation directors will no longer be elected separately by each member class but by the Exchange members as a whole, it is also no longer necessary to apply a separate 50% limitation on each class of members.

⁶¹ This is the same as the 20% voting limitation included in Section 6.3(b) of the Exchange's Current LLC Agreement. See note 52 above.

Time on the Election Date would count for the election of a Member Representative Director. The persons on the List of Candidates who receive the most votes would be elected to the Member Representative Director positions.

New Section 3 of Bylaw Article II proposes that if a Member Representative Director position becomes vacant prior to the expiration of such person's term, or if an increase in the size of the Board results in the creation of a new Member Representative Director position, the Sole LLC Member will elect a person from a list of candidates prepared by the Member Nominating Committee to fill such vacancy, except that if the remaining term of office for the vacant Director position is less than six months, no replacement will be required. The proposal would replace the current process for filling Exchange Director vacancies on the Board,⁶² and mirrors Section 3 of NSM Bylaw Article II. Finally, new Section 4 of Bylaw Article II, copied from Section 4 of NSM Bylaw Article II, proposes that the Exchange will not be required to hold meetings of the Exchange members.⁶³

Related to the proposed changes to the Exchange's nomination and election process described above, the Exchange also proposes to create a Member Nominating Committee, which would replace the current Exchange Director Nominating Committee in nominating candidates for director positions that meet the fair representation requirement (i.e., the proposed Member Representative Directors). In addition, the new

⁶² See Current Constitution, Section 3.3.

⁶³ In contrast, the Current Constitution requires that an annual meeting of the holders of Exchange Rights be held for the purpose of electing Exchange Directors to fill expiring terms. See Current Constitution, Section 2.1. As noted above for the proposed process, the Exchange members may vote in the event of a Contested Election, through a balloting process without a formal meeting.

Member Nominating Committee would nominate candidates for committee positions that meet the fair representation requirement (i.e., the “Member Representative members”).⁶⁴ Similar to the Member Representative Directors on the Board, the function of Member Representative members is to provide members a voice in the administration of the Exchange’s affairs, specifically on certain committees that are responsible for providing advice on any matters pertaining to the Exchange’s self-regulatory function or relating to the market structure which the Exchange regulates. The Exchange will therefore require that at least 20% of the persons serving on any such committees be individuals who will have been appointed by the Member Nominating Committee and be representative of the Exchange’s membership in order to ensure that its members have the opportunity to formally provide input on matters that are important to them.⁶⁵ New Section 6(b) of Bylaw Article III, which is copied from Section 6(b) of NSM Bylaw Article III, proposes that the Member Nominating Committee would nominate candidates for each Member Representative Director position on the Board, and would also nominate candidates for appointment by the Board for positions on any committees with positions reserved for Member Representative members. The Member Nominating Committee would consist of no fewer than three and no more than six members. All members of the Member Nominating Committee would be a current associated person of a current Exchange member. The Board would appoint such individuals after appropriate consultation with

⁶⁴ “Member Representative member” will be defined as a member of any committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to the Bylaws. See proposed Bylaw Article I(s), which is based on NSM Bylaw Article I(r).

⁶⁵ Under the Proposed Rule Change, the new Quality of Markets Committee, whose primary function is to provide advice on industry-wide market issues, will be required to be composed of at least 20% Member representative members. The Quality of Markets Committee is discussed in detail below.

the Exchange members. Member Nominating Committee members would be appointed annually by the Board and may be removed by a majority vote of the Board.

The Exchange believes that the proposed process for selecting Member Representative Directors, together with the requirement in the proposed LLC Agreement that the Board be comprised of at least 20% Member Representative Directors as discussed in the LLC Agreement section above, will continue to provide for a fair representation of its members on the Board. Similar to the nomination and election process currently in place, proposed Bylaw Article II includes a process by which members can directly petition and vote for representation on the Board. The Exchange also believes that proposed process for selecting Member Representative members, together with requirements in the proposed Bylaws that certain committees such as the Quality of Markets Committee be composed of at least 20% Member Representative members, will continue to provide for fair representation of its members in the administration of the Exchange's affairs. In addition, the proposed Member Nominating Committee would be composed solely of persons associated with Exchange members, similar to the current Exchange Director Nominating Committee, and is selected after consultation with representatives of Exchange members. The Commission has previously approved rule changes for substantially similar board nomination and election processes for the Nasdaq Exchanges.⁶⁶

⁶⁶ See e.g. Securities Exchange Act Release No. 53128 (Jan. 13, 2006), see note 18 above; Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02, -23, -25, SR-BSECC-2001-01) (Order Approving a Proposal by BX to Amend and Restate its COI and its Constitution to Reflect its Acquisition by the NASDAQ OMX Group); and Securities Exchange Act Release No. 59794 (April 20, 2009), 74 FR 18761 (April 24, 2009) (SR-Phlx-2009-17) (Order Approving Proposed Rule Change Relating

Board Composition

The Exchange is proposing to adopt Article III of the Bylaws, titled “Board of Directors,” which is based on NSM Bylaw Article III. Section 1 of Bylaw Article III proposes that if any Director position other than a Member Representative Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee (discussed below) shall nominate, and the Sole LLC Member shall select, a person satisfying the classification (Industry, Non-Industry, or Public Director), if applicable, for the directorship to fill such vacancy.

Section 2(a) of Bylaw Article III sets forth the proposed Board composition requirements and provides that a Director may not be subject to a statutory disqualification. The Exchange is proposing to replace the current Board qualification requirements with the ones set forth in the new Section 2(a), which mirrors the qualifications language in Section 2(a) of NSM Bylaw Article III. This proposed change to the current Board composition is in addition to the proposal discussed in the LLC Agreement section above to give the Sole LLC Member discretion to determine the size of the Board from time to time.⁶⁷

Currently, the number of directors on the Board must be no less than eight and no more than sixteen⁶⁸ and in no event shall the number of Exchange Directors constitute less than 30% of the members of Board and in no event shall the number of directors who meet the qualifications of “non-industry representatives” as set forth in the Current

to the Nomination and Election of Candidates for Governor and Independent Governor).

⁶⁷ See proposed Section 9(a) of the LLC Agreement.

⁶⁸ See Current Constitution, Section 3.2(a). Currently, the Board is comprised of sixteen directors.

Constitution⁶⁹ constitute less than the number of Exchange Directors.⁷⁰ Furthermore, the Board must be composed as follows: (i) at least 50% directors who meet the qualifications of “non-industry representatives”⁷¹ and elected by ISE Holdings as the Sole LLC Member, at least one (1) of whom must meet the qualifications of “Public Director,”⁷² (ii) one (1) director, who is the President and Chief Executive Officer of the Exchange (the “CEO Director”),⁷³ (iii) at least 30% Exchange Directors, as described above, and (iv) one (1) Former Employee Director , who may be elected by the Sole LLC Member in its sole and

⁶⁹ The term “non-industry representative” means any person who would not be considered an “industry representative,” as well as (i) a person affiliated with a broker or dealer that operates solely to assist the securities-related activities of the business of non-member affiliates, or (ii) an employee of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who is primarily engaged in the business of the non-member entity. See Current Constitution, Section 13.1(u).

The term “industry representative” means a person who is an officer, director or employee of a broker or dealer or who has been employed in any such capacity at any time within the prior three (3) years, as well as a person who has a consulting or employment relationship with or has provided professional services to the Exchange and a person who had any such relationship or provided any such services to the Exchange at any time within the prior three (3) years. See Current Constitution, Section 13.1(r).

⁷⁰ See Current Constitution, Section 3.2(a).

⁷¹ See Current Constitution, Section 3.2(b).

⁷² “Public Director” means is a non-industry representative who has no material relationship with a broker or dealer or any affiliate of a broker or dealer or the Exchange or any affiliate of the Exchange. See Current Constitution, Section 3.2(b) and Sections 13.1(z) and (aa).

⁷³ See Current Constitution, Section 3.2(b). The President and Chief Executive Officer of the Exchange is elected by the Board and will be nominated by the Board for a directorship by virtue of his or her office. See Current Constitution, Section 4.6(a). The President and Chief Executive Officer will only serve on the Board for so long as such person remains the President and Chief Executive Officer. See Current Constitution, Section 3.2(e).

absolute discretion.⁷⁴

The Exchange is proposing to replace the aforementioned Board composition with the board structure in place at the Nasdaq Exchanges. As is the case with the Nasdaq Exchanges, the proposed Board composition would be required to reflect a balance among “Industry Directors,” “Member Representative Directors,” and “Non-Industry Directors,” including “Public Directors.”⁷⁵ The new Board structure would be as follows:

- At least twenty percent (20%) of the directors on the Board would be “Member Representative Directors;”⁷⁶
- The number of “Non-Industry Directors”⁷⁷ would equal or exceed the sum of the number of “Industry Directors”⁷⁸ and “Member Representative Directors”⁷⁹

⁷⁴ The Former Employee Director is a director who meets the requirements of a “non-industry representative,” except that such person was employed by the Exchange at any time during the three (3) year period prior to his or her initial election. The Exchange is not required under its Current Constitution to fill this director position. See Current Constitution, Section 3.2(b).

⁷⁵ See Section 2(a) of NSM Bylaw Article III, Section 3-2(a) of Phlx Bylaws and Section 4.3 of BX Bylaws.

⁷⁶ See proposed LLC Agreement, Section 9(a). “Member Representative Director” will be defined as a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by an Exchange Member. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange member. See proposed Bylaws, Article I(r), which is based on NSM Bylaw Article I(q).

⁷⁷ “Non-Industry Director” will be defined as a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer, director, or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry Director. See proposed Bylaws, Article I(w), which is based on NSM Bylaw Article I(v).

⁷⁸ An “Industry Director” will be a person with direct ties to the securities industry as a result of connections to a broker-dealer, the Exchange or its affiliates,

- The Board would include at least one “Public Director”⁸⁰ and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives);
- Up to two officers of the Exchange (“Staff Directors”) may be elected to the Board.⁸¹

Under Section 2(b) of the proposed Bylaws, which mirrors Section 2(b) of NSM

FINRA, or certain service providers to such entities. Specifically, an “Industry Director” will be defined as a Director (excluding Staff Directors), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director’s firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director’s, officer’s, or employee’s professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director’s or member’s firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. See proposed Bylaws Article I(m), which is based on NSM Bylaw Article I(l).

⁷⁹ See proposed Section 2(a) of Bylaw Article III.

⁸⁰ Id. “Public Director” will be defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. See proposed Bylaw Article I(z), which is based on NSM Bylaw Article I(y).

⁸¹ See proposed Bylaw Article I(m). Staff Directors will not be considered as either Industry or Non-Industry Directors.

Bylaw Article III, a Director would be disqualified and removed immediately upon a determination by the Board, by a majority vote of the remaining Directors, (a) that the Director no longer satisfies the classification for which the Director was elected; and (b) that the Director's continued service as such would violate the compositional requirements of the Board set forth in proposed Section 2(a). Thus, for example, if a Public Director became employed by a broker-dealer and the Board thereby had an inadequate number of Public Directors, the Director would be disqualified and removed. If a Director is disqualified and removed, and the remaining term of office of such Director at the time of termination is not more than 6 months, a replacement for the Director is not required until the next annual meeting. Analogous disqualification provisions exist for committee members.⁸²

Upon the Acquisition, there were a number of harmonizing changes to the Board,⁸³ which resulted in a complete overlap of directors on the boards of the Exchange, NSM, Phlx and BX. Specifically, there were eight (8) directors meeting the qualifications of "non-industry representatives" under the Current Constitution and "Non-Industry Directors" under each of the Nasdaq Exchanges' Bylaws.⁸⁴ Furthermore, two of these directors also

⁸² See proposed Section 4(b) of Bylaw Article III, which mirrors the language in Section 4(b) of NSM Bylaw Article III.

⁸³ These changes consisted of the resignations of all directors, other than the Exchange Directors, sitting on the Board immediately prior to the consummation of the Acquisition, and the appointments of Nasdaq designees to fill these vacancies on the Board. The changes were effected through a series of unanimous written consents by the Board, as well as unanimous written consents by the Exchange Director Nominating Committee and the Corporate Governance Committee. The Exchange represents that these changes were effected in accordance with the Current Governing Documents.

⁸⁴ These eight directors also sat on the three Nasdaq Exchange boards immediately prior to the Acquisition.

met the compositional requirements of “Public Directors” under the Current Constitution and under the Bylaws of each Nasdaq Exchange.⁸⁵ The Chief Executive Officer appointed upon the Acquisition by the Sole LLC Member became a Board member by virtue of his office under the current Constitution, and also met the qualifications of “Staff Director” under each of the Nasdaq Exchange Bylaws. Five of the six Exchange Directors serving on the Board immediately prior to the Acquisition remained on the Board post-Acquisition. One Exchange Director was appointed by the Exchange Director Nominating Committee and elected to the Board upon the Acquisition due to his predecessor being term limited out under the Current Constitution. The Board therefore satisfied the composition requirements in the Current Constitution that at least 50% of directors be “non-industry representatives,” and at least 30% be Exchange Directors. The six Exchange Directors also served as “Member Representative Directors” on the Nasdaq Exchange boards, therefore satisfying the 20% Member Representative Director requirement under their Bylaws. Finally, one additional director was appointed to the “Former Employee Director” seat of the Board by the Sole LLC Member, meeting the qualifications for such directorship and also meeting the qualifications of “Staff Director” under each of the Nasdaq Exchange Bylaws. As such, the post-Acquisition Board satisfied the composition requirements contained both in the Current Constitution and in the proposed Bylaws.

The terms of the directors on the post-Acquisition Board ended at the 2017 annual meeting of the Exchange Members and Sole LLC Member (“2017 Annual Election”), which was held on June 19, 2017 to elect the current Board and coincided with the 2017

⁸⁵ In addition, the current Board also satisfies the requirement under the Nasdaq Exchange Bylaws that the board be composed of at least one Public Director and at least one (or two, if the board consists of ten or more directors) issuer representatives.

annual elections of the Nasdaq Exchange boards. The Exchange held the 2017 Annual Election to elect the current Board in accordance with the nomination, petition and voting processes set forth in the Current Governing Documents. Once the New Governing Documents become operative, no additional actions will be required under the LLC Act with respect to the current Board. All of the directors on the current Board are existing directors who served on the post-Acquisition Board and, similar to the post-Acquisition Board as described above, the current Board satisfies the board composition requirements both in the Current Governing Documents and in the New Governing Documents.⁸⁶ Even though the current Board was not nominated or voted upon in accordance with New Governing Documents, the Exchange believes that the current Board is consistent with the Act in that it still provides for the fair representation of members and has one or more directors that are representative of issuers and investors and not associated with a member of the exchange, broker, or dealer. First, six Exchange Directors, who are officers, directors or partners of Exchange members as required by Section 3.2(b) of the Current Constitution, were nominated by the Exchange Director Nominating Committee and elected to the current Board by a plurality of the holders of the Exchange Rights. These Exchange Directors were subject to the full petition and voting process by membership in accordance with Articles II and III of the Current Constitution, which process the Commission has already found as satisfying the principles of fair representation as required by Section 6(b) of the Act.⁸⁷ Furthermore as noted above, the Exchange believes that the Exchange Directors serve the same function as the Member

⁸⁶ See Current Constitution, Section 3.2; proposed LLC Agreement, Section 9(a); and proposed Bylaw Article III, Section 2(a).

⁸⁷ See GEMX Approval Order.

Representative Directors under the proposed board structure in that both directorships give Exchange members a voice in the Exchange's use of self-regulatory authority. The Exchange notes that only the corporate governance structure is changing under the Proposed Rule Change, and that the Exchange's membership has remained substantially the same both before and after the 2017 Annual Election.

Second, eight directors who meet the requirements of non-industry representatives under the Current Constitution as well as Non-Industry Directors under the proposed Bylaws were nominated by the existing Corporate Governance Committee and elected by the Sole LLC Member to the current Board. Further, at least three of these directors are Public Directors or issuer representatives, consistent with the composition requirements under the Current Constitution and proposed Bylaws. The current Board therefore reflects a balance among the six Exchange Directors (i.e., Member Representative Directors) and the eight non-industry representative directors (i.e., Non-Industry Directors, including Public Directors or issuer representatives). The Exchange's Chief Executive Officer was also elected to the current Board by the Sole LLC Member, thereby satisfying the composition requirements of CEO Director and Staff Director under the Current Constitution and proposed Bylaws.

For the annual elections starting in 2018 and subject to approval by the Commission, the Exchange will hold its annual elections in accordance with the processes contemplated in the New Governing Documents and as such, the 2017 Board will serve until the 2018 annual election. Specifically upon the Merger, the 2017 Board will appoint a Nominating Committee (as discussed in detail below) and a Member Nominating Committee, and such committees would nominate candidates for the 2018

annual election pursuant to the procedures set forth in proposed Bylaw Article I (for Member Representative Directors) and in proposed Section 9(a) of the LLC Agreement and proposed Bylaw Article III (for all other Directors).

Section 3 of Bylaw Article III, which is copied from Section 3 of NSM Bylaw Article III, contains standard provisions for a Delaware limited liability company governing the appropriateness of reliance by Directors upon the records of the Exchange. Section 3 also recognizes the Exchange's status as an SRO by providing that the Board, when evaluating any proposal, shall, to the fullest extent permitted by applicable law, take into account all factors that the Board deems relevant, including, without limitation, (i) the potential impact thereof on the integrity, continuity and stability of the national securities exchange operated by the Exchange and the other operations of the Exchange, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system. Taken together, these provisions are designed to reinforce the notion that the Exchange is not solely a commercial enterprise but rather an SRO registered pursuant to the Act and subject to the obligations imposed by the Act.

Standing Committees

The proposed new Sections 4, 5 and 6 of Bylaw Article III, which are based on Sections 4, 5 and 6 of the NSM Bylaw Article III, would include provisions governing the composition and authority of various standing committees established by the Board. Proposed new Section 4 of Bylaw Article III would require prospective committee

members, who are not Directors, to provide the Secretary of the Exchange with certain information to classify a committee member as an Industry member,⁸⁸ a Member Representative member,⁸⁹ a Non-Industry member,⁹⁰ or a Public member.⁹¹ Analogous

⁸⁸ “Industry member” will be defined as a member of any committee appointed by the Board who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member’s firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director’s, officer’s, or employee’s professional capacity and constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member’s firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. See proposed Bylaw Article I(n), which is based on NSM Bylaw Article I(m).

⁸⁹ “Member Representative member” will be defined as a member of any committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to the Bylaws. See proposed Bylaw Article I(s), which is based on NSM Bylaw Article I(r).

⁹⁰ “Non-Industry member” will be defined as a member of any committee appointed by the Board who is (i) a Public member; (ii) an officer or employee of an issuer of securities listed on the national securities exchange operated by the Exchange; or (iii) any other individual who would not be an Industry member. See proposed Bylaw Article I(x), which is based on NSM Bylaw Article I(w).

⁹¹ “Public member” will be defined as a member of any committee appointed by the Board who has no material business relationship with a broker or dealer, the

new provisions are also proposed for prospective Directors.⁹²

Sections 5 and 6 of proposed Bylaw Article III, titled “Committees Composed Solely of Directors” and “Committees Not Composed Solely of Directors,” establishes several standing committees and delineates their general duties and responsibilities. The proposed committee structure is modeled substantially on the committee structures of the Nasdaq Exchanges, and are copied to the extent such committees are relevant to the Exchange.⁹³

Currently, the standing Board committees of the Exchange are: an Executive Committee, a Corporate Governance Committee, a Finance and Audit Committee, a Compensation Committee, and such other additional committees as may be established by Board resolution.⁹⁴ As discussed above, the Exchange also has an Exchange Director Nominating Committee, which is a committee of the Exchange and not the Board. All committee appointments are made by the Board, and each appointee serves for one year or until his or her successor is duly appointed.

Exchange or its affiliates, or FINRA. See proposed Bylaw Article I(aa), which is based on NSM Bylaw Article I(z).

⁹² See proposed Section 6(b)(v) of Bylaw Article III, which is based on Section 6(b)(v) of NSM Bylaw Article III.

⁹³ For example, the Exchange does not propose to establish an Exchange Listing and Hearing Review Council because the Exchange does not offer any original listings. Similarly, the Exchange does not propose to establish an Arbitration and Mediation Committee as the Exchange’s arbitration and mediation program is operated by the Financial Industry Regulatory Authority (“FINRA”) in accordance with the FINRA rules pursuant to a regulatory services agreement dated June 10, 2013, as amended (“RSA”). Under the RSA, FINRA provides a comprehensive dispute resolution program for Exchange members.

⁹⁴ See Current Constitution, Article V.

Proposed Committees Composed Solely of Directors

New Section 5 of Bylaw Article III, which copies the language in Section 5 of NSM Bylaw Article III, provides for an Executive Committee, a Finance Committee, and a Regulatory Oversight Committee.

Creation of an Executive Committee

The Exchange proposes to adopt new Section 5(a), which provides that the Board may appoint an Executive Committee and delineates its composition and functions. In particular, the proposed Executive Committee may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange between meetings of the Board. The number of Non-Industry Directors on the Executive Committee must equal or exceed the number of Industry Directors on the Executive Committee. The percentage of Public Directors on the Executive Committee must be at least as great as the percentage of Public Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee must be at least as great as the percentage of Member Representative Directors on the whole Board. Currently, the Executive Committee is a permanent standing committee of the Board.⁹⁵ Under the new Section 5(a), the Executive Committee would be an optional committee, to be appointed only if deemed necessary by the Board. The Exchange's proposal is similar to all three Nasdaq Exchanges where the Exchange Committee is optional, at the

⁹⁵ The Executive Committee (consisting of six directors, and with the number of non-industry representatives equaling or exceeding the number of Exchange Directors) on behalf of the Board and subject to its control, has all of the powers of the Board except the power to approve any merger, consolidation, sale or dissolution of the Exchange. See Current Constitution, Section 5.2.

discretion of the Board.⁹⁶

Elimination of the Current Finance and Audit Committee

The Exchange also proposes to adopt new Section 5(b), which provides that the Board may appoint a Finance Committee and delineates its composition and functions. In particular, the Finance Committee will advise the Board with respect to the oversight of the financial operations and conditions of the Exchange, including recommendations for the Exchange's annual operating and capital budgets and proposed changes to the rates and fees charged by the Exchange. By adopting new Section 5, the Exchange is proposing to eliminate the current Finance and Audit Committee, and have all of its duties and functions performed at the Board level, assigned to other proposed Board committees or to the HoldCo audit committee (the "HoldCo Audit Committee").⁹⁷

Pursuant to its current charter, the Finance and Audit Committee⁹⁸ is primarily charged with: (i) oversight of financial operations of the Exchange; (ii) oversight of the Exchange's financial reporting process; (iii) oversight of the systems of internal controls established by management and the Board, and for monitoring compliance with laws and regulations; (iv) evaluation of independent external auditors; and (v) direction and oversight of the internal audit function. Under the new Section 5(b), the Board would

⁹⁶ See Section 5(a) of NSM Bylaw Article III, Section 4.13(a) of the BX Bylaws and Section 5-2(a) of the Phlx Bylaws.

⁹⁷ See Article IV, Section 4.13(g) of the HoldCo By-Laws. See also the HoldCo Audit Committee Charter (available at <http://ir.nasdaq.com/corporate-governance-document.cfm?DocumentID=195>).

⁹⁸ The current Finance and Audit Committee must be composed of at least three (3) and not more than five (5) directors, all of whom must be non-industry representatives. See Current Constitution, Section 5.5. In addition, committee members must be "financially literate" as determined by the Board.

retain oversight of the financial operations of the Exchange instead of delegating these functions to standing committee, and would have to option to appoint a Finance Committee at the Board's discretion. The Exchange's proposal is similar to all three Nasdaq Exchanges where the Finance Committee is optional, at the discretion of the Board.⁹⁹

Furthermore, the HoldCo Audit Committee also covers the functions of the current Finance and Audit Committee. The HoldCo Audit Committee is composed of at least three directors, all of whom must satisfy the standards for independence set forth in Section 10A(m) of the Act¹⁰⁰ and Rule 5605 of NSM's listing rules. All committee members must be able to read and understand financial statements, and at least one member must have past employment experience in finance or accounting, requisite professional certification in accounting or any other comparable experience or background that results in the individual's financial sophistication.

The HoldCo Audit Committee has broad authority to review the financial information that will be provided to shareholders of HoldCo and others, systems of internal controls, and audit, financial reporting and legal and compliance processes. Because HoldCo's financial statements are prepared on a consolidated basis that includes the financial results of HoldCo's subsidiaries, including the Exchange and the other Nasdaq Exchange subsidiaries, HoldCo's audit committee purview necessarily includes these subsidiaries. The Exchange notes that unconsolidated financial statements of the Exchange will still be prepared for each fiscal year in accordance with the requirements

⁹⁹ See Section 5(b) of NSM Bylaw Article III, Section 4.13(b) of the BX Bylaws and Section 5-2(b) of the Phlx Bylaws.

¹⁰⁰ See U.S.C. 78j-1(m).

set forth in its application for registration as a national securities exchange.¹⁰¹ To the extent the current Finance and Audit Committee oversees the Exchange's financial reporting process, its activities are duplicative of the activities of the HoldCo Audit Committee, which is also charged with providing oversight over financial reporting and independent auditor selection for HoldCo and all of its subsidiaries, including the Exchange and the other Nasdaq Exchange subsidiaries. Similarly, the HoldCo Audit Committee has general responsibility for oversight over internal controls, and direction and oversight over the internal audit function for HoldCo and all of its subsidiaries. Thus, the responsibilities of the Exchange's Finance and Audit Committee as it relates to the functions set forth in clauses (ii) – (v) above are fully duplicated by the responsibilities of the HoldCo Audit Committee. Accordingly, the Exchange is proposing to allow the elimination of its Finance and Audit Committee. The Commission has previously approved similar proposals by the Nasdaq Exchanges to eliminate their respective audit committees.¹⁰²

Creation of a Regulatory Oversight Committee

The Exchange believes, however, that even in light of the HoldCo Audit Committee's overall responsibilities for internal controls and the internal audit function, it is nevertheless important for the Board to maintain its own independent oversight over the Exchange's controls and internal audit matters relating to the Exchange's operations.

¹⁰¹ See GEMX Approval Order.

¹⁰² See Securities Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (SR-NASDAQ-2009-042); Securities Exchange Act Release No. 60247 (July 6, 2009), 74 FR 33495 (July 13, 2009) (SR-BX-2009-021); and Securities Exchange Act Release No. 60687 (September 18, 2009), 74 FR 49060 (September 25, 2009) (SR-Phlx-2009-59).

Therefore, the Exchange is proposing to create a Regulatory Oversight Committee (“ROC”) so that regulatory oversight functions formerly performed by the Finance and Audit Committee may be assumed by the new committee.¹⁰³ Like the ROCs of the Nasdaq Exchanges, the new committee will have broad authority to oversee the adequacy and effectiveness of the Exchange’s regulatory and self-regulatory organization responsibilities, and will therefore be able to maintain oversight over controls in tandem with the HoldCo Audit Committee’s overall oversight responsibilities.

Similarly, it is already a formal practice of HoldCo’s Internal Audit Department, which performs internal audit functions for all HoldCo subsidiaries, to report to the Nasdaq Exchange boards on all Nasdaq Exchange-related internal audit matters and to direct such reports to the ROCs of the Nasdaq Exchanges.¹⁰⁴ The Exchange proposes that the HoldCo Internal Audit Department would also similarly report to the Exchange Board and direct such reports to the new ROC. In addition, to ensure that the Exchange Board retains authority to direct the Department’s activities with respect to the Exchange, the Department’s written procedures will stipulate that the Exchange’s ROC may, at any time, direct the Department to conduct an audit of a matter of concern to it and report the results of the audit both to the Exchange ROC and the HoldCo Audit Committee. The Internal Audit Department is currently required to conduct such audits upon the request of the Nasdaq Exchange ROCs.

¹⁰³ See proposed Section 5(c) of Bylaw Article III. The Nasdaq Exchanges also have Regulatory Oversight Committees, which have the same authority in all material respects to the proposed ROC. See Section 5(c) of NSM Bylaw Article III, Section 4.13(c) of the BX Bylaws and Section 5-2(c) of the Phlx Bylaws.

¹⁰⁴ See the Regulatory Oversight Committee Charter of NSM, Phlx and BX (available at <http://ir.nasdaq.com/corporate-governance-document.cfm?DocumentID=1097>).

To effectuate this change, the Exchange proposes to adopt the new Section 5(c) providing for a ROC and delineating its composition and functions. In particular, the proposed ROC's responsibilities will be to: (i) oversee the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities; (ii) assess the Exchange's regulatory performance; and (iii) assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Exchange's regulatory functions. In furtherance of its functions, the ROC shall: (A) review the Exchange's regulatory budget and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (B) meet regularly with the Exchange's Chief Regulatory Officer in executive session; and (C) be informed about the compensation and promotion or termination of the Chief Regulatory Officer and the reasons therefor. The Exchange proposes that the ROC shall consist of three members, each of whom shall be a Public Director and an "independent director" as defined in Rule 5605 of the Rules of The NASDAQ Stock Market, LLC.

Given the expansive regulatory and internal oversight of the proposed ROC and HoldCo Audit Committee, coupled with the oversight and responsibilities of the full Board and HoldCo's Internal Audit Department, the Exchange believes that all of the duties and functions of the eliminated Finance and Audit Committee would continue to be performed in the new governance structure as proposed herein.

Elimination of the Current Compensation Committee

By adopting the new Board committees in Section 5, the Exchange also proposes to eliminate its current Compensation Committee, and to prescribe that its duties be performed by the HoldCo management compensation committee or the full Board when

required. The Compensation Committee¹⁰⁵ is primarily charged with reviewing and approving compensation policies and plans for the Chief Executive Officer and other senior executive officers of the Exchange. Under the Nasdaq governance structure, this function is performed by the HoldCo management compensation committee or the full boards of the Nasdaq Exchanges. The HoldCo By-Laws provide that its management compensation committee (a committee consisting of at least two HoldCo board members meeting the independence and other eligibility standards in the listing rules of NSM) considers and recommends compensation policies, programs, and practices for employees of HoldCo. Because many employees performing work for the Exchange are also employees of HoldCo, its compensation committee already performs these functions for such employees. Moreover, certain of its senior officers are also officers of HoldCo and other HoldCo subsidiaries because their responsibilities relate to multiple entities within the HoldCo corporate structure. Accordingly, HoldCo pays these individuals and establishes compensation policy for them. Most notably, the current Chief Executive Officer of the Exchange is also an “executive officer” of HoldCo within the meaning of NSM Rule 5605. Under that rule, the compensation of executive officers of an issuer of securities, such as the common stock of HoldCo, that is listed on NSM, must be determined by, or recommended to the board of directors for determination by, a majority of independent directors or a compensation committee comprised solely of independent directors. Accordingly, the HoldCo board of directors and/or its compensation committee is legally required to establish the compensation for this individual.

¹⁰⁵ The committee must be composed of at least three and not more than five directors who must all meet the “Non-Industry Director” qualifications under the Current Constitution. See Current Constitution, Section 5.6.

To the extent that policies, programs, and practices must also be established for any Exchange officers or employees who are not also HoldCo officers or employees, the Board would perform such actions without the use of a compensation committee (but subject to the recusal of the Staff Directors).¹⁰⁶ Finally, it should be noted that under the new Section 5(c) of Bylaw Article III, the ROC of the Board would be informed about the compensation and promotion or termination of the Exchange's Chief Regulatory Officer and the reasons therefor, to allow the ROC to provide oversight over decisions affecting this key officer. Therefore, the Exchange believes that the duties and functions of the eliminated Compensation Committee would continue to be performed and covered in the new corporate governance structure proposed by the New Governing Documents. The Commission has previously approved proposals by the Nasdaq Exchanges to eliminate their respective compensation committees.¹⁰⁷

Elimination of the Current Corporate Governance Committee

Finally, the Exchange also proposes to eliminate the current Corporate Governance Committee, and to prescribe that its duties be performed by the new Nominating Committee (as discussed below), the new ROC or by the full Board when

¹⁰⁶ As discussed in the proposed Board composition section above, "Staff Directors" would be Exchange directors that are also serving as officers. Since the Board would not be responsible for setting the compensation of any Staff Directors who are also officers of HoldCo, they would be permitted to participate in discussions concerning compensation of Exchange employees, but would recuse themselves from a vote on the subject to allow the determination to be made by directors that are not officers or employees of the Exchange. If a Staff Director was an officer or employee of the Exchange but not of HoldCo, that Staff Director would also absent himself or herself from any deliberations regarding his or her compensation.

¹⁰⁷ See note 102 above.

required. The Corporate Governance Committee¹⁰⁸ is primarily charged with: (i) nominating candidates for all vacant or new non-industry representative positions on the Board, (ii) overseeing the Exchange's regulatory activities and program, and (iii) overseeing and evaluating the governance of the Exchange. As discussed below, the Exchange is proposing to establish a new Nominating Committee that would nominate candidates for all vacant or new non-Member Representative Director positions on the Board, and therefore would perform the Non-Industry Director nominating functions of the current Corporate Governance Committee.¹⁰⁹ Furthermore, the new ROC would have to carry out the regulatory oversight tasks currently within purview of the Corporate Governance Committee. In particular, the new ROC would (i) oversee the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities; (ii) assess the Exchange's regulatory performance; and (iii) assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Exchange's regulatory functions. Its duties would include reviewing the Exchange's regulatory budget and inquiring into the adequacy of resources available in the budget for regulatory activities; meeting regularly with the Exchange's Chief Regulatory Officer in executive session; and having oversight over compensation, hiring and termination decisions affecting this key officer as discussed above.

As it relates to the general supervision over the corporate governance of the Exchange, the full Board would perform such functions without the use of a corporate

¹⁰⁸ The committee must consist of at least three directors, all of whom are required to meet the "Non-Industry Director" standards under the Current Constitution. See Current Constitution, Section 5.4.

¹⁰⁹ See proposed Section 6(b) of Bylaw Article III.

governance committee, similar to the boards of the Nasdaq Exchanges.¹¹⁰ In particular, the full Board, led by the Chair of the Board,¹¹¹ would perform annual self-assessments, oversee annual formal director and Chair evaluations, and periodically review the allocations of powers between management and the Board. Therefore, the Exchange believes that the duties and functions of the eliminated Corporate Governance Committee would continue to be performed and covered in the new corporate governance structure proposed by the New Governing Documents.

Proposed Committees Not Composed Solely of Directors

In addition to the proposed Board committees discussed above, new Section 6 of Bylaw Article III provides for the appointment by the Board of certain standing committees, not composed solely of Directors, to administer various provisions of the rules that the Exchange expects to propose with respect to governance, options trading and member discipline. By adopting Section 6, the Exchange proposes to eliminate certain standing committees and have their relevant functions performed by the new committees, each as described below.

Creation of a Member Nominating Committee

The new Member Nominating Committee, responsible for: (i) the nomination for election of Member Representative Directors to the Board or (ii) the nomination for appointment of Member Representative members to the committees requiring such members, would replace the Exchange Director Nominating Committee. The

¹¹⁰ See the Corporate Governance Guidelines of NSM, Phlx and BX (available at <http://ir.nasdaq.com/corporate-governance-document.cfm?DocumentID=6027>).

¹¹¹ The Board Chair will be an “independent director” (i.e. person other than an officer or employee of HoldCo or its subsidiaries, including the Exchange) as provided under the listing rules of NSM and SEC requirements.

composition requirements of the Member Nominating Committee are discussed in the Nomination and Election Process section above.

Creation of a Nominating Committee

The new Nominating Committee will nominate candidates for all other vacant or new Director positions on the Board, and therefore, would perform the non-industry representative nomination function currently assigned to the Corporate Governance Committee. The Nominating Committee will consist of no fewer than six and no more than nine members, and the number of Non-Industry members (i.e. committee members not associated with broker-dealers) shall equal or exceed the number of Industry members on the Nominating Committee. If the Nominating Committee consists of six members, at least two shall be Public members. If the Nominating Committee consists of seven or more members, at least three shall be Public members. No officer or employee of the Exchange shall serve as a member of the Nominating Committee in any voting or non-voting capacity. No more than three of the Nominating Committee members and no more than two of the Industry members shall be current Directors. A Nominating Committee member may not simultaneously serve on the Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee. Nominating Committee members will be appointed annually by the Board and may be removed by a majority vote of the Board.¹¹²

¹¹² See Section 6(b) of NSM Bylaw Article III, Section 4.14(b) of the BX Bylaws and Section 5-3(a) of the Phlx Bylaws for similar provisions related to the Nominating Committee.

Creation of a Quality of Markets Committee

The new Quality of Markets Committee (the “QMC”), which is modeled off of the QMCs of the Nasdaq Exchanges,¹¹³ will have the following functions: (i) to provide advice and guidance to the Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of the Exchange from the perspective of investors, both individual and institutional, retail firms, market making firms and other market participants; and (ii) to advise the Board with respect to national market system plans and linkages between the facilities of the Exchange and other markets. The QMC shall include broad representation of participants in the Exchange, including investors, market makers, retail firms, and order entry firms. The QMC shall include a number of Member Representative members that is equal to at least 20% of the total number of members of the QMC. The number of Non-Industry members on the proposed QMC shall equal or exceed the sum of the number of Industry members and Member Representative members. A quorum of the QMC will consist of a majority of its members, including not less than 50% of its Non-Industry members, unless this requirement is waived pursuant to proposed Section 6(c)(iii) of Bylaw Article III.

Other Proposed Bylaw Provisions

Proposed Section 7 of Bylaw Article III contains standard provisions for a Delaware limited liability company requiring recusal by Directors or committee members subject to a conflict of interest, and providing for the enforceability of contracts in which a Director has an interest if appropriately approved or ratified by disinterested Directors.

¹¹³ See Section 6(c) of NSM Bylaw Article III, Section 4.14(c) of the BX Bylaws and Section 5-3(c) of the Phlx Bylaws.

This language is based on Section 7 of NSM Bylaw Article III. Proposed Section 8 of Bylaw Article III allows for reasonable compensation of the Board and committee members, and mirrors Section 8 of NSM Bylaw Article III.

Bylaw Article IV, titled “Officers, Agents, and Employees,” contains provisions governing the Exchange’s officers, agents and employees, and is based on Article IV of the NSM Bylaws. Proposed Section 1 of Bylaw Article IV provides that the Board may delegate the duties and powers of any officer of the Exchange to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient. Proposed Section 2 discusses how an officer of the Exchange may resign or may be removed. Proposed Sections 3 through 11 each specifically provides for the appointment of a Chair of the Board,¹¹⁴ a Chief Executive Officer, a President, Vice Presidents, a Chief Regulatory Officer, a Secretary, an Assistant Secretary, a Treasurer, and an Assistant Treasurer.¹¹⁵ The Exchange notes that proposed Section 7 of Bylaw Article IV specifically provides for a Chief Regulatory Officer, a position that is not expressly provided for in the Current Governing Documents, who would have general supervision of the regulatory operations of the Exchange, including responsibility for overseeing the Exchange’s surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another SRO to which the Exchange is a party. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Exchange in executive session at regularly scheduled meetings of such committee, and at any time upon request of the Chief Regulatory

¹¹⁴ The Chair of the Board would be an independent Director as defined in Rule 5605 of the listing rules of The NASDAQ Stock Market, LLC.

¹¹⁵ See NSM Bylaw Article IV for substantially similar provisions.

Officer or any member of the Regulatory Oversight Committee. The Chief Regulatory Officer may also serve as the General Counsel of the Exchange. The Exchange notes that while the position of chief regulatory officer has long existed at the Exchange, this position is not expressly in the Current Governing Documents and now proposes to codify this position in the new Bylaws.

Bylaw Article VII, titled “Miscellaneous Provisions,” contains standard limited liability company provisions relating to waiver of notice of meetings and the Exchange’s contracting ability. Article VIII, titled “Amendments; Emergency By-Laws,” authorizes amendments to the By-Laws by either the Sole LLC Member or the vote of a majority of the whole Board,¹¹⁶ as well as the adoption of emergency by-laws by the Board. Other than as noted above, Articles VII and VIII mirror the language in Articles VII and VIII of the NSM Bylaws.

Article IX, titled “Exchange Authorities,” which mirrors NSM Bylaw Article IX, contains specific authorization for the Board to adopt rules needed to effect the Exchange’s obligations as an SRO, to establish disciplinary procedures and impose sanctions on its members, to establish standards for membership, to impose dues, fees, assessments, and other charges and to take action under emergency or extraordinary market conditions.

¹¹⁶ As proposed, all such changes must be filed with the Commission under Section 19(b) of the Act, 15 U.S.C. 78s(b), and become effective thereunder before being implemented. See proposed Bylaw Article VIII, Section 1. The BX Bylaws and the NSM Bylaws do not have a similar requirement, but Phlx has a similar requirement in Section 6-9 of the Phlx Bylaws. BX and NSM will each separately file proposed rule changes with the Commission to add this requirement in their respective governing documents. See note 46 above.

D. Rules

The Exchange proposes to amend its current Rules to reflect the changes to its constituent documents through the adoption of the New Governing Documents to replace the Current Governing Documents.¹¹⁷ All of the proposed changes are non-substantive, and primarily reflect the changing terminology from “Constitution” to “By-Laws,”¹¹⁸ or to remove references to the Current LLC Agreement¹¹⁹ as these will become obsolete under the Proposed Rule Change. Furthermore, a number of defined terms used in the Rules refer back to the Current LLC Agreement or the Current Constitution for their meanings. As discussed below, the Exchange proposes to add these defined terms originally contained in the Current Governing Documents as new Rules. In addition, a number of existing Rules contain references to the Current Governing Documents, and the Exchange proposes to amend these provisions either by (i) replacing those references with references to the New Governing Documents or (ii) importing language originally found in the Current Governing Documents, as further described below. Finally, the Exchange proposes to make a number of technical amendments to renumber the Rules, which is a result of adding the new definitions as further discussed below.

In Rule 100, titled “Definitions,” the Exchange proposes to make the following changes:

- Rule 100(a) currently refers to Article XIII of the Current Constitution as containing certain defined terms that are also used in the Exchange’s

¹¹⁷ The amended Rules were filed as part of the Proposed Rule Change as Exhibit 5E.

¹¹⁸ In particular, the proposed changes are in Rules 200, 202, 203, 305(a), 307(c), 307(d), and 711(a), as well as in .01(b)(2)(iii) of Supplementary Material to Rule 706.

¹¹⁹ In particular, the proposed changes are in Rules 100(a)(22A), 302(c), and 302(e).

rulebook. The proposed change would replace the reference to Article XIII of the Current Constitution with references to the proposed LLC Agreement and By-Laws.

- Rule 100(a)(5) “board of directors” or “Board” currently refers to Article I of the LLC Agreement. The proposed change reflects that this definition will be set forth in Article I of the new Bylaws.
- Rule 100(a)(12) “CMM Rights” currently refers to Article VI of the Current LLC Agreement. The proposed change would relocate the concept of CMM Rights from the Current LLC Agreement to this Rule, and would state that the term CMM Rights means the non-transferable rights held by a Competitive Market Maker.¹²⁰
- New Rule 100(a)(13) “Competitive Market Maker” would be relocated from Section 13.1(f) of the Current Constitution. Currently, this term is used throughout the Exchange’s rulebook, but the definition is only found in the Current Constitution.
- Rules 100(a)(13) – (14) “covered short position” and “discretion,” respectively, would be renumbered as Rules 100(a)(14) – (15).
- Rule 100(a)(15) “EAM Rights” currently refers to Article VI of the Current LLC Agreement. The proposed change would relocate the concept of EAM

¹²⁰ CMM Rights are non-transferable rights in that the holders of CMM Rights may not lease or sell these rights. As discussed in the LLC Agreement section above, all Exchange Rights (i.e., PMM, CMM and EAM Rights) convey voting rights and trading privileges on the Exchange. From GEMX’s inception, the voting rights and trading privileges associated with the PMM, CMM, and EAM Rights have never been transferable. See GEMX Approval Order.

Rights from the Current LLC Agreement to this Rule, and would state that EAM Rights means the non-transferable rights held by an Electronic Access Member.¹²¹ The Rule would also be renumbered as Rule 100(a)(16).

- New Rule 100(a)(17) “Electronic Access Member” would be relocated from Section 13.1(j) of the Current Constitution. Currently, this term is used throughout the Exchange’s rulebook, but the definition is only found in the Current Constitution.
- Rules 100(a)(16) and (17) “European-style option,” “Exchange Act” and “Exchange Rights,” respectively, would be renumbered as Rules 100(a)(18) – (20).¹²²
- New Rule 100(a)(21) “Exchange Transaction” would be relocated from Section 13.1(o) of the Current Constitution. Currently, this term is used throughout the Exchange’s rulebook, but the definition is only found in the Current Constitution.
- Rules 100(a)(18) and (19) “exercise price” and “Federal Reserve Board,” respectively, would be renumbered as Rules 100(a)(22) and (23).
- New Rule 100(a)(24) “good standing” would be relocated from Section 13.1(p) of the Current Constitution. Currently, this term is used throughout the Exchange’s rulebook, but the definition is only found in the Current Constitution.

¹²¹ See note 120 above.

¹²² “European-style option” and “Exchange Act” are both inadvertently numbered as Rule 100(a)(16) in the current Rules, so the proposed changes will renumber these Rules as Rules 100(a)(18) and (19), respectively.

- Rules 100(a)(20) – (22) “he,” “him” or “his,” “ISE,” and “long position,” respectively, would be renumbered as Rules 100(a)(25) – (27).
- Rule 100(a)(22A) “LLC Agreement” would be deleted as that term would no longer be used in the Rules, as amended by this rule change.
- Rules 100(a)(23) – (35) “Member,” “Membership,” “market makers,” “Market Maker Rights,” “Non-Customer,” “Non-Customer Order,” “offer,” “opening purchase transaction,” “opening writing transaction,” “Voluntary Professional,” “options contract,” “OPRA,” “order” and “outstanding,” respectively, would be renumbered as Rules 100(a)(28) – (40).
- Rule 100(a)(36) “PMM Rights” currently refers to Article VI of the Current LLC Agreement. The proposed change would relocate the concept of PMM Rights from the Current LLC Agreement to this Rule, and would state that PMM Rights means the non-transferable rights held by a Primary Market Maker.¹²³ The Rule would also be renumbered as Rule 100(a)(41).
- New Rule 100(a)(42) “Primary Market Maker” would be relocated from Section 13.1(y) of the Current Constitution. Currently, this term is used throughout the Exchange’s rulebook, but the definition is only found in the Current Constitution.
- Rules 100(a)(37), (37A), (37B), (37C), (38) – (48) “primary market,” “Priority Customer,” “Priority Customer Order,” “Professional Order,” “Public Customer,” “Public Customer Order,” “put,” “Quarterly Options Series,” “quote” or “quotation,” “Rules of the Clearing Corporation,” “SEC,”

¹²³See note 120 above.

“series of options,” “short position,” “Short Term Option Series” and “SRO,” respectively, would be renumbered as Rules 100(a)(43), (43A), (43B), (43C), (44) – (54).

- New Rule 100(a)(55) “System” would be relocated from Section 13.1(dd) of the Current Constitution. Currently, this term is used throughout the Exchange’s rulebook, but the definition is only found in the Current Constitution.
- Rules 100(a)(49) – (51) “type of option,” “uncovered” and “underlying security,” respectively, would be renumbered as Rules 100(a)(56) – (58).

In Rule 304(b), the Exchange is proposing to replace the references to the Current Governing Documents with the proposed Bylaws to state that no Exchange member shall exercise voting rights in excess of those permitted under the Bylaws¹²⁴

In Rule 309 “Limitation on Affiliation between the Exchange and Members,” the Exchange proposes to replace references to “Exchange Director” and “Constitution” with “Member Representative Director” and “By-Laws,” respectively, for the reasons discussed above. Lastly, the proposed changes in Rule 713(a) and Rule 720(a)(1) reflect the renumbering of the defined terms “offer,” “quotations,” “Priority Customer Orders,” “Professional Orders,” and “Priority Customer.”

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the

¹²⁴ See proposed Bylaw Article II, Section 2. An Exchange Member, either alone or together with its affiliates, may not cast votes representing more than 20% of the votes cast for a candidate. A similar 20% voting limitation is also in Section 6.3(b) of the Current LLC Agreement.

Act,¹²⁵ in general, and furthers the objectives of Section 6(b)(1) of the Act,¹²⁶ 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 Exchange also believes that this proposal furthers the objectives of Section 6(b)(3) and (b)(5) of the Act¹²⁷ in particular, in that it is designed to assure a fair representation of Exchange members in the selection of its directors and administration of its affairs and provide that one or more directors would be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and 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.

The Exchange believes that its proposal to adopt the Board and committee structure and related nomination and election processes set forth in New Governing Documents are consistent with the Act, including Section 6(b)(1) of the Act, which requires, among other things, that a national securities exchange be organized to carry out the purposes of the Act and comply with the requirements of the Act. In general, the proposed changes would make the Exchange's Board and committee composition requirements, and related nomination and election processes, more consistent with those

¹²⁵ 15 U.S.C. 78f(b).

¹²⁶ 15 U.S.C. 78f(b)(1).

¹²⁷ 15 U.S.C. 78f(b)(3) and (b)(5).

of its affiliates, BX, NSM and Phlx. The Exchange therefore believes that the proposed changes would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and comply with the provisions of the Act by its members and persons associated with members.

Additionally, the Exchange believes that the New Governing Documents support a corporate governance framework that is designed to insulate the Exchange's regulatory functions from its market and other commercial interests so that the Exchange can carry out its regulatory obligations in furtherance of Section 6(b)(1) of the Act. Specifically, the Exchange believes that creation of a ROC, modeled on the approved ROCs of other Nasdaq Exchanges, and the inclusion of the Chief Regulatory Officer in the proposed Bylaws, would underscore the importance of the Exchange's regulatory function and specifically empower an independent committee of the Board to oversee regulation and meet regularly with the Chief Regulatory Officer. Furthermore, proposed language in the New Governing Documents specifically providing that the Exchange's business and the Board's evaluations would include actions and evaluations that support and take into account its regulatory responsibilities under the Act, reinforce the notion that the Exchange is not solely a commercial enterprise, but an SRO subject to the obligations imposed by the Act. The restriction on using Regulatory Funds to pay dividends to the Sole LLC Member further underscores the independence of the Exchange's regulatory function. Finally, the Exchange believes that the proposed requirements to include Public Directors on the Board (at least two Directors) and that on the ROC (all three Directors) would help to ensure that no single group of market participants will have the ability to

systematically disadvantage other market participants through the exchange governance process, and would foster the integrity of the Exchange by providing unique, unbiased perspectives. Accordingly, the Exchange believes that the new board and committee structure contemplated by the proposed New Governing Documents is designed to insulate the Exchange's regulatory functions from its market and other commercial interests so that the Exchange can carry out its regulatory obligations in furtherance of Section 6(b)(1) of the Act.

The Exchange also believes that the proposed 20% requirement for Member Representative Directors and the proposed method for selecting Member Representative Directors would ensure fair representation of Exchange members on the Board and allow members to have a voice in the Exchange's use of its self-regulatory authority. In particular, the Exchange notes that the Member Nominating Committee would be composed solely of persons associated with Exchange members and is selected after consultation with representatives of Exchange members. In addition, the new Bylaws include a process by which Exchange members can directly petition and vote for representation on the Board. For the foregoing reasons, the Exchange believes that the proposed change to remove the Exchange Director positions and related concepts from its organizational documents is consistent with fair representation requirement under the Act. Specifically, Exchange members will continue to be represented on the Board and on key standing committees, and will have a voice in the selection of Member Representative Directors through the Member Nominating Committee and through their ability to petition and vote on alternate candidates. As noted above, the trading privileges associated with the Exchange Rights, which are currently located in the Exchange's

organizational documents, are already substantively in the Exchange's rulebook, and the Rules would be clarified to the extent such Rules refer back to the Current Governing Documents.

The Exchange also believes that the proposed Board and composition requirements set forth in the New Governing Documents is consistent with the requirements of Section 6(b)(3) of the Act, because the Public Director positions on the Board and on the ROC would include the representatives of issuers and investors with no material business relationship with a broker dealer or the Exchange. Further, the Exchange believes that the proposed compositional balance of the proposed committees continues to provide for the fair representation of members in the administration of the affairs of the Exchange. In particular, all members of the new Member Nominating Committee must be associated persons of an Exchange member. In addition, at least 20% of the new QMC must be composed of Member Representative members. Moreover, the proposed compositional requirements provide that the Nominating Committee and the QMC must be compositionally balanced between Industry members and Non-Industry members. The proposed compositional requirements are designed to ensure that members are protected from unfair, unfettered actions by an exchange pursuant to its rules, and that, in general, an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.

Moreover, the Exchange believes that the new corporate governance framework and related processes proposed by the New Governing Documents are consistent with Section 6(b)(5) of the Act because they are identical to the framework and processes used by the Nasdaq Exchanges, which have been well-established as fair and designed to

protect investors and the public interest. The Exchange believes that adopting the New Governing Documents based on the NSM model would streamline the Nasdaq Exchanges' governance process, create equivalent governing standards among HoldCo's SROs and also provide clarity to its members, which is beneficial to both investors and the public interest.

Finally, the proposed amendments to the Rules as discussed above are non-substantive changes to clarify the rule text where the Rule referred only to the Current LLC Agreement or to the Current Constitution, and also the technical amendments to renumber certain Rules.

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

Because the Proposed Rule Change relates to the corporate governance of the Exchange and not to the operations of the Exchange, 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.

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 (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-GEMX-2017-37 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-GEMX-2017-37. 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-GEMX-2017-37 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.¹²⁸

Eduardo A. Aleman
Assistant Secretary

¹²⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5A – Second Amended and Restated Limited Liability Company Agreement of Nasdaq GEMX, LLC

Text of the proposed rule change.
All text to be deleted.

[SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

OF

NASDAQ GEMX, LLC

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SECOND LIMITED LIABILITY COMPANY AGREEMENT
OF
NASDAQ GEMX, LLC

International Securities Exchange Holdings, Inc., a Delaware corporation (the “Sole LLC Member”), hereby forms Nasdaq GEMX, LLC, a Delaware limited liability company (the “Company”), pursuant to and in accordance with the Delaware Limited Liability Company Act, 6 Del.C. § 18-101, et seq. (the “Act”), and hereby declares the following to be the Limited Liability Company Agreement (the “LLC Agreement”) of the Company.

ARTICLE I
FORMATION OF THE COMPANY

Section 1.1. Formation of the Company. The Company concurrently herewith is being formed as a limited liability company under the Act by the filing of the Certificate of Formation with the Office of the Secretary of State of the State of Delaware. The Sole LLC Member agrees to be bound by and comply with the provisions thereof and hereof.

Section 1.2. Name. The name of the Company is “Nasdaq GEMX, LLC”.

Section 1.3. Purpose of the Company. The purpose of the Company shall be to conduct the operations of an “exchange” within the meaning of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and to conduct any lawful business or activity whatsoever, as permitted by applicable law and as determined from time to time by the board of directors of the Company (the “Board of Directors”).

Section 1.4. Principal Place of Business. The location of the principal place of business of the Company shall be 60 Broad Street, New York, New York 10004 or such other place as determined by the Board of Directors from time to time.

Section 1.5. Registered Office; Registered Agent. The registered office of the Company required by the Act to be maintained in the State of Delaware shall be National Registered Agents, Inc., 160 Greentree Drive, Suite 101, City of Dover, Delaware 19904 or such other office as the Board of Directors may designate from time to time. The registered agent for the Company shall be National Registered Agents, Inc., or such other registered agent as the Board of Directors may designate from time to time.

Section 1.6. Term. The Company shall continue until the Company is terminated in accordance with the provisions of this LLC Agreement.

ARTICLE II SOLE LLC MEMBER; VOTING

Section 2.1. Admission of the Sole LLC Member. Effective as of the date of the filing of the Certificate of Formation with the Office of the Secretary of State of the State of Delaware, the Sole LLC Member shall be admitted as the sole member of the Company.

Section 2.2. Rights and Powers of the Sole LLC Member; Voting. Other than as set forth in this LLC Agreement and, to the extent not inconsistent with this LLC Agreement and the Act, the Sole LLC Member shall not participate in the management or control of the Company's business nor shall the Sole LLC Member transact any business for the Company, nor shall the Sole LLC Member have the power to act for or bind the Company, said powers being vested solely and exclusively in the Board of Directors. Subject to the right of the Board of Directors to fill any vacancies as provided in the Constitution (as defined below), the Sole LLC Member shall have the sole right to elect each of the Non-Industry Directors (as defined in the Constitution) and the Chief Executive Officer of the Company as a director (who shall be elected as the Chief Executive Officer and thereafter nominated by the Board of Directors for a directorship by virtue of his or her office, as provided in Section 4.6 of the Constitution), and shall have no other voting rights, except with respect to those matters specifically set forth in this LLC Agreement and as required by the Act. In particular, the Sole LLC Member shall have no voting rights with respect to any increase in the number of authorized PMM Rights (as defined below) or CMM Rights (as defined below), the election of the Exchange Directors (as defined in the Constitution) or any other matters relating to the Exchange Rights (as defined below).

Section 2.3. Liability of the Sole LLC Member. The Sole LLC Member shall not have any liability under this LLC Agreement or under the Act except as provided herein or as required by the Act. Except as required by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise (including, without limitation, those arising as member, owner or shareholder of another company, partnership or entity) shall be solely the debts, obligations or liability of the Company, and the Sole LLC Member shall not be obligated for any such debt, obligation or liability of the Company solely by reason of being a member of the Company.

ARTICLE III INTERESTS, DISTRIBUTIONS, AND TAX TREATMENT

Section 3.1. Interest. The Company shall be authorized to issue a single class of Limited Liability Company Interest, as defined in the Act (the "Interest"), to the Sole LLC Member, which shall convey all of the rights of the Sole LLC Member under this Agreement, all rights to the profits and losses of the Company and the right to receive distributions of the assets of the Company. The Company shall be authorized, but not required, to issue one or more certificates, executed by an authorized officer of the Company, evidencing the Interest.

Section 3.2. Capital Contributions. The Sole LLC Member may contribute cash or other property to the Company as it shall decide, from time to time. The Sole LLC Member shall not be entitled to interest on or with respect to capital contributions.

Section 3.3. Distributions. Notwithstanding any provision to the contrary contained in this LLC Agreement, (i) the Company shall not be required to make a distribution to the Sole LLC Member if such distribution would violate the Act or any other applicable law or is otherwise required to fulfill the regulatory functions or responsibilities of the Company, and (ii) Regulatory Funds shall not be used for non-regulatory purposes, but rather shall be used to fund the legal, regulatory and surveillance operations of the Company and the Company shall not make any distribution to the Sole LLC Member using Regulatory Funds. For the purposes of this Section 3.3, "Regulatory Funds" means fees, fines or penalties derived from the regulatory operations of the Company, provided that Regulatory Funds shall not include revenues derived from listing fees, market data revenues, transaction revenues or any other aspect of the commercial operations of the Company or a facility of the Company, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Company.

Section 3.4. Tax Characterization; Returns; Distributions in Respect of Taxes. It is the intention of the Sole LLC Member that the Company be disregarded as an entity for tax purposes, so that the Sole LLC Member will be treated as owning all of the Company's assets directly, as recognizing all of the Company's income and loss directly, and as being entitled to all distributions for U.S. federal and state income tax purposes. All provisions of the Company's Certificate of Formation and this LLC Agreement are to be construed so as to preserve that tax status. Each of the Directors (as defined below) and officers of the Company and the Sole LLC Member is authorized to file any necessary elections with tax authorities. At the request of the Sole LLC Member, the Company shall make distributions to the Sole LLC Member in amounts sufficient to fund payments of taxes by the Sole LLC Member attributable to the assets, income and losses of the Company.

ARTICLE IV BOOKS OF ACCOUNT; RECORDS, REPORTS, FISCAL MATTERS AND ANNUAL MEETING

Section 4.1. Books and Records. (a) Proper and complete books and records of account shall be kept by the Company, in which shall be entered fully and accurately all transactions and other matters relative to the Company's business as are usually entered into books and records of account maintained by Persons (as defined in the Constitution) engaged in businesses of a like character. The Company books and records shall be kept in a manner determined by the Board of Directors in its sole discretion to be most beneficial for the Company, provided the books and records shall always be kept within the United States.

(b) All confidential information pertaining to the self-regulatory function of the Company (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Company shall: (i) not be made available to any persons (other than as provided in the next sentence) other than to

those officers, directors, employees and agents of the Company that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Company and the officers, directors, employees and agents of the Company; and (iii) not be used for any commercial purposes. Nothing in this LLC Agreement shall be interpreted as to limit or impede the rights of the United States Securities Exchange Commission (the “Commission”) to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Company to disclose such confidential information to the Commission or Nasdaq GEMX.

Section 4.2. Tax Returns. The Company shall file all required income and other tax returns required to be filed by the Company for each Fiscal Year (as defined below) or part thereof.

Section 4.3. Company Bank Accounts; Investments. All Company funds shall be deposited by the Company at such financial institutions as may be approved by the Board of Directors, or shall be invested by the Company, in accordance with parameters established by the Board of Directors, in furtherance of the purposes of the Company.

Section 4.4. Fiscal Year. The fiscal year of the Company (the “Fiscal Year”) shall end on December 31 of each calendar year. Each Fiscal Year shall consist of four fiscal quarters ending on March 31, June 30, September 30 and December 31.

Section 4.5. Annual Meeting. The Board of Directors shall call an annual meeting (the “Annual Meeting”) of the Sole LLC Member and the holders of Exchange Rights, as prescribed in Articles I and II of the Company’s Constitution, the same initially to be in the form attached hereto as Exhibit A and as amended from time to time in accordance with its terms (the “Constitution”).

Section 4.6. Bylaws. The Constitution shall constitute the Bylaws of the Company.

ARTICLE V MANAGEMENT; BOARD OF DIRECTORS

Section 5.1. General. (a) The administration and management of the Company shall be carried out by a Board of Directors elected or appointed in the manner prescribed in the Constitution, and by executive officers appointed from time to time by the Board of Directors. The Board of Directors shall have the powers and duties provided in Article III of the Constitution; provided, however, that, holders of PMM Rights, CMM Rights and EAM Rights, as such terms are defined in Article VI below, shall have the irrevocable right to vote with respect to the matter set forth in Article VI below. Each member of the Board of Directors shall constitute a “manager” within the meaning of Section 18-101(10) of the Act.

(b) In discharging his or her responsibilities as a member of the Board of Directors, each director shall take into consideration the effect that his or her actions would

have on the ability of the Company to carry out the Company's responsibilities under the Exchange Act and on the ability of the Company: to 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 mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest. In discharging his or her responsibilities as a member of the Board of Directors or as an officer or employee of the Company, each such director, officer or employee shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the Company and the Commission pursuant to their respective regulatory authority.

Section 5.2. Board of Directors. The Board of Directors shall consist of no less than eight (8) and no more than sixteen (16) directors (the "Directors") as further prescribed in the Constitution. In no event shall the number of Industry Directors (as defined in the Constitution) constitute less than 30% of the members of the Board of Directors and in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors. The initial Board of Directors shall consist of the directors as set forth on Exhibit B hereto. At the end of the terms of such initial directors, the Board of Directors shall be elected as prescribed in Article III of the Constitution.

Section 5.3. Tenure. Each director shall serve for the term prescribed in Article III of the Constitution.

Section 5.4. Removal or Resignation. Any director may resign or be removed from office at any time in accordance with Article III of the Constitution.

Section 5.5. Meetings of the Board of Directors. Meetings of the Board of Directors shall be conducted as provided in Article III of the Constitution.

Section 5.6. Vacancies. A vacancy on the Board of Directors may be filled in accordance with the requirements set forth in Article III of the Constitution.

Section 5.7. Management; Officers. The Board of Directors shall have the powers and duties provided herein and in Article III of the Constitution. The Company shall have such officers with such duties, powers and responsibilities as provided in Article IV of the Constitution.

Section 5.8. Limitation on Liability; Indemnification. Directors shall be indemnified as set forth in Article VI of the Constitution.

ARTICLE VI EXCHANGE RIGHTS

Section 6.1. Exchange Rights. (a) The Company shall have the authority to issue an unlimited number of non-transferable Exchange Rights and such rights may be divided into series of PMM Rights, CMM Rights, EAM Rights, and such other series of

rights as may be determined by the Board of Directors from time to time provided, however, the issuance of such other series of rights will be subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Exchange Act.. The Exchange Rights shall not convey any portion of the Interest in the Company, and holders of Exchange Rights are not and shall not be deemed to be “members” of the Company for purposes of the Act or this LLC Agreement. A holder of Exchange Rights may withdraw from the Exchange upon the approval of the Exchange, which shall be given upon a determination that the holder of Exchange Rights has satisfied all obligations to the Exchange. Upon such approval and without any payment related thereto, the Exchange Rights will automatically terminate, as provided in the Constitution.

(b) The Board of Directors is hereby expressly authorized at any time, and from time to time, to create and provide for the issuance of Exchange Rights in one or more new series (hereinafter referred to as an “Exchange Right Designation”), to establish the number of rights to be included in each such series, and to fix the designations and relative, participating, optional or other special rights of the rights of each such series and the qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue thereof adopted by the Board of Directors, including, but not limited to, the following:

- (1) the designation of and the number of rights constituting such series, which number the Board of Directors may thereafter (except as otherwise provided in the Exchange Right Designation) increase or decrease (but not below the number of rights of such series then outstanding);
- (2) the extent, if any, to which the holders of Exchange Rights of such series shall be entitled to vote as a class or otherwise with respect to the election of directors or otherwise;
- (3) the restrictions, if any, on the issue or reissue of rights of the same series or of any other class or series; and
- (4) any other relative rights and limitations of that series.

Section 6.2. Trading Rights. (a) PMM Rights. A holder of a PMM Right shall exercise the trading rights and privileges associated with such PMM Right if such holder is approved as a Primary Market Maker under the Constitution and Rules.

(b) CMM Rights. A holder of a CMM Right shall exercise the trading rights and privileges associated with a CMM Right if such holder is approved as a Competitive Market Maker under the Constitution and Rules.

(c) EAM Rights. A holder of an EAM Right shall exercise the trading rights and privileges associated with an EAM Right if such holder is approved as an Electronic Access Member under the Constitution and Rules.

Section 6.3. Voting. Each holder of an Exchange Right shall have one vote in respect of each such Exchange Right thereof held by such holder of record on the books of

the Company on each matter for which the vote of the holders thereof is required. Holders of Exchange Rights shall have the following voting rights and no other voting rights:

(a) Election of Exchange Directors. The holders of Exchange Rights shall have the following rights with respect to election of directors. Holders of PMM Rights shall have the sole right to elect the PMM Directors (as defined in the Constitution). Holders of CMM Rights shall have the sole right to elect the CMM Directors (as defined in the Constitution). Holders of EAM Rights shall have the sole right to elect the EAM Directors (as defined in the Constitution). The Board of Directors shall have the right to fill any vacancies as provided in the Constitution.

(b) A holder of Exchange Rights, together with any affiliate, as such term is defined in the Constitution, may not exercise the voting rights associated with more than twenty percent (20%) of the outstanding Exchange Rights. Any exercise of voting rights in excess of twenty percent (20%) of the outstanding Exchange Rights by a holder of Exchange Rights, together with any affiliate, as such term is defined in the Constitution, shall be deemed null and void.

Section 6.4 Termination of Exchange Rights; Non-Transferability. The Exchange Rights shall not be transferable. In the event of a withdrawal of a holder of Exchange Rights, the Exchange Rights of such holder shall automatically terminate, as provided in the Constitution.

ARTICLE VII

ASSIGNMENTS; CESSATION OF MEMBERSHIP; WITHDRAWAL OF MEMBERS; LIQUIDATION AND DISTRIBUTION OF ASSETS

Section 7.1. Assignments; Additional LLC Members. The Sole LLC Member may assign all (but not less than all) of its Interest; provided, however, such assignment will be subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Exchange Act. The assignment of all of the Interest shall entitle the assignee to exercise the rights of the Sole LLC Member of the Company under this LLC Agreement and to enjoy all of the benefits of the Interest. At no time may the Company have more than one holder of the Interest.

Section 7.2. Dissolution of Company. (a) The Company shall be dissolved, and its affairs wound up as provided herein commencing upon the earliest to occur of:

(i) the date on which the Board of Directors consents to its dissolution by approval of a majority of the Board of Directors;

(ii) the date on which is consummated the sale or disposition by the Company of substantially all of its assets; or

(iii) the date when any other event occurs that causes the dissolution of a limited liability company under the Act, unless the business of the Company is continued by unanimous approval of the Board of Directors within sixty (60) days

following the occurrence of any such event and such continuance is permitted under the Act.

(b) In the event of the dissolution of the Company for any reason, the Board of Directors shall wind up the affairs of the Company and liquidate the Company's assets. The Board of Directors shall have full right and unlimited discretion to determine the time, manner and terms of any sale or sales of Company assets pursuant to such liquidation, giving due regard to the activity and condition of the relevant market and general financial and economic conditions.

(c) The Board of Directors shall have all of the rights and powers with respect to the assets and liabilities of the Company in connection with the winding up of the affairs of the Company as the Board of Directors would have with respect to the assets and liabilities of the Company prior to the dissolution of the Company.

Section 7.3. Distribution in Liquidation. Upon the payment, provision for payment or other satisfaction of the liabilities of the Company, the Company's remaining assets shall be distributed to the Sole LLC Member.

Section 7.4. Termination. Upon the dissolution and the completion of the winding up of the Company and the distribution of the remaining assets of the Company as provided in Section 7.3, the Board of Directors shall cause to be executed and filed a Certificate of Cancellation of the Company with the office of the Secretary of State of the State of Delaware in accordance with the Act.

ARTICLE VIII AMENDMENT OF LLC AGREEMENT

Section 8.1. Amendments. Amendments to this LLC Agreement may be made by the Board of Directors provided, however, if such amendment would alter or change the powers, preferences or special rights of the Sole LLC Member's Interest so as to affect it adversely, such amendment shall also be approved by the Sole LLC Member, in the manner set forth in herein and in the Constitution.

Section 8.2. Amendment of Certificate. In the event this LLC Agreement shall be amended pursuant to Section 8.1, the Board of Directors shall cause the Company to amend the Certificate of Formation to reflect such change if the Board of Directors deems such amendment of the Certificate of Formation to be necessary or appropriate.

ARTICLE IX MISCELLANEOUS

Section 9.1. Governing Law. This LLC Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the law of the State of Delaware without regard to the conflicts of law principles thereof.

Section 9.2. Pronouns and Number. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and

the plural, and pronouns stated in either the masculine, feminine or neuter shall include the masculine, feminine and neuter.

Section 9.3. Headings. Headings contained in this LLC Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this LLC Agreement or any provision hereof.

Section 9.4. Partial Enforceability. If any provision of this LLC Agreement, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this LLC Agreement, or the application of such provision to Persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

IN WITNESS WHEREOF, the Sole LLC Member has caused this LLC Agreement to be executed by its duly authorized officer on December 18, 2014.

INTERNATIONAL SECURITIES EXCHANGE
HOLDINGS, INC.

By /s/ Gary Katz
Gary Katz
President and Chief Executive Officer

EXHIBIT B

Interim Board of Directors of Nasdaq GEMX, LLC

Gary Katz and the following individuals shall be appointed as the initial directors of Nasdaq GEMX, LLC:

Non-Industry Directors

David Krell	Joseph B. Stefanelli
Michael P. Monaco	Marcus Thompson
Andreas Preuß	Kenneth A. Vecchione
Hauke Stars	Christianna Wood

Industry Directors

Class 1	Class 2
J. Slade Winchester	Michael T. Juneman
Patrick Hickey	Denis Medvedsek
Elizabeth R. Martin	Joseph Sellitto

EXHIBIT 5B – Limited Liability Company Agreement of Nasdaq GEMX, LLC

Text of the proposed rule change.

All text is new.

**Limited Liability Company Agreement
of Nasdaq GEMX, LLC**

This Limited Liability Company Agreement (together with the exhibit and schedules attached hereto, this "Agreement") of Nasdaq GEMX, LLC (the "Company") is entered into by International Securities Exchange Holdings, Inc., a Delaware corporation (the "Sole LLC Member"). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

WHEREAS, Nasdaq GEMX, LLC (the "Pre-Merger LLC") was formed pursuant to the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq., as amended from time to time (the "LLC Act"), by filing a Certificate of Formation of the Company with the office of the Secretary of State of the State of Delaware on May 30, 2012 and entering into a limited liability company agreement (as previously amended and restated);

WHEREAS, (i) GEMX Newco, LLC, a Delaware limited liability company, merged with and into the Company (the "Merger") pursuant to that certain Agreement and Plan of Merger between the Pre-Merger LLC and GEMX Newco, LLC, dated as of _____, 201_ and the filing of a Certificate of Merger (the "Certificate of Merger"), (ii) the Merger is effective on the date hereof (the "Effective Date"), (iii) the Company is the surviving entity of the Merger, and (iv) this Agreement is the limited liability company agreement of the surviving entity of the Merger as of the Effective Date; and

WHEREAS, the Sole LLC Member desires to enter into this Agreement.

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

Section 1. Name.

The name of the limited liability company continued hereby is Nasdaq GEMX, LLC.

Section 2. Principal Business Office.

The principal business office of the Company shall be located at One Liberty Plaza, New

York, New York, 10006, or such other location as may hereafter be determined by the Board of Directors.

Section 3. Registered Office.

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

Section 4. Registered Agent.

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

Section 5. Sole LLC Member.

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

Section 6. Certificates.

Joseph W. Ferraro III, as an "authorized person" within the meaning of the LLC Act, has executed, delivered and filed (i) the Certificate of Formation of the Company, dated May 29, 2012, as filed in the office of the Secretary of State of the State of Delaware on May 30, 2012, and (ii) the Certificate of Amendment thereto, dated February 18, 2014 (the "Certificate of Amendment", as filed in the office of the Secretary of State of the State of Delaware on February 18, 2014 (such filings being hereby approved and ratified in all respects) and upon the filing of the Certificate of Amendment with the Secretary of State of the State of Delaware, his powers as an "authorized person" ceased. [REDACTED], as an "authorized person" within the meaning of the LLC Act, has executed, delivered and filed the Certificate of Merger with respect to the Merger with the Secretary of State of the State of Delaware (such filing being hereby approved and ratified in all respects). Upon the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, [REDACTED]'s powers as an "authorized person" ceased, and the Sole LLC Member, each Director and each Officer thereupon became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the LLC Act. The Sole LLC Member, any Director or any Officer, as an authorized person within the meaning of the LLC Act, shall execute, deliver and file, or cause the execution, delivery and filing of, all certificates (and any amendments and/or restatements thereof) required or permitted by the LLC Act to be filed with the Secretary

of State of the State of Delaware. The Sole LLC Member, any Director or any Officer shall execute, deliver and file, or cause the execution, delivery and filing of, any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business.

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

Section 7. Purposes.

The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the LLC Act and engaging in any and all activities necessary or incidental to the foregoing. Without limiting the generality of the foregoing, the nature of the business or purposes to be conducted and promoted shall include (i) supporting the operation, regulation, and surveillance of the national securities exchange operated by the 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 Company's self-regulatory responsibilities as set forth in the Exchange Act, and (v) supporting such other initiatives as the Board may deem appropriate.

Section 8. Powers.

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

Section 9. Management.

(a) Board of Directors. The business and affairs of the Company shall be managed by or under the direction of a Board of Directors. Each Director is hereby designated as a "manager" within the meaning of the LLC Act. The Sole LLC Member

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

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

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

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

All meetings of the Board of Directors of the Exchange (and any committees of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters) or relating to the structure of the market which the Exchange regulates shall be closed to all persons other than members of the Board of Directors and officers, staff, counsel or other advisors whose participation is necessary or appropriate to the proper discharge of such regulatory functions and any representatives of the Commission. In no event shall members of the Board of Directors of the Sole LLC

Member who are not also members of the Board of Directors of the Exchange or any officers, staff, counsel or advisors of the Sole LLC Member who are not also officers, staff, counsel or advisors of the Exchange be allowed to participate in any meetings of the Board of Directors of the Exchange (or any committees of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters) or relating to the structure of the market which the Exchange regulates.

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

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

(g) Committees.

- (i) The Board may designate one or more committees, each committee to consist of one or more of the Directors or other Persons. The By-Laws may establish the initial committees, which may be altered, eliminated or restructured by an amendment to the By-Laws. The Board may designate one or more Directors or other Persons as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.
- (ii) Except as otherwise provided by the By-Laws, members of a committee shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a committee may be removed from such committee only by the Board. Vacancies in the membership of any committee shall be filled by the Board.
- (iii) Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may

determine. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

- (iv) Unless otherwise required by the By-Laws, a majority of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.
- (v) To the extent provided in the resolution of the Board, any committee that consists solely of one or more Directors shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company, except that such committee shall not have the powers of the Board with respect to approving any matters pertaining to the self-regulatory function of the Exchange or relating to the structure of the market which the Exchange regulates. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. In the absence or disqualification of a member of a committee composed solely of Directors, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

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

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

(j) Directors as Agents. To the extent of their powers set forth in this Agreement, the Directors are agents of the Company for the purpose of the Company's business, and the actions of the Directors taken in accordance with such powers set forth

in this Agreement shall bind the Company. Notwithstanding the last sentence of Section 18-402 of the LLC Act, except as provided in this Agreement or in a resolution of the Directors, a Director may not bind the Company.

Section 10. Officers.

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

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

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

Section 11. Limited Liability.

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

Section 12. Capital Contributions.

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

Section 13. Additional Contributions.

The Sole LLC Member is not required to make any additional capital contribution to the

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

Section 14. Allocation of Profits and Losses.

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

Section 15. Distributions.

Distributions shall be made to the Sole LLC Member at the times and in the aggregate amounts determined by the Board. Notwithstanding any provision to the contrary contained in this Agreement, (i) the Company shall not be required to make a distribution to the Sole LLC Member on account of its interest in the Company if such distribution would violate the LLC Act or any other applicable law or is otherwise required to fulfill the regulatory functions or responsibilities of the Company, and (ii) Regulatory Funds shall not be used for non-regulatory purposes, but rather shall be used to fund the legal, regulatory and surveillance operations of the Company and the Company shall not make a distribution to the Sole LLC Member using Regulatory Funds.

Section 16. Books and Records.

The Board shall keep or cause to be kept within the United States complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Board. The Company's books of account shall be kept using the method of accounting determined by the Sole LLC Member. The Company's independent auditor shall be an independent public accounting firm selected by the Board.

Other than as provided in this Section 16 with respect to the Commission (defined below), all confidential information pertaining to the self-regulatory function of the Company (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Company shall: (i) not be made available to any persons other than to those officers, directors, employees and agents of the Company that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Company and the officers, directors, employees and agents of the Company; and (iii) not be used for any non-regulatory purposes. Nothing in this LLC Agreement shall be interpreted as to limit or impede the rights of the U.S. Securities and Exchange Commission (the "Commission") to access and examine such confidential

information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit and impede the ability of any officers, directors, employees or agents of the Company to disclose such confidential information to the Commission.

Section 17. Reports.

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

Section 18. Other Business.

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

Section 19. Exculpation and Indemnification.

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

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

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

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

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

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

Section 20. Assignments.

The Sole LLC Member may not transfer or assign in whole or in part its limited liability company interest in the Company, unless such transfer or assignment is filed with and approved by the Commission pursuant to the rule filing procedure under Section 19 of the Exchange Act.

Section 21. Dissolution.

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

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Sole LLC Member shall not cause the Sole LLC Member to cease to be a member of

the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

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

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

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

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

Section 23. Severability of Provisions.

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

Section 24. Entire Agreement.

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

Section 25. Binding Agreement.

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

Section 26. Governing Law.

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

Section 27. Amendments.

This Agreement may be modified, altered, supplemented or amended by a resolution adopted by the Board and a written agreement executed and delivered by the Sole LLC Member. Amendments to this Agreement shall not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Exchange Act and the rules promulgated thereunder.

Section 28. Notices.

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

[SIGNATURE PAGE FOLLOWS]

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

SOLE LLC MEMBER:

INTERNATIONAL SECURITIES
EXCHANGE HOLDINGS, INC.

By: _____

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

SCHEDULE A

Definitions

A. Definitions

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

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

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

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

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

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

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

"Certificate of Amendment" has the meaning set forth in Section 6.

"Certificate of Formation" means the Certificate of Formation of the Company, dated May 29, 2012 and filed with the Secretary of State of the State of Delaware on May 30, 2012, as amended by the Certificate of Amendment, as supplemented by the Certificate

of Merger, as further supplemented, amended or amended and restated from time to time.

"Certificate of Merger" has the meaning set forth in the preamble to this Agreement.

"Company" means Nasdaq GEMX, LLC, a Delaware limited liability company.

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

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

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

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

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

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

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

"Regulatory Funds" means fees, fines, or penalties derived from the regulatory operations of the Company. "Regulatory Funds" shall not be construed to include revenues derived from listing fees, market data revenues, transaction 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.

"Sole LLC Member" means International Securities Exchange Holdings, Inc., a Delaware corporation, as the sole member of the Company.

B. Rules of Construction

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

references to such parts of this Agreement.

SCHEDULE B**Sole LLC Member**

Name	Mailing Address	Limited Liability Company Interest
International Securities Exchange Holdings, Inc.	One Liberty Plaza, New York, New York 10006	100%

EXHIBIT A

(Bylaws of Nasdaq GEMX, LLC Attached)

EXHIBIT 5C – Constitution of Nasdaq GEMX, LLC

Text of the proposed rule change.
All text to be deleted.

[Adopted as of July 31, 2013]

CONSTITUTION

OF

NASDAQ GEMX, LLC

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CONSTITUTION OF
NASDAQ GEMX, LLC

ARTICLE I
SOLE LLC MEMBER

Section 1.1 Sole LLC Member. Nasdaq GEMX, LLC (the “Exchange”) is a single member limited liability company with one limited liability company interest currently authorized (the “LLC Interest”). The holder of the LLC interest is International Securities Exchange Holdings, Inc., which may assign the LLC Interest as provided in the LLC Agreement (the “Sole LLC Member”).

Section 1.2 Meetings of Sole LLC Member. (a) Meetings of the Sole LLC Member shall be held at such place within or without the State of Delaware, as may be fixed by the Board of Directors in conjunction with meetings of holders of Exchange Rights (as defined in Article VI of the Limited Liability Company Agreement of the Exchange (the “LLC Agreement”).

(b) The Sole LLC Member shall meet annually along with the holders of Exchange Rights on such date and place and at such time as may be designated by the Board of Directors provided in Section 2.1 to elect the members of the Board of Directors and transact such other business as may be set forth in the written notice of the meeting.

Section 1.3 Special Meetings of Sole LLC Member. A special meeting of the Sole LLC Member may be called by the Chairman of the Board of the Exchange or a majority of the Board of Directors for any purpose or purposes, and shall be called by the Secretary of the Exchange at the request of the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors which the Exchange would at the time have if there were no vacancies (the “Whole Board”), including no less than fifty percent (50%) of the Non-Industry Directors (as defined in Section 3.2). A special meeting shall also be called by the Secretary of the Exchange at the request of the Sole LLC Member. The Board of Directors may designate the place of meeting for any special meeting, and if no such designation is made, the place of meeting shall be the principal executive offices of the Exchange.

Section 1.4. Notice of Sole LLC Member Meetings; Proxies; Record Date; No Action by Written Consent. Whenever the Sole LLC Member is required or permitted to take any action at a meeting, unless notice is waived as provided in Section 8.1 of this Constitution, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, and except in instances in which the Sole LLC Member duly waives notice, the written notice of any meeting shall be given personally or by mail, not less than ten (10) nor more than sixty (60) days before the date of the meeting to the Sole LLC Member. If mailed, notice shall be deemed given when deposited in the mail, postage prepaid, directed to the Sole LLC Member at the address of the Sole LLC Member as it appears on the records of the Exchange. When a meeting is adjourned to another time or place,

notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Exchange may transact any business which might have been transacted at the original meeting. If, however, the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to the Sole LLC Member.

In order that the Exchange may determine the holder of the Interest entitled to notice of or to vote at any meeting of the Sole LLC Member or any adjournment thereof or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. If no record date is fixed by the Board of Directors, (1) the record date for determining the holder of the Interest entitled to notice of or to vote at a meeting of the Sole LLC Member shall be at the close of business on the day next preceding the date on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and (2) the record date for determining the holder of the Interest for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of the holder of the Interest of record entitled to notice of or to vote at a meeting of the Sole LLC Member shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting. Only such holder of the Interest as shall be holder of record on the date so fixed shall be entitled to notice of, and to vote at, such meeting and any adjournment thereof, or to participate in such action, as the case may be, notwithstanding any transfer of the Interest on the books of the Exchange after any record date so fixed.

Any action required or permitted to be taken by the Sole LLC Member must be taken at any annual or special meeting of the Sole LLC Member and may not be taken by any consent in writing by the Sole LLC Member.

ARTICLE II

EXCHANGE RIGHTS

Section 2.1 Annual Meeting. An annual meeting of the holders of Exchange Rights shall be held on such date and at such time as may be designated by the Board of Directors at the principal executive offices of the Exchange, or at such other place within or without the State of Delaware as may be fixed by the Board of Directors for the purpose of electing directors to fill expiring terms.

Section 2.2 Special Meetings. A special meeting of the holders of Exchange Rights entitled to vote on any business to be considered at any such meeting may be called by the Chairman of the Board of the Exchange or a majority of the Board of Directors for any purpose or purposes, and shall be called by the Secretary of the Exchange at the request of the Board of Directors pursuant to a resolution adopted by a majority of the Whole Board, including no less than fifty percent (50%) of the Non-Industry Directors (as defined in Section 3.2). The Board of Directors may designate the place of meeting for any special meeting, and if no such designation is made, the place of meeting shall be the principal

executive offices of the Exchange.

Section 2.3 Notice of Meetings. Whenever holders of Exchange Rights are required or permitted to take any action at a meeting, unless notice is waived as provided in Section 8.1 of this Constitution, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

Unless otherwise provided by law, and except as to any holder of Exchange Rights duly waiving notice, the written notice of any meeting shall be given personally or by mail, not less than ten (10) nor more than sixty (60) days before the date of the meeting to each holder of Exchange Rights entitled to vote at such meeting. If mailed, notice shall be deemed given when deposited in the mail, postage prepaid, directed to each such holder at such holder's address as it appears on the records of the Exchange. Any previously scheduled meeting of the holders of Exchange Rights may be postponed by resolution of the Board of Directors and upon public notice given by press release prior to the time previously scheduled for such meeting of holders.

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Exchange may transact any business which might have been transacted at the original meeting. If, however, the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each holder of Exchange Rights of record entitled to vote at the meeting.

Section 2.4 Quorum. Except as otherwise provided by law, the LLC Agreement or by this Constitution, at any meeting of holders of Exchange Rights the holders of a majority of the voting power of the outstanding Exchange Rights entitled to vote generally in the election of Industry Directors (as defined in Section 3.2)(the "Voting Rights"), either present in person or represented by proxy, shall constitute a quorum for the transaction of any business at such meeting, except that, when specified business is to be voted on by a series voting as a class, the holders of a majority of the voting power of such series entitled to vote shall constitute a quorum for the transaction of such business. To the fullest extent permitted by applicable law, the chairman of the meeting or a majority of the voting power of the Voting Rights so represented may adjourn the meeting from time to time, whether or not there is such a quorum (or in the case of specified business to be voted on as a series, the chairman or a majority of the rights of such series entitled to vote which are so represented may adjourn the meeting with respect to such specified business). No notice of the time and place of adjourned meetings need be given except as provided in the last paragraph of Section 2.3 of this Constitution. The holders of Exchange Rights present at a duly organized meeting may

continue to transact business until adjournment, notwithstanding the withdrawal of a sufficient number of holders to result in less than a quorum.

Section 2.5 Voting. Except with respect to the directors elected by the Sole LLC Member, as set forth in Section 3.2(b) hereof, whenever directors are to be elected at a meeting, they shall be elected by a plurality of the votes cast at the meeting by the holders of Exchange Rights entitled to vote thereon. Whenever any company action, other than the election of directors, is to be taken by vote of the holders of Exchange Rights at a meeting, such company action shall, except as otherwise required by law, by the LLC Agreement or by this Constitution, be authorized by the affirmative vote of the holders of a majority of the Exchange Rights present or represented by proxy and entitled to vote with respect to such company action.

Except as otherwise provided by law, or by the LLC Agreement, each holder of record of Exchange Rights entitled to vote on any matter at any meeting of holders of Exchange Rights shall be entitled to one vote for each Exchange Right standing in the name of such holder on the books of the Exchange on the record date for the determination of the holders entitled to vote at the meeting.

Upon the demand of any holder of Exchange Rights entitled to vote, the vote for directors or the vote on any other matter at a meeting shall be by written ballot, but otherwise the method of voting and the manner in which votes are counted shall be discretionary with the presiding officer at the meeting.

Section 2.6 Proxies. Each holder of Exchange Rights entitled to vote at a meeting of holders may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after eleven (11) months from its date, unless the proxy provides for a longer period. Every proxy shall be signed by the holder or by his or her duly authorized attorney. Such proxy must be filed with the Secretary of the Exchange or his or her representative at or before the time of the meeting.

Section 2.7 Record Date. In order that the Exchange may determine the holders of Exchange Rights entitled to notice of or to vote at any meeting of holders or any adjournment thereof or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action.

If no record date is fixed by the Board of Directors, (1) the record date for determining holders of Exchange Rights entitled to notice of or to vote at a meeting of holders shall be at the close of business on the day next preceding the date on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and (2) the record date for determining holders of Exchange Rights for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

A determination of holders of Exchange Rights of record entitled to notice of or to vote at a meeting of holders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Only such holders of Exchange Rights as shall be holders of record on the date so fixed shall be entitled to notice of, and to vote at, such meeting and any adjournment thereof, or to participate in such action, as the case may be, notwithstanding any transfer of any rights on the books of the Exchange after any record date so fixed.

Section 2.8 List of Holders. The Secretary of the Exchange shall prepare and make, at least ten (10) days before every meeting of holders of Exchange Rights, a complete list of the holders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each holder and the number of Exchange Rights registered in the name of each holder. Such list shall be open to the examination of any holder, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting on a reasonably accessible electronic network, provided that information required to gain access to such list is provided with the notice of the meeting, or during ordinary business hours, at the principal place of business of the Exchange. In the event that the Exchange determines to make the list available on an electronic network, the Exchange may take reasonable steps to ensure that such information is available only to holders of Exchange Rights. If the meeting is to be held at a place, then the list shall also be produced at the place of the meeting during the whole time thereof, and may be inspected by any holder of Exchange Rights who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any holders of Exchange Rights during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Nothing in this Section shall require the Exchange to include electronic mail addresses or other electronic contact information on such list.

The list of holders of Exchange Rights shall be the only evidence as to who are the holders entitled to examine the list required by this Section or the books of the Exchange, or to vote in person or by proxy at any meeting of holders of Exchange Rights.

Section 2.9 No Action by Written Consent. Any action required or permitted to be taken by the holders of Exchange Rights must be taken at an annual meeting or special meeting of the holders of Exchange Rights and may not be taken by any consent in writing by such holders.

ARTICLE III

DIRECTORS

Section 3.1 General Powers. The business and affairs of the Exchange shall be managed by or under the direction of its Board of Directors. In addition to the powers and authorities by this Constitution expressly conferred upon it, the Board of Directors may exercise all such powers of the Exchange and do all such lawful acts and things as are not by

the LLC Agreement or by this Constitution required to be exercised or done by the Sole LLC Member or the holders of Exchange Rights.

Section 3.2 Number, Tenure, Qualifications and Voting. (a) The number of directors shall be no less than eight (8) and no more than sixteen (16) and in no event shall the number of Industry Directors constitute less than 30% of the members of the Board and in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors.

(b) The Board shall be composed as follows:

- (i) At least 30% of the members of the Board shall be officers, directors or partners of Exchange Members and shall be elected by a plurality of the holders of the Exchange Rights (the "Industry Directors"), wherein such Industry Directors shall consist of at least one (1) PMM Director (an officer, director or partner of a Primary Market Maker that is elected by a plurality of holders of the PMM Rights); at least one (1) CMM Director (an officer, director or partner of a Competitive Market Maker that is elected by a plurality of holders of the CMM Rights); and at least one (1) EAM Director (an officer, director or partner of a Electronic Access Member that is elected by a plurality of holders of the EAM Rights); provided, however, that the number of PMM Director(s), CMM Director(s), and EAM Director(s) shall always be equal to one another (i.e. either one (1) PMM Director, one (1) CMM Director and one (1) EAM Director, or two (2) PMM Directors, two (2) CMM Directors and two (2) EAM Directors);
- (ii) At least 50% of the members of the Board shall meet the requirements of non- industry representatives and shall be elected by the Sole LLC Member (the "Non-Industry Directors"), at least one (1) of whom shall be a public representative (the "Public Director");
- (iii) One (1) director shall be the person then holding the office of President and Chief Executive Officer of the Exchange and shall be elected by the Sole LLC Member; and
- (iv) The Sole LLC Member may, in its sole and absolute discretion, elect one (1) additional director who shall meet the requirements of "Non-Industry Directors," except that such person was employed by the Exchange at any time during the three (3) year period prior to his or her initial election (the "Former Employee Director").

(c) Upon approval of the Exchange's Form 1 Application by the Securities and Exchange Commission (the "Approval Date"), the Sole LLC Member will appoint the initial Directors of the Board ("Initial Directors") and such Initial Directors shall serve only until the first annual meeting of the holders of Exchange Rights and the Sole LLC Member following such appointment, which meeting shall be held as promptly as possible after the effective date of the LLC Agreement and within ninety (90) days after the Approval Date. At each annual meeting of the holders of Exchange Rights and the Sole LLC Member, the Sole

LLC Member shall elect the successors to such Non-Industry Directors whose terms are expiring. The Non-Industry Directors shall hold office for a term expiring at each succeeding annual meeting of the holders of Exchange Rights and Sole LLC Member held in the first year following the year of their election, and until their successors are elected and qualified. At each annual meeting of the holders of Exchange Rights and the Sole LLC Member, the holders of Exchange Rights shall elect the successors to such Industry Directors whose terms are expiring. In the event there is more than one (1) PMM Director, one (1) CMM Director, and one (1) EAM Director elected at any annual meeting, the Industry Directors shall be divided into two classes, and designated as Class I or Class II directors. Each of Class I and Class II shall be comprised of half of the Industry Directors. At the first annual meeting of the holders of Exchange Rights and the Sole LLC Member, the Class I directors shall be elected for a term expiring at the 2015 annual meeting of the holders of Exchange Rights and the Sole LLC Member and the Class II directors shall be elected for a term expiring at the 2014 annual meeting of the holders of Exchange Rights and the Sole LLC Member. Thereafter, the Industry Directors shall hold office for a term expiring at each succeeding annual meeting of holders of Exchange Rights and the Sole LLC Member held in the second year following the year of their election, and until their successors are elected and qualified. The President and Chief Executive Officer shall hold office for a term of one (1) year, or until such earlier time as such person no longer serves as President and Chief Executive Officer of the Exchange. If a Former Employee Director is elected by the Sole LLC Member pursuant to Section 3.2(b)(iv), such director shall hold office for a term expiring at the annual meeting of holders of Exchange Rights and the Sole LLC Member held in the first year following the year of his or her election. In the event that such Former Employee Director position becomes available, whether through vacancy resulting from death, resignation, retirement, disqualification, removal from office or other cause, the Sole LLC Member may, in its sole and absolute discretion, elect a person satisfying the requirements of a "Former Employee Director," and such director so chosen shall hold office for a term expiring at the annual meeting of holders of Exchange Rights and the Sole LLC Member at which the term of office of the prior Former Employee Director expires.

(d) All meetings of the Board of Directors of the Exchange (and any committees of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters) or relating to the structure of the market which the Exchange regulates shall be closed to all persons other than members of the Board of Directors and officers, staff, counsel or other advisors whose participation is necessary or appropriate to the proper discharge of such regulatory functions and any representatives of the Commission. In no event shall members of the Board of Directors of the Sole LLC Member who are not also members of the Board of Directors of the Exchange or any officers, staff, counsel or advisors of the Sole LLC Member who are not also officers, staff, counsel or advisors of the Exchange be allowed to participate in any meetings of the Board of Directors of the Exchange (or any committees of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters) or relating to the structure of the market which the Exchange regulates.

(e) Qualifications and other Requirements.

(i) No Exchange Member shall have more than one officer, director or partner of such Exchange Member elected to the Board of Directors during any term.

(ii) The President and Chief Executive Officer shall serve on the Board only for so long as such person remains the President and Chief Executive Officer.

(iii) No Industry Director may serve on the Board of Directors for more than three (3) consecutive terms. In determining the amount of time a Director has served on the Board of Directors, such Director's service as a director for any predecessor entity of the Exchange shall be taken into account. Any such director may be eligible for election following a two-year hiatus from service on the Board of Directors.

Section 3.3 Vacancies and Newly Created Directorships. In the event that a director position becomes available, whether through a vacancy resulting from death, resignation, retirement, disqualification, removal from office or other cause, or a newly created directorship resulting from any increase in the authorized number of directors, the Nominating Committee, in the case of a vacancy for an Industry Directorship, and the Corporate Governance Committee, in the case of a vacancy for a Non-Industry Directorship, shall nominate, and the Board of Directors shall elect, by the affirmative vote of a majority of the remaining directors, though less than a quorum of the Board of Directors, a person satisfying the qualifications for the class of directors in which there is a vacancy, and any director so chosen shall hold office for a term expiring at the annual meeting of holders of Exchange Rights and the Sole LLC Member at which the term of office of the class to which such director has been elected expires and until such director's successor shall have been duly elected and qualified. No decrease in the number of authorized directors constituting the Whole Board shall shorten the term of any incumbent director.

Section 3.4 Resignation. Any director may resign at any time upon written notice to the Exchange. Any such resignation shall take effect at the time specified therein or, if the time be not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Section 3.5 Removal. Any director may be removed from office at any time, but only for cause and only by the affirmative vote of, in the case of the Non-Industry Directors, the Sole LLC Member, and in the case of the Industry Directors, the holders of at least a majority of the Exchange Rights.

Section 3.6 Meetings. Meetings of the Board of Directors, regular or special, may be held at any place within or without the State of Delaware. Members of the Board of Directors, or of any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. An annual meeting of the Board of Directors shall be held as soon as practicable following each annual meeting of holders of Exchange Rights and the Sole LLC Member. The Board of Directors may fix times and places for such annual and additional regular meetings of the Board of Directors and no further notice of such meetings need be given. A special meeting of the Board of Directors shall be held whenever called by

the Chairman of the Board or by the Secretary if a majority of the Board of Directors shall request such a meeting, at such time and place as shall be specified in the notice or waiver thereof. The person or persons authorized to call a special meeting of the Board of Directors may fix the place and time of the meetings. Notice of any special meeting shall be given to each director at his or her business or residence in writing, by electronic mail or by telegram or by telephone communication. If mailed, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five (5) days before such meeting. If by electronic mail, such notice shall be deemed adequately delivered when the electronic mail is sent at least twenty-four hours before the meeting. If by telegram, such notice shall be deemed adequately delivered when the telegram is delivered to the telegraph company at least twenty-four hours before such meeting. If by facsimile transmission, such notice shall be transmitted at least twenty-four hours before such meeting. If by telephone, the notice shall be given at least twelve hours prior to the time set for the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice of such meeting, except for amendments to this Constitution as provided under Section 10.1 of this Constitution.

Section 3.7 Quorum and Voting. A number of directors equal to at least a majority of the Whole Board, including no less than fifty percent (50%) of the Non-Industry Directors, provided that such requirement shall be deemed satisfied if at least fifty percent (50%) of the Non-Industry Directors are (i) present at or (ii) have waived their attendance for a meeting after receiving an agenda prior to such meeting, shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if there be less than a quorum, a majority of the directors present may adjourn the meeting from time to time, and no further notice thereof need be given other than announcement at the meeting so adjourned. Except as otherwise provided by law, by the LLC Agreement, or by this Constitution, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 3.8 Written Consent of Directors in Lieu of a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or of such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or of such committee.

Section 3.9 Compensation. Directors may receive compensation for services to the Exchange in their capacities as directors or otherwise in such manner and in such amounts as may be fixed from time to time by the Board of Directors.

Section 3.10 Nomination of Directors. (a) (i) Subject to Section 3.2(c), nominees for election of the Industry Directors shall be selected by the Nominating Committee as described in Section 5.3(c) or as provided in this Section 3.10.

(ii) In addition to the nominees for Industry Directors named by the Nominating Committee, persons eligible to serve as such may be nominated for election to the Board of Directors by a petition, signed by the holders of not less than five percent (5%) of the outstanding Exchange Rights of the series entitled to elect

such person if there are more than eighty (80) Exchange Rights in the series entitled to vote, ten percent (10%) of the outstanding rights of such series entitled to elect such person if there are between eighty (80) and forty (40) Exchange Rights in the series entitled to vote, and twenty-five percent (25%) of the outstanding Exchange Rights of such series entitled to elect such person if there are less than forty (40) Exchange Rights in the series entitled to vote. Such petition must be filed with the Secretary at least 45 days prior to the annual meeting for such year. For purposes of determining whether a person has been nominated for election by petition by the requisite percentage, no Exchange Member, alone or together with its affiliates, may account for more than fifty percent (50%) of the signatures of the holders of outstanding Exchange Rights of the series entitled to elect such person, and any such signatures by such Exchange Member, alone or together with its affiliates, in excess of such fifty percent (50%) limitation shall be disregarded.

(b) (i) Nominees for election of the Non-Industry Directors, including the Public Director(s), shall be selected by the Corporate Governance Committee or by the Sole LLC Member in the manner set forth in subparagraph (ii) below. In the event any nominee named by the Corporate Governance Committee withdraws or becomes ineligible, the Corporate Governance Committee may select an additional nominee to replace the withdrawn or ineligible nominee. In making nominations, such committee shall give due consideration to a member's longevity of service on the Board of Directors and the benefits of rotation of the Non-Industry Directors serving on the Board of Directors.

(ii) In addition to the nominees named by the Corporate Governance Committee, persons may be nominated for election to the Board as Non-Industry Directors by a petition, signed by the Sole LLC Member. Such petition must be filed with the Secretary at least 45 days prior to the annual meeting for such year.

(c) Nominees for director shall provide the Secretary such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as a Non-Industry Director, a Public Director or an Industry Director.

Section 3.11 Interested Directors. (a) No director shall directly or indirectly participate as a member of the Board of Directors or of any committee in any matter which would substantially affect his or her interest or the interests of any person in whom he or she is directly or indirectly interested, although interested directors may be counted in determining the presence of a quorum at the meeting of the Board of Directors or of a committee which authorizes actions with respect to such matter.

(b) An interested director shall disqualify himself or herself or shall be disqualified by a vote of the Board of Directors or the chairman of any committee.

(c) For purposes of this Section, a director is not personally interested by reason of being or having been a member of a committee which has made prior inquiry, examination or investigation of the subject under consideration, nor in the determination of matters that may affect the Exchange Members as a whole or certain types of Exchange Members, and Industry Directors shall not be prohibited from participating in such determination by reason of their participation in the normal course of the conduct of Exchange business.

Section 3.12 Chairman of the Board. The Chairman of the Board shall be a Non-Industry Director or Former Employee Director who is elected by the affirmative vote of at least two-thirds of the directors then in office. The Chairman of the Board shall serve as such for a term of one (1) year. The Chairman of the Board shall have the authority provided in this Constitution and the Rules, but shall not be an officer of the Exchange. The Chairman of the Board shall preside at all meetings of holders of Exchange Rights, the Sole LLC Member, and of the Board of Directors.

Section 3.13 Vice Chairman of the Board. The Vice Chairman of the Board shall be elected from among the directors by the affirmative vote of at least two-thirds of the directors then in office. The Vice Chairman of the Board shall serve as such for a term of one (1) year. In the case of the absence or inability of the Chairman of the Board to act, or a vacancy in the office of the Chairman of the Board, the Vice Chairman of the Board shall exercise the powers and discharge the duties of the Chairman of the Board, unless determined otherwise by the Board of Directors. The Vice Chairman of the Board shall have the authority provided in this Constitution and the Rules, but shall not be an officer of the Exchange.

ARTICLE IV

OFFICERS

Section 4.1 Officers. The Board of Directors shall elect a President and Chief Executive Officer, a Secretary and a Treasurer, and one or more Vice Presidents, one or more Assistant Secretaries and one or more Assistant Treasurers. All officers elected by the Board of Directors shall have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article IV, together with such other powers and duties as from time to time may be conferred by the Board of Directors or any committee thereof. Any number of such offices may be held by the same person, but no officer shall execute, acknowledge or verify any instrument in more than one capacity. The Board of Directors may elect, and may delegate power to elect, such other officers, agents and employees as it may deem necessary or proper, who shall hold their offices or positions for such terms, have such authority and perform such duties as may from time to time be determined by or pursuant to authorization of the Board of Directors.

Section 4.2 Election and Term of Office. The officers of the Exchange shall be elected annually by the Board of Directors at the regular meeting of the Board of Directors held after each annual meeting of the Sole LLC Member and holders of Exchange Rights. If the election of officers shall not be accomplished at such meeting, such election shall be accomplished as soon thereafter as convenient. Subject to Section 4.3 of this Constitution, each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death, removal or resignation.

Section 4.3 Resignation and Removal. Any officer may resign at any time upon written notice to the Exchange. Any elected officer may be removed by a majority of the members of the Whole Board, with or without cause, at any time. The Board of Directors may delegate such power of removal as to officers, agents and employees not elected by the Board of Directors. Such removal shall be without prejudice to a person's contract rights, if any, but the appointment of any person as an officer, agent or employee of the Exchange shall not itself create contract rights.

Section 4.4 Compensation and Bond. The compensation of the officers of the Exchange shall be fixed by the Board of Directors, but this power may be delegated to any officer in respect of other officers under his or her control. The Exchange may secure the fidelity of any or all of its officers, agents or employees by bond or otherwise.

Section 4.5 Qualification. The officers and employees of the Exchange shall not be holders of Exchange Rights nor affiliated with an Exchange Member.

Section 4.6 President and Chief Executive Officer. (a) The President and Chief Executive Officer shall be elected by the Board of Directors pursuant to Section 4.1 and shall be nominated for a directorship by virtue of his or her office. The President and Chief Executive Officer shall manage the affairs of the Exchange and shall be the representative of the Exchange in all public matters. The President and Chief Executive Officer shall not engage in any other occupation during his or her incumbency except with the approval of the Board of Directors. The President and Chief Executive Officer may be removed by a vote of two-thirds of the directors then in office, exclusive of the President and Chief Executive Officer, in the event that he or she refuses, fails, neglects or is unable to discharge his or her duties or for any cause affecting the best interests of the Exchange. In the case of temporary absence or inability to act, the President and Chief Executive Officer may designate any other officer to assume all the functions and discharge all the duties of the President and Chief Executive Officer. Upon his or her failure to do so, or if the office of the President and Chief Executive Officer is vacant, any officer so designated by the Board of Directors shall perform the functions and duties of the President and Chief Executive Officer.

(b) The President and Chief Executive Officer shall have such powers and perform such duties as the Board of Directors may from time to time prescribe.

Section 4.7 Vice Presidents. Each Vice President shall have such powers and perform such duties as the Board of Directors may from time to time prescribe.

Section 4.8 Treasurer. The Treasurer shall have charge of all funds and securities of the Exchange, shall endorse the same for deposit or collection when necessary and deposit the same to the credit of the Exchange in such banks or depositaries as the Board of Directors may authorize. He or she may endorse all commercial documents requiring endorsements for or on behalf of the Exchange, may sign all receipts and vouchers for payments made to the Exchange and may disburse funds in accordance with the Rules or as directed by the Board of Directors. He or she shall have all such further powers and duties as generally are incident to the position of Treasurer or as may be assigned to him or her by the Board of Directors.

Section 4.9 Secretary. The Secretary shall record all the proceedings of the meetings of the holders of Exchange Rights, the Sole LLC Member and the Board of Directors in a book to be kept for that purpose and shall also record therein all action taken by written consent of directors in lieu of a meeting. He or she shall determine whether a nominee for either director or a prospective committee member meets the required qualifications for such a position and shall review the qualifications of such persons at least annually. He or she shall attend to the giving and serving of all notices of the Exchange. He or she shall have charge of the ledger setting forth the holders of Exchange Rights and such

other books and papers as the Board of Directors may direct, but he or she may delegate responsibility for maintaining such ledger to any transfer agent appointed by the Board of Directors. He or she shall have all such further powers and duties as generally are incident to the position of Secretary or as may be assigned to him or her by the Board of Directors.

Section 4.10 Assistant Treasurers. In the absence or inability to act of the Treasurer, any Assistant Treasurer may perform all the duties and exercise all the powers of the Treasurer. An Assistant Treasurer shall also perform such other duties as the Treasurer or the Board of Directors may assign to him.

Section 4.11 Assistant Secretaries. In the absence or inability to act of the Secretary, any Assistant Secretary may perform all the duties and exercise all the powers of the Secretary. An Assistant Secretary shall also perform such other duties as the Secretary or the Board of Directors may assign to him.

Section 4.12 Delegation of Duties. In case of the absence of any officer of the Exchange, or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may confer for the time being the powers or duties, or any of them, of such officer upon any other officer or upon any director.

ARTICLE V

COMMITTEES

Section 5.1 Committees of the Board of Directors. (a) The Board of Directors may from time to time, by resolution passed by a majority of the Whole Board, designate one or more additional committees (the "Board Committees"), each committee to consist of one or more directors of the Exchange. The Board of Directors may designate one or more directors as alternate members of any Board Committee, who may replace any absent or disqualified member at any meeting of the committee. The resolution of the Board of Directors may, in addition or alternatively, provide that in the absence or disqualification of a member of a Board Committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such Board Committee, to the extent provided in the resolution of the Board of Directors or in this Constitution, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Exchange, and may authorize the seal of the Exchange to be affixed to all papers which may require it, except with respect to those matters referred to in Section 5.2 of this Constitution and as otherwise provided by law. Unless the resolution of the Board of Directors expressly so provides, no such Board Committee shall have the power or authority to authorize the issuance of Exchange Rights. Any such Board Committee may adopt rules governing the method of calling and time and place of holding its meetings. Unless otherwise set forth herein or as provided by the Board of Directors, a majority of any such Board Committee (or the member thereof, if only one) shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such Board Committee present at a meeting at which a quorum is present shall be the act of such Board Committee. Each such Board Committee shall keep a record of its acts and proceedings and shall report thereon to the Board of Directors whenever requested so to do. Any or all members of any such Board

Committee may be removed, with or without cause, by resolution of the Board of Directors, passed by a majority of the Whole Board.

(b) A committee or subcommittee, other than a Board Committee, may consist of industry and non-industry representatives who are not directors. Such committee members may be appointed by the Board of Directors or the Board of Directors may delegate such authority. Such committee members may only be removed, with or without cause, by resolution of the Board of Directors, passed by a majority of the Whole Board. Each prospective committee member who is not a director shall, upon request, provide the Secretary of the Exchange with such information as is reasonably requested in order to verify that the prospective committee member meets any specified qualifications.

Section 5.2 Executive Committee. The Executive Committee shall consist of six (6) Directors, including the Chairman of the Board, the Vice Chairman of the Board, the President and Chief Executive Officer and three (3) Non-Industry Directors. The Board shall appoint the members of the Executive Committee in accordance with this Section 5.2. The Chairman of the Executive Committee shall be the President and Chief Executive Officer of the Exchange. The Executive Committee shall have and may exercise all the powers and authority of the Board of Directors except that the Executive Committee shall not have the powers of the Board of Directors with respect to approving any merger, consolidation, sale of substantially all of the assets or dissolution of the Exchange.

Section 5.3 Nominating Committee. (a) The Nominating Committee shall not act as a committee of the Board of Directors, but rather shall be a committee of the Exchange. The Nominating Committee shall be composed of three (3) industry representatives. No officer or employee of the Exchange shall serve on the Nominating Committee. Not less than 60 days, but not more than 75 days, prior to each annual meeting of the Sole LLC Member and holders of Exchange Rights, the Nominating Committee shall select nominees for each Industry Directorship to be filled. The Board shall appoint the members of the Nominating Committee in accordance with the qualifications prescribed in this Section 5.3.

(b) A member of the Nominating Committee may not simultaneously serve on the Board of Directors, unless such member is in the final year of his or her term as director and does not stand for reelection to the Board of Directors until such time as he or she is no longer a member of the Nominating Committee.

(c) The Nominating Committee shall nominate persons for election to the Board of Directors as the Industry Directors by the holders of Exchange Rights during the annual meeting pursuant to the following:

(1) The Nominating Committee shall meet on such dates and at such times as determined by the Committee for the purpose of selecting not less than one (1) nominee for each expiring term and vacancy on the Board of Directors for Industry Directors.

(2) The Nominating Committee will accept recommendations of nominations for an expiring term or vacancy of an Industry Director from the holders of Exchange Rights.

(3) In the event any nominee named by the Nominating Committee withdraws or becomes ineligible, the Nominating Committee may select an additional nominee to replace the withdrawn or ineligible nominee.

(d) At all meetings, a quorum for the transaction of business shall consist of a majority of the members of the Nominating Committee. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

Section 5.4 Corporate Governance Committee. The Corporate Governance Committee shall consist of at least three (3) of the Non-Industry Directors, each of whom shall meet the requirements established in the Corporate Governance Committee charter. The Board of Directors shall adopt a charter setting forth the responsibilities of the Corporate Governance Committee.

Section 5.5 Finance & Audit Committee. The Finance & Audit Committee shall consist of not less than three (3) and no more than five (5), Non-Industry Directors each of whom shall meet the requirements established in the Finance & Audit Committee charter. The Board of Directors shall adopt a charter setting forth the responsibilities of the Finance & Audit Committee.

Section 5.6 Compensation Committee. The Compensation Committee shall consist of not less than three (3), and no more than five (5), Non-Industry Directors each of whom shall meet the requirements established in the Compensation Committee charter. The Board of Directors shall adopt a charter setting forth the responsibilities of the Compensation Committee.

Section 5.7 Conduct of Proceedings. Except as otherwise provided in this Constitution, the Rules or by resolution of the Board of Directors, each Committee may determine the manner in which its proceedings shall be conducted.

ARTICLE VI

INDEMNIFICATION AND INSURANCE

Section 6.1 Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was a director or an officer of the Exchange or is or was serving at the request of the Exchange as a director, officer, employee or agent of any other corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to any employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Exchange to the fullest extent authorized by the Act, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Exchange to provide broader indemnification rights than the Act permitted the Exchange to provide prior to such amendment), against all

expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, excise taxes or penalties under the Employee Retirement Income Security Act of 1974, as amended, and amounts paid or to be paid in settlement) reasonably incurred by such indemnitee in connection therewith; provided, however, that except as provided in Section 6.3 with respect to proceedings seeking to enforce rights to indemnification, the Exchange shall indemnify any such indemnitee seeking indemnification in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors.

Section 6.2 Right to Advancement of Expenses. The right to indemnification conferred in Section 6.1 shall include the right to be paid by the Exchange the expenses (including attorneys' fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the Act requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Exchange of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 6.2 or otherwise.

Section 6.3 Right of Indemnitee to Bring Suit. If a claim under Section 6.1 or Section 6.2 is not paid in full by the Exchange within thirty (30) days after a written claim has been received by the Exchange, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the Exchange to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Exchange to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right of an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Exchange to recover an advancement of expenses pursuant to the terms of an undertaking, the Exchange shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the Act. Neither the failure of the Exchange (including its Board of Directors, independent legal counsel or the Sole LLC Member) to have made a determination prior to the commencement of such action that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Act, nor an actual determination by the Exchange (including its Board of Directors, independent legal counsel or the Sole LLC Member) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Exchange to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VI or otherwise shall be on the Exchange.

Section 6.4 Non-Exclusivity of Rights. The right to indemnification and the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the LLC Agreement, provision of this Constitution, agreement, vote of the Sole LLC Member or disinterested directors or otherwise.

Section 6.5 Insurance. The Exchange may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Exchange or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Exchange would have the power to indemnify such person against such expense, liability or loss under the law.

Section 6.6 Indemnification of Employees and Agents of the Exchange. The Exchange may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to the advancement of expenses, to any employee or agent of the Exchange to the fullest extent of the provisions of this Article VI with respect to the indemnification and advancement of expenses of directors and officers of the Exchange.

Section 6.7 Contract Rights. The rights to indemnification and to the advancement of expenses conferred in Section 6.1 and Section 6.2 shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators.

ARTICLE VII

EXCHANGE RIGHTS

Section 7.1 Uncertificated Rights. The Exchange Rights shall be uncertificated rights. The Secretary of the Exchange shall maintain a ledger of such rights. Within a reasonable time following the issuance of any uncertificated rights, the Exchange shall send to the registered holder thereof written confirmation of such issuance of rights.

ARTICLE VIII

WAIVER OF NOTICE

Section 8.1 Waiver of Notice. Whenever notice is required to be given to any holder of Exchange Rights, the Sole LLC Member or director of the Exchange under any provision of the Act or the LLC Agreement or this Constitution, a written waiver thereof, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. In the case of a holder of Exchange Rights, such waiver of notice may be signed by such holder's attorney or proxy duly appointed in writing. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the holders of Exchange Rights, the Sole LLC Member, directors or members of a committee of

directors need be specified in any written waiver of notice.

ARTICLE IX

CHECKS, NOTES, DRAFTS, ETC.

Section 9.1 Checks, Notes, Drafts, Etc. Checks, notes, drafts, acceptances, bills of exchange and other orders or obligations for the payment of money shall be signed by such officer or officers or person or persons as the Board of Directors or a duly authorized committee thereof may from time to time designate.

ARTICLE X

AMENDMENTS

Section 10.1 Amendments. This Constitution may be amended, added to, rescinded or repealed at any meeting of the Board of Directors, provided that notice of the proposed change was given in the notice of the meeting and, in the case of the Board of Directors, in a notice given no less than twenty-four hours prior to the meeting provided, however, if such amendment would alter or change the powers, preferences or special rights of the Sole LLC Member's Interest so as to affect it adversely, such amendment shall also be approved by the Sole LLC Member, in the manner set forth in the LLC Agreement and in this Constitution.

ARTICLE XI

REGULATION

Section 11.1 Rulemaking. The Board of Directors may, by majority vote adopt, amend or repeal such Rules as it may deem necessary or proper, including, but not limited to, Rules with respect to:

- (a) The trading of securities on the Exchange;
- (b) The access of Exchange Members to and the conduct of such Exchange Members with the Exchange System and their use of System facilities;
- (c) Insolvency of the Exchange Members;

- (d) The partners, officers, directors, stockholders and employees of Exchange;
- (e) The business conduct of Exchange Members;
- (f) The business connections of Exchange Members, and their association with or domination by or over corporations or other persons engaged in the securities business;
- (g) Capital requirements for Exchange Members;
- (h) The arbitration of disputes, claims and controversies between Exchange Members and procedures relating thereto; and
- (i) The conduct and procedure for disciplinary hearings and reviews therefrom.

Section 11.2 Supervision. The Board of Directors shall have general supervision over the examination of Exchange Members and associated persons in connection with their conduct of business related to being a member of the Exchange.

- (a) The Board of Directors may examine the business conduct and financial condition of Exchange Members and associated persons.
- (b) The Board of Directors may adopt Rules with respect to the Exchange's supervision over partnership and corporate arrangements and over officers of Exchange Members, as well as with respect to the employment, compensation and duties of such employees as it may deem appropriate.
- (c) The Board of Directors shall supervise all matters relating to the collection, dissemination and use of quotations and of reports of prices on the Exchange.
- (d) The Board of Directors shall have the power to approve or disapprove any connection or means of communication with the Exchange and may require the discontinuance of any such connection or means of communication.

Section 11.3 Securities. The Board of Directors may approve the admission of securities for trading on the Exchange or may remove the same from trading on the Exchange.

Section 11.4 Penalties. The Board of Directors may prescribe and impose penalties for violations of this Constitution or Rules for neglect or refusal to comply with

orders, directions or decisions of the Board of Directors, or for any other offenses against the Exchange.

ARTICLE
E XII

PROVISIONS REGARDING MEMBERS AND
TRADING PRIVILEGES

Section 12.1 PMM Rights.

(a) Each PMM Right shall have the trading rights and privileges as set forth herein and in the Rules for Primary Market Makers so long as the holder thereof meets the Exchange's eligibility criteria and is in good standing. Each such Exchange Member shall be entitled to enter quotations and orders into the Exchange's System for such Exchange Member's own account and to perform other functions specified in the Rules to facilitate execution and handling of orders placed into the Exchange's System with respect to options classes allocated by the Exchange as provided in the Rules. Each such Exchange Member shall also be permitted to effect proprietary transactions in other options classes traded on the Exchange pursuant to the Rules.

(b) The trading privileges associated with a PMM Right shall not be transferable. A holder of PMM Rights may withdraw from the Exchange upon the approval of the Exchange, which shall be given upon a determination that the holder of PMM Rights has satisfied all obligations to the Exchange. Upon such approval and without any payment related thereto, the PMM Rights will be transferred back to the Exchange.

Section 12.2 CMM Rights.

(a) Each CMM Right shall have the trading rights and privileges as set forth herein and in the Rules for Competitive Market Makers so long as the holder thereof meets the Exchange's eligibility criteria and is in good standing. Each such Exchange Member shall be entitled to enter quotations and orders into the Exchange's System for such Exchange Member's own account and to perform other functions specified in the Rules to facilitate execution and handling of orders placed into the Exchange's System with respect to options classes allocated by the Exchange as provided in the Rules. Each such Exchange Member shall also be permitted to effect proprietary transactions in other options classes traded on the Exchange pursuant to the Rules.

(b) The trading privileges associated with a CMM Right shall not be transferable. A holder of CMM Rights may withdraw from the Exchange upon the approval of the Exchange, which shall be given upon a determination that the holder of EAM Rights has satisfied all obligations to the Exchange. Upon such approval and without any payment related thereto, the CMM Rights will be transferred back to the Exchange.

Section 12.3 EAM Rights.

(a) Each EAM Right shall have the trading rights and privileges as set forth herein and in the Rules for Electronic Access Members so long as the holder thereof meets the Exchange's eligibility criteria and is in good standing. Each such Exchange Member shall be entitled to (i) enter orders into the Exchange's System, and/or (ii) clear Exchange Transactions.

(b) The trading privileges associated with an EAM Right shall not be transferable. A holder of EAM Rights may withdraw from the Exchange upon the approval of the Exchange, which shall be given upon a determination that the holder of EAM Rights has satisfied all obligations to the Exchange. Upon such approval and without any payment related thereto, the EAM Rights will be transferred back to the Exchange.

Section 12.4 Approval of Holders of Exchange Rights. Each holder of an Exchange Right must be approved by the Exchange with respect to each right held by such holder. Any holder of Exchange Rights approved by the Exchange shall be deemed an Exchange Member. The good standing of a holder of Exchange Rights may be suspended, terminated or otherwise withdrawn, as provided in the Rules, if any of the requirements for approval set forth therein cease to be maintained, or if such holder violates any agreements with the Exchange or any of the provisions of this Constitution or the Rules.

Section 12.5 Eligibility for Trading Privileges; Members. Exchange Members shall be corporations, partnerships or limited liability companies that meet the requirements for approval as stated in this Constitution and the Rules. Exchange Members must have as the principal purpose of their ownership of Exchange Rights the conduct of a public securities business as defined in the Rules. The good standing of an Exchange Member may be suspended, terminated or otherwise withdrawn, as provided in the Rules, if any of said conditions for approval cease to be maintained or such Exchange Member violates any of its agreements with the Exchange or any of the provisions of this Constitution or the Rules. Unless such an Exchange Member is in good standing, the Exchange Member shall have no rights or trading privileges except as otherwise provided by law, this Constitution or the Rules, shall not hold itself out for any purpose as an Exchange Member, and shall not deal with the Exchange on any basis except as an entity without trading privileges.

Section 12.6 Membership Agreement. No Exchange Member shall be entitled to any privileges thereof until such Exchange Member has agreed to be bound by this Constitution and the Rules by execution of a Membership Agreement. By such agreement such Exchange Member pledges to abide by the same as it has been or shall be from time to time amended.

ARTICLE XIII
DEFINITION OF
TERMS

Section 13.1 Definitions. When used in this Constitution, unless the context otherwise requires:

- (a) The term “the Act” shall mean the Delaware Limited Liability Company Act, 6 § 18-101, et seq.
- (b) The term “affiliate” of a person or “affiliated with” another person means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another person.
- (c) The term “Board Committees” has the meaning set forth in Section 5.1 of this Constitution.
- (d) The term “CMM Right” has the meaning set forth in the LLC Agreement.
- (e) The term “Commission” means the United States Securities and Exchange Commission.
- (f) The term “Competitive Market Maker” means an Exchange Member that is approved to exercise trading privileges associated with CMM Rights.
- (g) The term “Constitution” means this Constitution, as may be amended or amended and restated from time to time.
- (h) The term “control” means the power to exercise a controlling influence over the management or policies of a person, unless such power is solely the result of an official position with such person. Any person who owns beneficially, directly or indirectly, more than twenty percent (20%) of the voting power in the election of directors of a corporation, or more than twenty-five percent (25%) of the voting power in the election of directors of any other corporation which directly, or through one or more affiliates, owns beneficially more than twenty-five percent (25%) of the voting power in the election of directors of such corporation, shall be presumed to control such corporation.
- (i) The term “EAM Right” has the meaning set forth in the LLC Agreement.

(j) The term “Electronic Access Member” means an Exchange Member that is approved to exercise trading privileges associated with EAM Rights.

(k) The term “Exchange” has the meaning set forth in Section 1.1 of this

(l) The term “Exchange Act” means the Securities Exchange Act of 1934, as amended and the rules promulgated thereunder.

(m) The term “Exchange Member” means an organization that has been approved to exercise trading rights associated with Exchange Rights.

(n) The term “Exchange Rights” has the meaning set forth in the LLC Agreement.

(o) The term “Exchange Transaction” means a transaction executed on or through the facilities of the Exchange.

(p) The term “good standing” means that an Exchange Member is not delinquent respecting Exchange dues, fees or other charges and is not suspended or barred from effecting Exchange Transactions or from association with an Exchange Member either by the Exchange or by means of a statutory disqualification.

(q) The term “Industry Directors” has the meaning set forth in Section 3.2 of this Constitution.

(r) The term “industry representative” means a person who is an officer, director or employee of a broker or dealer or who has been employed in any such capacity at any time within the prior three (3) years, as well as a person who has a consulting or employment relationship with or has provided professional services to the Exchange and a person who had any such relationship or provided any such services to the Exchange at any time within the prior three (3) years.

(s) The term “LLC Agreement” means the Limited Liability Company Agreement of the Exchange, dated as of July 31, 2013.

(t) The term “Non-Industry Directors” has the meaning set forth in Section 3.2 of this Constitution.

(u) The term “non-industry representative” means any person that would not be considered an “industry representative,” as well as (i) a person affiliated with a broker or dealer that operates solely to assist the securities-related activities of the business of

non- member affiliates, (ii) an employee of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who is primarily engaged in the business of the non-member entity.

(v) The term “Person” shall mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

(w) The term “person associated with a holder” or an “associated person” means any partner, officer, director, or branch manager of a holder of Exchange Rights (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such holder of Exchange Rights, or any employee of such holder of Exchange Rights.

(x) The term “PMM Rights” has the meaning set forth in the LLC Agreement.

(y) The term “Primary Market Maker” means an Exchange Member that is approved to exercise trading privileges associated with PMM Rights.

(z) The term “Public Director” has the meaning set forth in Section 3.2 of this Constitution.

(aa) The term “public representative” means a non-industry representative who has no material business relationship with a broker or dealer or the Exchange.

(bb) The term “Rules” means the rules of the Exchange as adopted or amended from time to time.

(cc) The terms “Sole LLC Member” has the meaning set forth in Section 1.1 of this Constitution.

(dd) The “System” means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions.

(ee) The terms “Voting Rights” has the meaning set forth in Section 2.5 of this Constitution.

(ff) The term “Whole Board” has the meaning set forth in Section 1.3 of this Constitution.]

EXHIBIT 5D – By-Laws of Nasdaq GEMX, LLC

Text of the proposed rule change.

All text is new.

BY-LAWS OF NASDAQ GEMX, LLC

These By-Laws have been established as the By-laws of Nasdaq GEMX, LLC, a Delaware limited liability company (the "*Company*" or the "*Exchange*"), pursuant to the Limited Liability Company Agreement of the Company, dated as of _____, 2011 (as amended from time to time, the "*LLC Agreement*"), and, together with the LLC Agreement, constitute the limited liability company agreement of the Company within the meaning of the LLC Act (as defined in the LLC Agreement). In the event of any inconsistency between the LLC Agreement and these By-Laws, the provisions of the LLC Agreement shall control.

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

Article I DEFINITIONS

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

- (a) "Act" means the Securities Exchange Act of 1934, as amended.
- (b) "affiliate" has the meaning ascribed to that term in Rule 12b-2 of the General Rules and Regulations under the Act, as in effect on the date of the LLC Agreement.
- (c) "Board" or "Board of Directors" means the Board of Directors of the Company.
- (d) "broker" shall have the same meaning as in Section 3(a)(4) of the Act.
- (e) "Commission" means the Securities and Exchange Commission.
- (f) "Company Member" or "Sole LLC Member" means International Securities Exchange Holdings, Inc., a Delaware corporation, as the sole member of the Company.
- (g) "Contested Election" means an election for one or more Member Representative Directors for which the number of candidates on the List of Candidates exceeds the number of positions to be elected.
- (h) "day" means calendar day.
- (i) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act.
- (j) "Director" means the Persons elected or appointed to the Board of Directors from time to time in accordance with the LLC Agreement and these By-Laws, in their capacity as

managers of the Company.

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

(l) "Executive Representative" means an individual appointed by an Exchange Member to represent, vote, and act for the Exchange Member in all the affairs of the Exchange; provided, however, that other representatives of an Exchange Member may also serve on the Board or committees of the Exchange or otherwise take part in the affairs of the Exchange. If an Exchange Member is also a member of FINRA, the Exchange Executive Representative shall be the same person appointed to serve as the FINRA Executive Representative. An Exchange Member may change its Executive Representative or appoint a substitute for its Executive Representative upon giving notice thereof to the Exchange Secretary via electronic process or such other process as the Exchange may prescribe. An Executive Representative of an Exchange Member or a substitute shall be a member of senior management and registered principal of the Exchange Member. Each Executive Representative shall maintain an Internet electronic mail account for communication with the Exchange and shall update firm contact information as prescribed by the Exchange. Each Exchange Member shall review and, if necessary, update its Executive Representative designation and contact information in the manner prescribed by the Exchange.

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

(n) "Industry member" means a member of any committee appointed by the Board who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a

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

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

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

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

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

(s) "Member Representative member" means a member of any committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to these By-Laws.

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

(u) "Exchange Member" means any registered broker or dealer that has been admitted to membership in the national securities exchange operated by the Company. An Exchange Member is not a member of the Company by reason of being an Exchange Member.

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

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

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

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

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

(aa) "Public member" means a member of any committee appointed by the Board who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA.

(bb) "Record Date" means a date selected by the Board for the purpose of determining the Exchange Members entitled to vote for the election of Member Representative Directors on an Election Date in the event of a Contested Election.

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

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

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

[Adopted by SEC Release [_____] ([_____, 201_]).

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

Section 1. Record and Election Date

(a) The Member Representative Directors shall be elected to the Board on an annual basis. For each annual election of Member Representative Directors, the Board shall select a Record Date and an Election Date. The Record Date shall be at least 10 days but not more than 60

days prior to the Election Date. The Member Nominating Committee shall create a list of one or more candidates for each Member Representative Director position (the "*List of Candidates*") on the Board to be elected on the Election Date. Promptly after selection of the Election Date, in a Notice to Members and in a prominent location on a publicly accessible website, the Company (i) shall announce the Election Date and the List of Candidates, and (ii) shall describe the procedures for Exchange Members to nominate candidates for election at the next annual meeting. In the Event of a Contested Election, the Company shall also send Exchange Members the formal notice described in Section 1(c).

(b) An additional candidate may be added to the List of Candidates by any Exchange Member that submits a timely and duly executed written nomination to the Secretary of the Company. To be timely, an Exchange Member's notice shall be delivered to the Secretary at the principal executive offices of the Company not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's Election Date (provided, however, that in the event that the Election Date is more than 30 days before or more than 70 days after such anniversary date, notice by the Exchange Member must be so delivered not earlier than the close of business on the 120th day prior to such Election Date and not later than the close of business on the later of the 90th day prior to such Election Date or the tenth day following the day on which public announcement of such Election Date is first made by the Company). Such Exchange Member's notice shall set forth: (i) as to the person whom the Exchange Member proposes to nominate for election as a Member Representative Director, all information relating to that person that is required to be disclosed in solicitations of proxies for election of Directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Act and the rules thereunder (and such person's written consent to be named in the List of Candidates as a nominee and to serving as a Director if elected); (ii) a petition in support of the nomination duly executed by the Executive Representatives of 10% or more of all Exchange Members; and (iii) the name and address of the Exchange Member making the nomination. The Company may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a Member Representative Director. For purposes of determining whether a person has been nominated for election by petition by the requisite percentage, no Exchange Member, alone or together with its affiliates, may account for more than 50% of the signatures endorsing a particular candidate, and any such signatures by such Exchange Member, alone or together with its affiliates, in excess of such 50% limitation shall be disregarded.

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

[Adopted by SEC Release [_____] ([_____, 201_]).

Section 2. Voting

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

[Adopted by SEC Release [_____] ([_____] __, 201_)].

Section 3. Filling of Vacancies

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

[Adopted by SEC Release [_____] ([_____] __, 201_)].

Section 4. Member Meetings

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

[Adopted by SEC Release [_____] ([_____] __, 201_)].

Article III BOARD OF DIRECTORS

Section 1. Selection

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

[Adopted by SEC Release [_____] ([_____] __, 201_)].

Section 2. Qualifications

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

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

[Adopted by SEC Release [_____] ([_____, 201_])].

Section 3. Regulation

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

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

[Adopted by SEC Release [_____] ([_____, 201_])].

Section 4. Committees

(a) Upon request of the Secretary of the Company, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Member Representative, Non-Industry, or Public Committee member. The Secretary of the Company shall certify to the Board each prospective committee

member's classification. Such committee members shall update the information submitted under this subsection at least annually and upon request of the Secretary of the Company, and shall report immediately to the Secretary any change in such information.

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

[Adopted by SEC Release [_____] ([_____, 201_]).

Section 5. Committees Composed Solely of Directors

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

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

(c) The Board shall appoint a Regulatory Oversight Committee. The Committee shall oversee the adequacy and effectiveness of the Company's regulatory and self-regulatory organization responsibilities; assess the Company's regulatory performance; and assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Company's regulatory functions. In furtherance of its functions, the Regulatory Oversight Committee shall (A) review the Company's regulatory budget and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (B) meet regularly with the Chief Regulatory Officer in executive session; and (C) be informed about the compensation and promotion or termination of the Chief Regulatory Officer and the reasons therefor. The Regulatory Oversight Committee shall consist of three members, each of whom shall be a Public Director and an "independent director" as defined in Rule 5605 of the Rules of the NASDAQ Stock Market LLC.

[Adopted by SEC Release [_____] ([_____, 201_]).

Section 6. Committees Not Composed Solely of Directors

(a) Reserved.

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

- (i) The Nominating Committee shall consist of no fewer than six and no more than nine members. The number of Non-Industry members on the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee. If the Nominating Committee consists of six members, at least two shall be Public members. If the Nominating Committee consists of seven or more members, at least three shall be Public members. No officer or employee of the Company shall serve as a member of the Nominating Committee in any voting or non-voting capacity. No more than three of the Nominating Committee members and no more than two of the Industry members shall be current Directors.
- (ii) A Nominating Committee member may not simultaneously serve on the Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee.
- (iii) The Member Nominating Committee shall consist of no fewer than three and no more than six members. All members of the Member Nominating Committee shall be a current associated person of a current Exchange Member. The Board will appoint such individuals after appropriate consultation with representatives of Exchange Members.
- (iv) Members of the Nominating Committee and the Member Nominating Committee shall be appointed annually by the Board and may be removed by a majority vote of the Board.
- (v) The Secretary shall collect from each nominee for Director such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Member Representative, Non-Industry, or Public Director, if applicable, and the Secretary shall certify to the Nominating Committee or the Member

Nominating Committee each nominee's classification, if applicable. Directors shall update the information submitted under this subsection at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

- (c) The Board shall appoint a Quality of Markets Committee.
- (i) The Quality of Markets Committee shall have the following functions: (A) to provide advice and guidance to the Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of the national securities exchange operated by the Company from the perspective of investors, both individual and institutional, retail firms, market making firms, Nasdaq-listed companies, and other market participants; and (B) to advise the Board with respect to national market system plans and linkages between the facilities of the Company and other markets.
- (ii) The Quality of Markets Committee shall include broad representation of participants in the national securities exchange operated by the Company, including investors, market makers, integrated retail firms, and order entry firms. The Quality of Markets Committee shall include a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Quality of Markets Committee. The number of Non-Industry members of the Quality of Markets Committee shall equal or exceed the sum of the number of Industry members and Member Representative members.
- (iii) At all meetings of the Quality of Markets Committee, a quorum for the transaction of business shall consist of a majority of the Quality of Markets Committee, including not less than 50 percent of the Non-Industry members. If at least 50 percent of the Non-Industry members (A) are present at or (B) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry members be present to constitute the quorum shall be waived.

[Adopted by SEC Release [_____] ([_____, 201_])].

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

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

- (b) No contract or transaction between the Company and one or more of its Directors

or officers, or between the Company and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum.

[Adopted by SEC Release [_____] ([_____] __, 201_)]).

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

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

[Adopted by SEC Release [_____] ([_____] __, 201_)]).

Article IV OFFICERS, AGENTS, AND EMPLOYEES

Section 1. Delegation of Duties of Officers

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

[Adopted by SEC Release [_____] ([_____] __, 201_)]).

Section 2. Resignation and Removal of Officers

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

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

[Adopted by SEC Release [_____] ([_____] __, 201_)]).

Section 3. Chair of the Board

The Chair of the Board shall preside at all meetings of the Board at which the Chair is present.

The Chair shall exercise such other powers and perform such other duties as may be assigned to the Chair from time to time by the Board.

[Adopted by SEC Release [_____] ([_____] __, 201_)].

Section 4. Chief Executive Officer

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

[Adopted by SEC Release [_____] ([_____] __, 201_)].

Section 5. President

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

[Adopted by SEC Release [_____] ([_____] __, 201_)].

Section 6. Vice President

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

[Adopted by SEC Release [_____] ([_____] __, 201_)].

Section 7. Chief Regulatory Officer

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

[Adopted by SEC Release [_____] ([_____] __, 201_)].

Section 8. Secretary

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

[Adopted by SEC Release [_____] ([_____] __, 201_)].

Section 9. Assistant Secretary

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

[Adopted by SEC Release [_____] ([_____] __, 201_)].

Section 10. Treasurer

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

time by the Board, the Chief Executive Officer or the President.

[Adopted by SEC Release [_____] ([_____, 201_)]].

Section 11. Assistant Treasurer

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

[Adopted by SEC Release [_____] ([_____, 201_)]].

Article V RESERVED.

Article VI RESERVED.

Article VII MISCELLANEOUS PROVISIONS

Section 1. Waiver of Notice

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

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

[Adopted by SEC Release [_____] ([_____, 201_)]].

Section 2. Execution of Instruments, Contracts, etc.

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

authority may be general or confined to specific instances.

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

[Adopted by SEC Release [_____] ([_____, 201_])].

Article VIII AMENDMENTS; EMERGENCY BY-LAWS

Section 1. By the Company Member or Board

These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, by a resolution adopted by the Board at any regular or special meeting of the Board or a written agreement executed and delivered by the Company Member. Amendments to these By-Laws shall not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Act and the rules promulgated thereunder.

[Adopted by SEC Release [_____] ([_____, 201_])].

Section 2. Emergency By-Laws

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

[Adopted by SEC Release [_____] ([_____, 201_])].

Article IX EXCHANGE AUTHORITIES

Section 1. Rules

To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among Exchange Members, to collaborate with governmental and other agencies in the promotion of fair practices and the elimination of fraud, and in general to carry out the purposes of the Company and of the Act, the Board is hereby authorized to adopt such rules and such amendments thereto as it may, from time to time, deem

necessary or appropriate, including, but not limited to, rules for the required or voluntary arbitration of controversies between members and between members and customers or others. If any such rules or amendments thereto are approved by the Commission or otherwise become effective as provided in the Act, they shall become effective Rules as of the date of Commission approval or effectiveness under the Act. The Board is hereby authorized, subject to the provisions of these By-Laws and the Act, to administer, enforce, and interpret any Rules adopted hereunder.

[Adopted by SEC Release [_____] ([_____, 201_)]].

Section 2. Disciplinary Proceedings

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

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

- (i) a breach by an Exchange Member or a person associated with an Exchange Member of any covenant with the Company or its members;
- (ii) violation by an Exchange Member or a person associated with an Exchange Member of any of the terms, conditions, covenants, and provisions of the By-Laws, the Rules, or the federal securities laws, including the rules and regulations adopted thereunder;
- (iii) failure by an Exchange Member or person associated with an Exchange Member to: (A) submit a dispute for arbitration as may be required by the Rules; (B) appear or produce any document in the Exchange Member's or person's possession or control as directed pursuant to the Rules; (C) comply with an award of arbitrators properly rendered, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied; or (D) comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition; or
- (iv) failure by an Exchange Member or person associated with an Exchange Member to adhere to any ruling, order, direction, or decision of or to pay any sanction, fine, or costs imposed by the Board or any entity to which the Board has delegated its powers.

[Adopted by SEC Release [_____] ([_____, 201_)]].

Section 3. Membership Qualifications

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

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

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

[Adopted by SEC Release [_____] ([_____, 201_])].

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

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

[Adopted by SEC Release [_____] ([_____, 201_])].

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

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

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

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

[Adopted by SEC Release [_____] ([_____, 201_])].

EXHIBIT 5E – Nasdaq GEMX, LLC Rules

Text of proposed rule change.

Underlining indicates additions; [Brackets] indicate deletions.

* * * * *

CHAPTER 1**Definitions****Rule 100. Definitions**

(a) The following terms, when used in these Rules, shall have the meanings specified in this Chapter 1, unless the context indicates otherwise. Any term defined in the Limited Liability Company Agreement (the “LLC Agreement”) or the By-Laws of Nasdaq GEMX, LLC (the “By-Laws”)[Article XIII of the Constitution of Nasdaq GEMX, LLC (the “Constitution”)] and not otherwise defined in this Chapter shall have the meaning assigned in the LLC Agreement or the By-Laws[Article XIII of the Constitution].

(1) – (4) No change.

(5) The term “**board of directors**” or “**Board**” has the meaning set forth in Article I of the By-Laws[LLC Agreement].

(6) – (11) No change.

(12) The term “**CMM Rights**” means the non-transferable rights held by a Competitive Market Maker[has the meaning set forth in Article VI of the LLC Agreement].

(13) The term “**Competitive Market Maker**” means a Member that is approved to exercise trading privileges associated with CMM Rights.

(14)[(13)] The term “**covered short position**” means (i) the obligation of a writer of a call option is secured by a “specific deposit” or an “escrow deposit” meeting the conditions of Rule 710(f) or 710(h), respectively, of the Rules of the Clearing Corporation, or the writer holds in the same account as the short position, on a share-for-share basis, a long position either in the underlying security or in an options contract of the same type and class of options where the exercise price of the options contract in such long position is equal to or less than the exercise price of the options contract in such short position; and (ii) the writer of a put option holds in the same account as the short position, on a share-for-share basis, a long position in an options contract of the same type and class of options where the exercise price of the options contract in such long position is equal to or greater than the exercise price of the options contract in such short position.

(15)[(14)] The term “**discretion**” means the authority of a broker or dealer to determine for a customer the type of option, the class or series of options, the number of contracts, or whether options are to be bought or sold.

(16)[(15)] The term “**EAM Rights**” means the non-transferable rights held by an Electronic Access Member[has the meaning set forth in Article VI of the LLC Agreement].

(17) The term “**Electronic Access Member**” means a Member that is approved to exercise trading privileges associated with EAM Rights.

(18)[(16)] The term “**European-style option**” means an options contract that, subject to the provisions of Rule 1100 (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised only on its expiration date.

(19)[(16)] The term “**Exchange Act**” means the Securities Exchange Act of 1934 and the rules and regulations thereunder, as amended from time to time.

(20)[(17)] The term “**Exchange Rights**” means the PMM Rights, CMM Rights and EAM Rights collectively.

(21) The term “**Exchange Transaction**” means a transaction executed on or through the facilities of the Exchange.

(22)[(18)] The term “**exercise price**” means the specified price per unit at which the underlying security may be purchased or sold upon the exercise of an options contract.

(23)[(19)] The term “**Federal Reserve Board**” means the Board of Governors of the Federal Reserve System.

(24) The term “**good standing**” means that a Member is not delinquent with respect to Exchange dues, fees or other charges and is not suspended or barred from effecting Exchange Transactions or from association with a Member either by the Exchange or by means of a statutory disqualification.

(25)[(20)] The terms “**he**,” “**him**” or “**his**” shall be deemed to refer to persons of female as well as male gender, and to include organizations, as well as individuals, when the context so requires.

(26)[(21)] The term “**ISE**” means Nasdaq ISE, LLC, a national securities exchange.

(27)[(22)] The term “**long position**” means a person’s interest as the holder of one or more options contracts.

[(22A) The term “**LLC Agreement**” means the Limited Liability Company Agreement of the Exchange, dated as of [], as amended from time to time.]

(28)[(23)] The term “**Member**” means an organization that has been approved to exercise trading rights associated with Exchange Rights.

(29)[(24)] The term “**Membership**” refers to the trading privileges associated with Exchange Rights.

(30)[(25)] The term “**market makers**” refers to “Competitive Market Makers” and “Primary Market Makers” collectively.

(31)[(26)] The term “**Market Maker Rights**” refers to PMM Rights and CMM Rights collectively.

(32)[(27)] The term “**Non-Customer**” means a person or entity that is a broker or dealer in securities.

(33)[(28)] The term “**Non-Customer Order**” means an order for the account of a Non-Customer.

(34)[(29)] The term “**offer**” means a quote or limit order to sell one or more options contracts.

(35)[(30)] The term “**opening purchase transaction**” means an Exchange transaction that will create or increase a long position in an options contract.

(36)[(31)] The term “**opening writing transaction**” means an Exchange transaction that will create or increase a short position in an options contract.

(36A)[(31A)] The term “**Voluntary Professional**” means any Public Customer that elects, in writing, to be treated in the same manner as a broker or dealer in securities for purposes of Rules 713, 716, and 723, as well as the Exchange’s schedule of fees.

(37)[(32)] The term “**options contract**” means a put or a call issued, or subject to issuance by the Clearing Corporation pursuant to the Rules of the Clearing Corporation.

(38)[(33)] The term “**OPRA**” means the Options Price Reporting Authority.

(39)[(34)] The term “**order**” means a commitment to buy or sell securities, the permitted types of which are set forth in Rule 715.

(40)[(35)] The term “**outstanding**” means an options contract which has been issued by the Clearing Corporation and has neither been the subject of a closing writing transaction nor has reached its expiration date.

(41)[(36)] The term “**PMM Rights**” means the non-transferable rights held by a Primary Market Maker[has the meaning set forth in Article VI of the LLC Agreement].

(42) The term “**Primary Market Maker**” means a Member that is approved to exercise trading privileges associated with PMM Rights.

(43)[(37)] The term “**primary market**” means the principal market in which an underlying security is traded.

(43A)[(37A)] The term “**Priority Customer**” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

(43B)[(37B)] The term “**Priority Customer Order**” means an order for the account of a Priority Customer.

(43C)[(37C)] The term “**Professional Order**” means an order that is for the account of a person or entity that is not a Priority Customer.

(i) No change.

(a) – (c) No change.

(44)[(38)] The term “**Public Customer**” means a person or entity that is not a broker or dealer in securities.

(45)[(39)] The term “**Public Customer Order**” means an order for the account of a Public Customer.

(46)[(40)] The term “**put**” means an options contract under which the holder of the option has the right, in accordance with the terms and provisions of the option, to sell to the Clearing Corporation the number of shares of the underlying security covered by the options contract.

(47)[(41)] The term “**Quarterly Options Series**” means a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and that expires at the close of business on the last business day of a calendar quarter.

(48)[(42)] The term “**quote**” or “**quotation**” means a bid or offer entered by a market maker that updates the market maker’s previous bid or offer, if any.

(49)[(43)] The term “**Rules of the Clearing Corporation**” means the Certificate of Incorporation, the By-laws and the Rules of the Clearing Corporation, and all written interpretations thereof, as the same may be in effect from time to time.

(50)[(44)] The term “**SEC**” means the United States Securities and Exchange Commission.

(51)[(45)] The term “**series of options**” means all options contracts of the same class having the same exercise price and expiration date.

(52)[(46)] The term “**short position**” means a person’s interest as the writer of one or more options contracts.

(53)[(47)] The term “**Short Term Option Series**” means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for

trading on any Thursday or Friday that is a business day and that expires on the Friday of the following business week that is a business day. If a Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Friday.

(54)[(48)] The term “**SRO**” means a self-regulatory organization as defined in Section 3(a)(26) of the Exchange Act.

(55) The term “**System**” means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions.

(56)[(49)] The term “**type of option**” means the classification of an options contract as either a put or a call.

(57)[(50)] The term “**uncovered**” means a short position in an options contract that is not covered.

(58)[(51)] The term “**underlying security**” means the security that the Clearing Corporation shall be obligated to sell (in the case of a call option) or purchase (in the case of a put option) upon the valid exercise of an options contract.

**CHAPTER 2
Administration****Rule 200. Establishment of Committees**

The Chief Executive Officer and President, with the approval of the Board, shall appoint any committee members that are not Directors to committees established upon delegated authority by the Board as set forth in the By-Laws[Constitution], or established by the Chief Executive Officer and President pursuant to authority delegated to him by the Board.

* * * * *

Rule 202. Committee Procedures

Except as otherwise provided in the By-Laws[Constitution], the Rules or resolution of the Board, each committee shall determine its own time and manner of conducting its meetings, and the vote of a majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee. Committees may act informally by written consent of all of the members of the committee.

Rule 203. General Duties and Powers of Committees

Each committee shall administer the provisions of the By-Laws[Constitution] and the Rules pertaining to matters within its jurisdiction. Each committee shall have such other powers and duties as may be delegated to it by the Board. Each committee is subject to the control and supervision of the Board.

* * * * *

CHAPTER 3 Membership

* * * * *

Rule 302. Member Application Procedures

(a) – (b) No change.

(c) *Rights of Members.* No rights shall be conferred upon a Member except those set forth in the [LLC Agreement or] Rules as amended from time to time. A Membership shall not convey any ownership interest in the Exchange. Memberships may not be leased and are not transferable except in the event of a change in control or corporate reorganization involving a Member. In such case, Member status may be transferred to a qualified affiliate or successor upon written notice to the Exchange.

(d) No change.

(e) *Exchange Jurisdiction over Members.* Every Member shall be subject to the regulatory jurisdiction of the Exchange under the Exchange Act[, the LLC Agreement] and the Rules, including without limitation the Exchange's disciplinary jurisdiction under Chapter 16 of the Rules.

* * * * *

Rule 304. Approval to Operate Multiple Memberships

(a) No change.

(b) An applicant or approved Member will be denied approval with respect to a particular Membership if (together with any of its affiliates) approval would result in the applicant or approved Member being approved to exercise the trading privileges associated with more than 30% of the Exchange Rights issued and outstanding at any time. No Member shall exercise voting rights in excess of those permitted under the Exchange's By-Laws[LLC Agreement or Constitution].

Rule 305. Persons Associated with Members

(a) Persons associated with Members shall be bound by the By-Laws[Constitution] and Rules of the Exchange and the rules of the Clearing Corporation. The Exchange may bar a person from becoming or continuing to be associated with a Member if such person does not agree in writing, on a form prescribed by the Exchange, to furnish the Exchange with information with respect to such person's relationship and dealings with the Member, and information reasonably related to such person's other securities business, as may be required by the Exchange, and to permit the examination of its books and records by the Exchange to verify the accuracy of any information so supplied.

(b) – (c) No change.

* * * * *

Rule 307. Documents Required of Applicants and Members

(a) – (b) No change.

(c) In a manner and form prescribed by the Exchange, every Member shall pledge to abide by the By-Laws[Constitution] and Rules of the Exchange, as amended from time to time, and by all circulars, notices, directives or decisions adopted pursuant to or made in accordance with the By-Laws[Constitution] and Rules.

(d) Members shall keep and maintain a current copy of the By-Laws[Constitution] and Rules in a readily accessible place. Members that are approved to do business with the public pursuant to Rule 600 shall make the By-Laws[Constitution] and Rules available for examination by customers.

* * * * *

Rule 309. Limitation on Affiliation between the Exchange and Members

(a) Without prior SEC approval, the Exchange, or any facility of the Exchange, or any entity with which the Exchange or any facility of the Exchange is affiliated shall not, directly or indirectly through one or more intermediaries, acquire or maintain an ownership interest in a Member. In addition, a Member shall not be or become an affiliate of the Exchange, or any facility of the Exchange, or any entity with which the Exchange or any facility of the Exchange is affiliated. In addition, no Member or person associated with a Member shall be the beneficial owner, directly or indirectly, of greater than twenty percent (20%) of the (i) then-outstanding voting Limited Liability Company Interest of the Exchange, or (ii) then-outstanding voting securities of Nasdaq, Inc. Nothing in this Rule shall prohibit any Member from being or becoming an affiliate of the Exchange, or any facility of the Exchange, or an affiliate of any affiliate of the Exchange or any facility of the Exchange solely by reason of any officer, director or partner of such Member being or becoming a Member Representative Director (as defined in the By-Laws) pursuant to the By-Laws[an Exchange Director (as defined in the Constitution) pursuant to the Constitution]. For purposes of this rule, any calculation of the voting Limited Liability Company Interest of the Exchange or the voting securities of Nasdaq, Inc. outstanding at any particular time shall be made in accordance with the last sentence of SEC Rule 13d-3(d)(1)(i)(D). The term “beneficially owned”, including all derivative or similar words, shall have the meaning set forth in the Amended and Restated Certificate of Incorporation of Nasdaq, Inc.

(b) No change.

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CHAPTER 7
Doing Business On The Exchange

* * * * *

Rule 706. Access to and Conduct on the Exchange

(a) – (b) No change.

Supplementary Material to Rule 706

.01 (a) No change.

.01 (b) No change.

(1) No change.

(2) No change.

(i) – (ii) No change.

(iii) Sponsoring Member shall comply with the Exchange's Certificate of Formation, By-Laws[Constitution], Rules and procedures with regard to the Exchange and Sponsored Customer shall comply with Exchange's Certificate of Formation, By-Laws[Constitution], Rules and procedures with regard to the Exchange, as if Sponsored Customer were an Exchange Member.

(iv) – (ix) No change.

(3) No change.

* * * * *

Rule 711. Acceptance of Quotes and Orders

(a) All bids or offers made and accepted on the Exchange in accordance with the Rules shall constitute binding contracts, subject to applicable requirements of the By-Laws[Constitution] and the Rules and the rules of the Clearing Corporation.

(b) – (c) No change.

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Rule 713. Priority of Quotes and Orders*(a) Definitions.*

As provided in Rule 100(a)(4) and (a)(34)[(29)], a “bid” is a quotation or limit order to buy options contracts and an “offer” is a quotation or limit order to sell options contracts. “Quotations,” which are defined in Rule 100(a)(48)[(42)], may only be entered on the Exchange by market makers in the options classes to which they are appointed under Rule 802. Limit orders may be entered by market makers in certain circumstances as provided in the Rules and by Electronic Access Members (either as agent or as principal). “Priority Customer Orders” and “Professional Orders” are defined in Rule 100(a)(43B)[(37B)] and (43C)[(37C)].

(b) – (e) No change.

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Rule 720. Nullification and Adjustment of Options Transactions including Obvious Errors

The Exchange may nullify a transaction or adjust the execution price of a transaction in accordance with this Rule. However, the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution. It is considered conduct inconsistent with just and equitable principles of trade for any Member to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

(a) Definitions.

(1) *Customer.* For purposes of this Rule, Customer has the same definition as Priority Customer in Rule 100(a)(43A)[(37A)].

(2) – (4) No change.

(b) – (k) No change.

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