

Proposed deletions are enclosed in [brackets]; proposed new text is underscored.



**[SECOND] THIRD AMENDED AND RESTATED BY-LAWS  
OF  
NATIONAL STOCK EXCHANGE, INC.**

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**[~~SECOND~~]THIRD AMENDED AND RESTATED BY-LAWS  
OF  
NATIONAL STOCK EXCHANGE, INC.  
(a Delaware corporation)**

**ARTICLE I  
DEFINITIONS**

Section 1.1. Definitions. When used in these By-Laws, unless the context otherwise requires:

**A.**

**Act**

- (1) The term “Act” shall mean the Securities Exchange Act of 1934, as amended.

**Affiliate**

- (2) The term “affiliate” of, or a person “affiliated” with a specific person, shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

**B.**

**Board**

- (1) The term “Board” shall mean the Board of Directors of the Exchange.

**By-Laws**

- (2) The term “By-Laws” shall mean the bylaws of the Exchange.

**C.**

**Commission**

- (1) The term “Commission” shall mean the United States Securities and Exchange Commission.

**D. Reserved**

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**E.**

**ETP Holder**

(1) The term “ETP Holder” shall mean any individual, corporation, partnership, limited liability company or other entity that holds an equity trading permit issued by the Exchange to trade securities on the market operated by the Exchange. An ETP Holder will have the status of a “member” of the Exchange as that term is defined in Section 3 of the Act.

**ETP Holder Director**

(2) The term “ETP Holder Director” shall mean a director who is an ETP Holder or a director, officer, managing member or partner of an entity that is, or is an affiliate of, an ETP Holder.

**ETP Holder Representative**

(3) The term “ETP Holder Representative” shall mean a representative of any committee or hearing panel who is an officer, director, employee or agent of an ETP Holder.

**Exchange**

(~~3~~4) The term “Exchange” shall mean National Stock Exchange, Inc., a Delaware corporation.

**F. – H. Reserved**

**I.**

**Independent Director**

(1) The term “Independent Director” shall mean a member of the Board that the Board has determined to have no material relationship with the Exchange or any affiliate of the Exchange, or any ETP Holder or any affiliate of any such ETP Holder, other than as a member of the Board.

**Industry Director**

(2) The term “Industry Director” shall mean a member of 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 member of

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the Board or 20 percent or more of the gross revenues received by the member of the Board'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 member of the Board or member or 20 percent or more of the gross revenues received by the member of the Board'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 has had any such relationship or provided any such services at any time within the prior three years.

**J – M.** Reserved

**N.**

**Non-Industry Director**

(1) The term "Non-Industry Director" shall mean a member of the Board who is (i) an Independent Director; or (ii) any other individual who would not be an Industry Director.

**O.** Reserved

**P.**

**Person**

(1) The term "person" shall mean a natural person, partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government.

**Q.** Reserved

**R.**

**Rules**

(1) The term "Rules" or "Exchange Rules" shall mean the rules of the Exchange adopted by the Board pursuant to Section 3.1(b) of the By-Laws.

**S.**

**Securities Act**

(1) The term "Securities Act" shall mean the Securities Act of 1933, as amended.

**Statutory Disqualification**

(2) The term "Statutory Disqualification" shall have the same meaning as "statutory disqualification" in Section 3(a)(39) of the Act.

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Article II: Registered Office and Agent; Offices

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## **ARTICLE II**

### **REGISTERED OFFICE AND AGENT; OFFICES**

Section 2.1. Registered Office and Registered Agent. The Exchange shall maintain a registered office in the State of Delaware at such location as shall from time to time be determined by the Board. The registered agent of the Exchange in the State of Delaware shall be such person or entity as shall from time to time be determined by the Board.

Section 2.2. Other Offices. The Exchange may also have offices at such other locations both within and without the State of Delaware as the Board may from time to time determine or the business or purposes of the Exchange may require.

**ARTICLE III**  
**BOARD OF DIRECTORS**

Section 3.1. Powers.

(a) The business and affairs of the Exchange shall be managed by its Board, except to the extent that the authority, powers and duties of such management shall be delegated to a committee or committees of the Board pursuant to these By-Laws or the Rules. The Board, acting in accordance with the terms of these By-Laws and the Rules, shall be vested with all powers necessary for the government of the Exchange as an “exchange” within the meaning of the Act, the regulation of the business conduct of the ETP Holders, and the promotion of the welfare, objects and purposes of the Exchange.

(b) The Board shall have the power to adopt, amend or repeal the Rules in accordance with Section 8.2.

(c) The Board shall exercise all such powers of the Exchange and do all such lawful acts and things as are not by law, the Certificate of Incorporation, these By-Laws or the Rules, directed or required to be exercised, done or approved by the stockholders of the Exchange or the ETP Holders.

Section 3.2. General Composition.

(a) Subject to Section 3.2(b), the Board shall consist of not fewer than seven (7) and not more than twenty-five (25) directors.

(b) The Board may, by resolution, add or remove director positions to the Board, provided that no removal of a director position shall have the effect of shortening the term of any incumbent director. The Board at all times shall include the Chief Executive Officer of the Exchange, at least 50% Non-Industry Directors (at least one of whom shall be an Independent Director) and such number of ETP Holder Directors as is necessary to comprise at least 20% of the Board. Newly-created director positions pursuant to this Section 3.2(b) shall be filled: *first*, by Non-Industry Directors, to the extent necessary for the Board to consist of at least 50% Non-Industry Directors, *second*, by ETP Holder Directors, to the extent necessary for the Board to consist of at least 20% ETP Holder Directors, and *third*, by Industry or Non-Industry Directors, for the remainder of any newly-created director positions of the Board that are not filled pursuant to the *first* and *second* clauses of this sentence. For purposes of calculating the percentage of Non-Industry Directors herein, the Chief Executive Officer of the Exchange shall be excluded.

(c) No two or more directors may be partners, officers or directors of the same person or be affiliated with the same person, unless such affiliation is with a national securities exchange or [CBOE Stock Exchange, LLC]National Stock Exchange Holdings, Inc. No director need be a stockholder.

(d) A director may not be subject to a Statutory Disqualification.

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Section 3.3. Reserved.

Section 3.4. Terms of Office.

(a) CEO Director. The Board term of the Chief Executive Officer shall expire when such individual ceases to be Chief Executive Officer of the Exchange.

(b) ETP Holder Directors. The ETP Holder Directors shall serve one-year terms. The term of office for each ETP Holder Director elected at each annual meeting shall be until the annual meeting of stockholders of the Exchange in the year after the date of election. In the case of any new ETP Holder Director as contemplated by Section 3.2, such director shall have an initial term expiring at the next annual meeting of stockholders of the Exchange. All ETP Holder Directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of a director's earlier death, retirement, removal or disqualification.

(c) Non-Industry Directors. The Non-Industry Directors shall serve one-year terms. The term of office for each Non-Industry Director elected at each annual meeting shall be until the annual meeting of stockholders of the Exchange in the year after the date of election. In the case of any new Non-Industry Director as contemplated by Section 3.2, such director shall have an initial term expiring at the next annual meeting of stockholders of the Exchange. All Non-Industry Directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of a director's earlier death, retirement, resignation, removal or disqualification.

(d) Independent Directors. A Non-Industry Director may be an Independent Director. With reference to any Non-Industry Director who is also an Independent Director, such director's term of office shall be determined pursuant to Section 3.4(c) above.

(e) Industry Directors. The Industry Directors shall serve one-year terms. The term of office for each Industry Director elected at each annual meeting shall be until the annual meeting of stockholders of the Exchange in the year after the date of election. In the case of any new Industry Director as contemplated by Section 3.2, such director shall have an initial term expiring at the next annual meeting of stockholders of the Exchange. All Industry Directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of a director's earlier death, retirement, resignation, removal or disqualification.

Section 3.5. Nomination and Election.

(a) Candidates for election as a director shall be nominated by the Governance and Nominating Committee as follows:

(b) The Governance and Nominating Committee each year shall nominate directors for each director position standing for election at the annual meeting of stockholders that year. For positions requiring persons who qualify as ETP Holder Directors, the Governance and Nominating Committee shall nominate only those persons whose names have been



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approved and submitted by the ETP Holder Director Nominating Committee and (to the extent required by subsection (e) below) presented to, and approved by, the ETP Holders pursuant to the procedures set forth below in this Section 3.5.

(c) The ETP Holder Director Nominating Committee shall consult with the Governance and Nominating Committee, the Chairman of the Board and the Chief Executive Officer, and shall solicit comments from the ETP Holders for the purpose of approving and submitting names of candidates for election to the position of ETP Holder Director. Not later than seventy-five (75) days prior to the date announced for the annual meeting of stockholders, the ETP Holder Director Nominating Committee shall submit to the Governance and Nominating Committee the initial nominees for ETP Holder Director positions on the Board.

(d) Not later than sixty (60) days prior to the date announced for the annual meeting of stockholders, the Governance and Nominating Committee shall report to the Secretary of the Exchange the initial nominees for ETP Holder Director positions on the Board that have been approved and submitted by the ETP Holder Director Nominating Committee. The Secretary shall promptly notify ETP Holders of those initial nominees. ETP Holders may identify other candidates for the ETP Holder Director positions by delivering to the Secretary, at least thirty-five (35) days before the date announced for the annual meeting of stockholders, a written petition, which shall designate the candidate by name and office and shall be signed by ten percent (10%) or more of the ETP Holders. An ETP Holder may endorse as many candidates as there are ETP Holder Director positions to be filled. No ETP Holder, together with its affiliates, may account for more than fifty percent (50%) of the signatures endorsing a particular candidate, and any signatures of such ETP Holder, together with its affiliates, in excess of fifty percent (50%) limitation shall be disregarded.

(e) If one or more valid petitions are received, the Secretary shall notify all ETP Holders of record (as of the close of business on the day before the date of such notice) of the names of the initial nominees approved and submitted by the ETP Holder Director Nominating Committee and those additional candidates identified by the ETP Holders, (the "List of Candidates"), as well as of the time and date of an election to be held at least twenty (20) days prior to the annual stockholders' meeting to confirm the ETP Holders' selections of nominees for ETP Holder Directors. In such elections, each ETP Holder shall have one (1) vote with respect to each ETP Holder Director position that is to be filled at the annual stockholders' meeting; provided, however, that any such vote must be cast for a person on the List of Candidates and that no ETP Holder, together with its affiliates, may account for more than twenty percent (20%) of the votes cast for a candidate, and any votes cast by such ETP Holder, together with its affiliates, in excess of such twenty percent (20%) limitation shall be disregarded. No ETP Holder shall have the right to vote cumulatively in the election of any directors. Votes may be cast in person or by proxy. The individuals receiving the largest number of votes shall be the persons approved by the ETP Holders as ETP Holder Director nominees. The Secretary shall notify the Governance and Nominating Committee of the results of the election.

(f) If no valid petitions from the ETP Holders are received by the date that is thirty-five (35) days prior to the date that is announced for the annual meeting of stockholders, the initial nominees approved and submitted by the ETP Holder Director Nominating Committee

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shall be deemed to be the persons approved by the ETP Holders as the ETP Holder Director nominees, and the Secretary shall so notify the Governance and Nominating Committee.

Section 3.6. Chairman. The Board, acting through a vote of a majority of its directors, shall elect a Chairman of the Board from among the directors of the Exchange. The Chairman may also serve as the Chief Executive Officer and/or President of the Exchange, but may hold no other offices in the Exchange. Unless the Chairman of the Board also serves as the Chief Executive Officer of the Exchange, the Board shall elect the Chairman from among the Non-Industry Directors. Unless another director is appointed by the Board for such purpose in the Chairman's absence, the Chairman shall preside at all meetings of the stockholders and the Board. The Chairman shall also have such other duties, authority and obligations as may be given to him or her by these By-Laws or by the Board.

Section 3.7. Vacancies.

(a)(i) Notwithstanding any provision herein to the contrary, any vacancy in the Board, however occurring, including a vacancy resulting from an increase in the number of the directors, may be filled by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director, provided such new director qualifies for the category in which the vacancy exists. A director elected to fill a vacancy shall hold office until the next annual meeting of stockholders, subject to the election and qualification of his or her successor and to his or her earlier death, resignation, disqualification or removal.

(ii) If the Board fills a vacancy resulting from a ETP Holder Director position becoming vacant prior to the expiration of such ETP Holder Director's term, or resulting from the creation of an additional ETP Holder Director position required by an increase in the size of the Board, then the Board shall follow the procedures set forth in this Section 3.7(a)(ii). In such an event, the ETP Holder Director Nominating Committee shall either (i) recommend an individual to the Board to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the Board from which the Board shall elect the individual to fill such vacancy. The Board shall elect, pursuant to this Section 3.7(a)(ii), only individuals recommended by the ETP Holder Director Nominating Committee. Any vacancy filled pursuant to this Section 3.7(a)(ii), shall be filled by the vote of a majority of the directors then in office, although less than a quorum.

(b) In the event any director fails to maintain any of the qualifications for such director set forth in these By-Laws or the Certificate of Incorporation of the Exchange, of which failure the Board shall be the sole judge, such director shall, upon determination of the Board that such director is no longer qualified, cease to be a director, such director's office shall be deemed vacant and (effective upon the expiration of any grace period for re-qualification permitted by the Board pursuant to Section 3.7(c) below) the vacancy may be filled by the Board with a person who so qualifies for such director's position in compliance with Section 3.7(a) above.

(c) The Board in its discretion may institute a grace period for a reasonable length of time for re-qualification for a director who ceases to be a director pursuant to Section 3.7(b) above. If any such grace period is instituted, during such period up until the time when the director re-qualifies, the director shall be deemed not to hold office and the director position

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formerly held by the director shall be deemed to be vacant for all purposes. The Board shall be the sole judge of whether a director has re-qualified.

(d) An ETP Holder Director whose individual status as an ETP Holder has been temporarily suspended, or whose ETP Holder organization has been temporarily suspended as an ETP Holder, shall not be deemed to lose his or her qualification as a director by reason of such suspension during the period of suspension.

Section 3.8. Removal. As set forth in the Certificate of Incorporation of the Exchange, except as provided herein, any director may be removed from office by a vote of the stockholders at any time with or without cause; provided, however, that any ETP Holder Director may only be removed for cause. For purposes of this Section 3.8, "cause" shall mean only (i) a breach of a director's duty of loyalty to the Exchange or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) actions resulting in liability under Section 174 of the General Corporation Law of Delaware, or (iv) transactions from which a director derived an improper personal benefit. Any director may be removed for cause by the holders of a majority of the shares of capital stock then entitled to be voted at an election of directors.

Section 3.9. Place of Meetings; Mode. Any meeting of the Board may be held at such place, within or without the State of Delaware, as shall be designated in the notice of such meeting, but if no such designation is made, then the meeting will be held at the principal business office of the Exchange. Members of the Board or any committee of the Board may participate in a meeting of the Board or committee by conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 3.10. Regular Meetings. Regular meetings of the Board may be held, with or without notice, at such time or place as may from time to time be specified in a resolution adopted by the Board.

Section 3.11. Special Meetings.

(a) Special meetings of the Board may be called on a minimum of two (2) days notice to each director by the Chairman of the Board or the Chief Executive Officer, and shall be called by the Secretary upon the written request of three (3) directors then in office.

(b) The person or persons calling a special meeting of the Board shall fix the time and place at which the meeting shall be held, and such time and place shall be specified in the notice of such meeting. Notice of any special meeting shall be given to each director at his or her business address or such other address as he or she may have advised the Secretary of the Exchange to use for such purpose. If delivered, notice shall be deemed to be given when delivered to such address or to the director to be notified. If mailed, such notice shall be deemed to be given five (5) business days after deposit in the United States mail, postage prepaid, of a letter addressed to the appropriate location. Notice may also be given by

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telephone, electronic transmission or other means not specified in this section, and in each such case shall be deemed to be given when actually received by the director to be notified.

Section 3.12. Voting; Quorum and Action by the Board. Each director shall be entitled to one (1) vote. At all meetings of the Board, the presence of a majority of the number of directors then in office shall constitute a quorum for the transaction of business. 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 except as may be otherwise specifically provided by statute, the Certificate of Incorporation or these By-Laws.

Section 3.13. Waiver of Notice. A written waiver of notice, signed by a director entitled to notice of a meeting of the Board, whether before or after the time of the meeting stated in the notice, shall be deemed equivalent to the giving of such notice to that director. Attendance of a director at a meeting of the Board or of a committee of the Board of which the director is a member shall constitute a waiver of notice of such meeting, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 3.14. Presumption of Assent. A director of the Exchange who is present at a duly convened meeting of the Board or of a committee of the Board at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken unless his or her dissent or election to abstain shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent or election to abstain to such action with the person acting as the secretary of the meeting before the adjournment of the meeting or shall forward such dissent or election to abstain by registered or certified mail to the Secretary of the Exchange immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a director who voted in favor of such action.

Section 3.15. Action in Lieu of Meeting. Unless otherwise restricted by statute, the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing(s) or electronic transmission(s) are filed with the minutes of proceedings of the Board or the committee.

Section 3.16. Compensation. The directors may be paid their reasonable expenses, if any, of attendance at each meeting of the Board and at each meeting of a committee of the Board of which they are members. The Board, irrespective of any personal interest of any of its members, shall have authority to fix compensation of all directors for services to the Exchange as directors, officers or otherwise.

Section 3.17. Interpretation of By-Laws. Subject to the Act, including section 19 thereunder, the Board shall have the power to interpret these By-Laws and any interpretation made by it shall be final and conclusive.

**ARTICLE IV****STOCKHOLDERS**

Section 4.1. Annual Meeting. The annual meeting of the stockholders shall be held at such place and time as determined by the Board for the purpose of electing directors and for conducting such other business as may properly come before the meeting. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting.

Section 4.2. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, may be called by the Chairman, the Board or the Chief Executive Officer, and shall be called by the Secretary at the request in writing of stockholders owning not less than a majority of the then issued and outstanding capital stock of the Exchange entitled to vote. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting. Business transacted at any special meeting of stockholders shall be limited to the purpose(s) stated in the notice of the meeting.

Section 4.3. List of Stockholders. The Secretary of the Exchange, or such other person designated by the Secretary or the Board, shall have charge of the stock ledger of the Exchange and shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting, and may be inspected by any stockholder who is present.

Section 4.4. Quorum and Vote Required for Action.

(a) The holders of a majority of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute, the Certificate of Incorporation or these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

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(b) When a quorum is present at any meeting, the vote of the holders of a majority of the capital stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the Certificate of Incorporation, a different vote is required in which case such express provision shall govern and control the decision of such question.

Section 4.5. Voting of Shares; Proxies. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, each stockholder of the Exchange shall at every meeting of the stockholders be entitled to one (1) vote in person or by proxy for each share of the capital stock having voting power held by such stockholder, but no proxy shall be voted on after three (3) years from its date, unless the proxy provides for a longer period. Any such proxy shall be in writing and shall be filed with the Secretary of the Exchange before or at the time of the meeting.

Section 4.6. Action in Lieu of Meeting. As set forth in the Certificate of Incorporation of the Exchange, any action upon which a vote of stockholders is required or permitted, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding capital stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Exchange in the manner required by law, provided that the matter to be acted upon by such written consent previously has been directed by the Board to be submitted to the stockholders for their action by written consent. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not so consented in writing.

**ARTICLE V****COMMITTEES**

Section 5.1. Number of Committees. The committees of the Board shall consist of a Business Conduct Committee, an Appeals Committee, a Governance and Nominating Committee, an ETP Holder Director Nominating Committee, a Regulatory Oversight Committee, an Executive Compensation Committee, an Executive Committee, an Audit Committee, and such other committees as may be from time to time established by the Board. Committees shall have such authority as is vested in them by these By-Laws or the Rules, or as is delegated to them by the Board. All committees are subject to the control and supervision of the Board.

Section 5.2. Appointment; Vacancies; and Removal. The Chairman of the Board, with the approval of the Board, shall appoint, consistent with these By-Laws, the members of all committees of the Board, and the Chairman may, at any time, with or without cause, remove any member of a committee so appointed, with the approval of the Board. Any vacancy occurring in a committee shall be filled by the Chairman of the Board for the remainder of the term, with the approval of the Board. Except as otherwise provided in this Article V, each committee shall be comprised of at least three (3) people and may include persons who are not members of the Board; provided, however, that such committee members who are not also members of the Board shall only participate in committee actions to the extent permitted by law. In appointing new members to committees of the Board, the Chairman is responsible for determining that any such committee meets the composition requirements set forth in this Article V.

Section 5.3. Powers and Duties of Committees. To the extent not prohibited by law, all committees shall have such duties and may exercise such authority as may be prescribed for them in these By-Laws, the Rules or by the Board.

Section 5.4. Conduct of Proceedings. Except as otherwise provided in these By-Laws or by the Board, each committee may determine the manner in which its proceedings shall be conducted. Any action required or permitted to be taken at any meeting of any committee may be taken without a meeting if a written consent to the action is signed by all of the members of the committee and the written consent is filed with the minutes of the proceedings of the committee.

Section 5.5. Executive Committee.

(a) The Chairman of the Board, with the approval of the Board, shall appoint an Executive Committee. The Chairman of the Board with the approval of the Board, may also appoint one or more directors as alternate members of the Executive Committee who shall take the place of any absent member or members at any meeting of such committee. The Executive Committee at all times shall include the Chief Executive Officer of the Exchange, at least 50% Non-Industry Directors, at least one Independent Director and such number of ETP Holder Directors as is necessary to comprise at least 20% of the Executive Committee.

(b) The Executive Committee shall have and may exercise, so far as may be permitted by law, all the powers of the Board as may be delegated to it by the Board, except

that the Executive Committee shall not have the power to change the membership of, or to fill vacancies in, the Executive Committee. The Board, consistent with Section 5.2, shall have the power at any time to fill vacancies in or change the membership of the Executive Committee.

(c) A majority of the members of the Executive Committee shall constitute a quorum and either (i) the act of a majority of the members of the Executive Committee present at a meeting thereof, or (ii) the act of all members of the Executive Committee evidenced by a writing or writings, shall be the act of the Executive Committee.

(d) All actions of the Executive Committee shall be reported at the meeting of the Board next succeeding such action.

Section 5.6. Regulatory Oversight Committee. The Regulatory Oversight Committee shall be responsible to oversee all of the Exchange's regulatory functions and responsibilities and to advise regularly the Board about the Exchange's regulatory matters. The Regulatory Oversight Committee shall at all times be comprised entirely of Non-Industry Directors.

Section 5.7. ETP Holder Director Nominating Committee. The ETP Holder Director Nominating Committee shall be composed solely of ETP Holder Directors and/or ETP Holder [r]Representatives and shall be responsible for approving and submitting names of candidates for election to the position of ETP Holder Director pursuant to, and in accordance with, Section 3.5.

Section 5.8. Executive Compensation Committee. The Executive Compensation Committee shall consider and recommend compensation policies, programs, and practices for officers of the Company. Each member of the Compensation Committee shall be a Non-Industry Director.

Section 5.9. Audit Committee. The Audit Committee shall perform the following functions, as well as such other functions as may be specified in the charter of the Audit Committee: (A) provide oversight over the Exchange's financial reporting process and the financial information that is provided to stockholders and others; (B) provide oversight over the systems of internal controls established by management and the Board and the Exchange's legal and compliance process; and (C) select, evaluate and, where appropriate, replace the Company's independent auditors (or nominate the independent auditors to be proposed for ratification by stockholders). A majority of the Audit Committee members shall be Non-Industry Directors. A Non-Industry Director shall serve as Chairman of the Audit Committee.

Section 5.10. Governance & Nominating Committee. The Governance and Nominating Committee shall nominate candidates for election to the Board at the annual stockholder meeting and all other vacant or new Director positions on the Board. The number of Non-Industry Director members on the Nominating Committee shall equal or exceed the number of Industry Director members on the Nominating Committee.

Section 5.11. Appeals Committee. The Appeals Committee shall preside over all appeals related to disciplinary and adverse action determinations in accordance with the Exchange Rules. The Appeals Committee shall consist of one Independent Director, one Industry Director, and one ETP Holder Director. If the Independent Director recuses himself or herself from an appeal, due to a conflict of interest or otherwise, such Independent Director may



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be replaced by a Non-Industry Director for purposes of the applicable appeal if there is no other Independent Director able to serve as the replacement.

Section 5.12. Business Conduct Committee. The Business Conduct Committee shall preside over all disciplinary proceedings in accordance with Exchange Rules and as may be specified in the charter of the Business Conduct Committee. The Business Conduct Committee members shall be appointed by the Chairman with the approval of the Board in a composition consistent with applicable regulatory requirements and the Exchange By-Laws and Rules.

## **ARTICLE VI**

### **OFFICERS**

Section 6.1. Officers of the Exchange. The officers of the Exchange shall consist of a Chief Executive Officer, President, Chief Regulatory Officer, Secretary, Treasurer, and such other officers as the Board may determine. Any two or more offices may be held by the same person, except that the Chief Regulatory Officer and the Secretary may not hold either the office of Chief Executive Officer or President.

Section 6.2. Compensation. The compensation of all of the officers of the Exchange shall be fixed from time to time by the Board or a committee thereof designated by the Board.

Section 6.3. Tenure and Appointment. Each officer of the Exchange shall be appointed by the Board and shall hold office until his or her successor is appointed and qualified, or until his or her earlier death, disqualification, resignation, retirement or removal.

Section 6.4. Removal and Vacancies. Any officer of the Exchange may be removed at any time by the Board, with or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Vacancies in any office of the Exchange may be filled for the unexpired term by the Board.

Section 6.5. Powers and Duties. Each of the offices of the Exchange shall, unless otherwise ordered by the Board, have such powers and duties as customarily pertain to the respective office, and such further powers and duties as from time to time may be conferred by the Board, or by an officer delegated such authority by the Board.

Section 6.6. Arbitration Director. The Chairman of the Board, subject to the approval of the Board, may designate one of the officers or other employees of the Exchange to serve as the Arbitration Director, and may also designate an employee of the Exchange to serve as the Assistant Arbitration Director, to act in the event of the absence or inability to act of the Arbitration Director. The Arbitration Director, if any, shall be charged with the duty of performing or delegating all ministerial duties in connection with matters submitted for arbitration pursuant to the Rules.

**ARTICLE VII****INDEMNIFICATION**

Section 7.1. Extent of Indemnification. The Exchange shall, to the maximum extent not prohibited by the General Corporation Law of Delaware or any other applicable laws, as may from time to time be in effect, indemnify and hold harmless any person who was or is made or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of the Exchange, or is or was serving at the request of the Exchange as a director or officer of another corporation, partnership, joint venture, trust or other enterprise (each, individually an "Indemnified Person"), against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnified Person in connection with such action, suit or proceeding. The Exchange shall be required to indemnify an Indemnified Person in connection with an action, suit or proceeding initiated by such person only if such action, suit or proceeding was authorized by the Board.

As set forth in the Certificate of Incorporation of the Exchange, to the fullest extent not prohibited by the General Corporation Law of the State of Delaware, as it exists on the date that the Certificate of Incorporation of the Exchange is adopted or as such law may later be amended, no director of the Exchange shall be liable to the Exchange or its stockholders or the ETP Holders for monetary damages for any breach of fiduciary duty as a director. No amendment to or repeal of this Article shall adversely affect any right or protection of a director of the Exchange that exists at the time of such amendment or repeal with respect to any actions taken, or inactions, prior thereto.

Section 7.2. Expenses. Expenses (including attorneys' fees) incurred by an Indemnified Person in defending a civil, criminal, administrative or investigative action, suit or proceeding, including appeals, may be paid by the Exchange in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall be ultimately determined that he or she is not entitled to be indemnified as authorized by the General Corporation Law of the State of Delaware.

Section 7.3. Contract. The provisions of this Article VII shall be deemed to be a contract between the Exchange and each Indemnified Person at any time while this Article and the relevant provisions of the General Corporation Law of Delaware or other applicable law, if any, are in effect and any repeal or modification of any such law or of this Article VII shall not affect and rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

Section 7.4. Discretionary Indemnification Coverage. Persons not expressly covered by the foregoing provisions of this Article VII, such as those who are or were directors, officers, employees or agents of a constituent corporation absorbed in a consolidation or merger in which the Exchange was the resulting or surviving corporation, or who are or were serving at the request of such constituent corporation as directors, officers, employees or agents of

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another corporation, partnership, joint venture, trust or other enterprise, may be indemnified to the extent authorized at any time or from time to time by the Board.

Section 7.5. Continuity of Indemnification and Non-Exclusivity. The indemnification provided or permitted hereunder shall not be deemed exclusive of any other rights to which those indemnified now or hereafter may be entitled by law or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent entitled to such indemnification and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 7.6. Insurance. The Exchange may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Exchange, or is or was serving at the request of the Exchange as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person in any such capacity, or arising out of such person's status as such, whether or not the Exchange would have the power to indemnify such person against such liability.

Section 7.7. Exchange Not Liable. The Exchange shall not be liable for any loss or damage sustained by any current or former member or ETP Holder growing out of the use or enjoyment by such member or ETP Holder of the facilities afforded by the Exchange (or any predecessor or successor thereof) or its subsidiaries.

**ARTICLE VIII****AMENDMENTS**

Section 8.1. By-Laws. As set forth in the Certificate of Incorporation of the Exchange, the Board shall have the power to adopt, amend or repeal the By-Laws. The By-Laws may also be amended or repealed, or new By-Laws of the Exchange may be adopted, by action taken by the stockholders of the Exchange. Notwithstanding the foregoing, neither this sentence nor any provision of Sections 3.1 through 3.8, Section 3.12, or Section 4.5 of these By-Laws may be amended or repealed without action of the stockholders of the Exchange. By-Laws adopted, altered or amended shall become effective in accordance with the provisions of Section 19(b) of the Act. Before any amendment to, alteration or repeal of any provision of the By-laws of the Exchange under this Article VIII shall be effective, those changes shall be submitted to the Board and if the same must be filed with or filed with and approved by the Commission, then the proposed changes to the Bylaws of the Exchange shall not become effective until filed with or filed with and approved by the Commission, as the case may be.

Section 8.2. Rules. The Rules may be amended or repealed, or new Rules may be adopted, by the Board. A proposal to adopt, alter or amend any rule shall be presented in writing to the Board by the Chairman of the Board and a record shall be kept thereof. The Board shall pass on the proposed action, which may be adopted by the affirmative vote of a majority of the members of the Board then in office. Rules adopted, altered or amended shall become effective in accordance with the provisions of Section 19(b) of the Act.

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## ARTICLE IX

### CERTIFICATES OF STOCK AND THEIR TRANSFER

Section 9.1. Form and Execution of Certificates. Every holder of stock in the Exchange shall be entitled to have a certificate signed by, or in the name of, the Exchange by the Chairman of the Board, the President or a vice president and by the Secretary or an assistant secretary or the Treasurer or an assistant treasurer of the Exchange, certifying the number of shares owned. Any and all signatures on a certificate may be facsimiles. Such certificates shall be in such form as may be determined by the Board. In case any officer, transfer agent or registrar of the Exchange who has signed, or whose facsimile signature has been placed upon, any such certificate shall have ceased to be such officer, transfer agent or registrar of the Exchange before such certificate is issued by the Exchange, such certificate may nevertheless be issued and delivered by the Exchange with the same effect as if the officer, transfer agent or registrar who signed, or whose facsimile signature was placed upon, such certificate had not ceased to be such officer, transfer agent or registrar.

Section 9.2. Replacement Certificates. The Exchange may direct a new certificate or certificates to be issued in place of any certificate or certificates evidencing shares of stock of the Exchange alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Exchange may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or such owner's legal representative, to advertise the same in such manner as it shall require and require such owner to give the Exchange a bond in such sum as it may direct as indemnity against any claim that may be made against the Exchange with respect to the certificate alleged to have been lost, stolen or destroyed. The Exchange may delegate its authority to direct the issuance of replacement stock certificates to the transfer agent or agents of the Exchange.

Section 9.3. Notice on Certificates. Each certificate evidencing shares of stock of the Exchange shall include a clear and conspicuous notice of the restrictions and limitations on the transfer of the shares evidenced by such certificate, in form and substance similar to the following:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY BE TRANSFERRED ONLY PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION FROM REGISTRATION THEREUNDER AND OTHERWISE IN ACCORDANCE WITH THE BY-LAWS OF THE CORPORATION."

Section 9.4. Conditions to Transfer. No sale, transfer or other disposition of stock of the Exchange shall be effected except (a) (i) pursuant to an effective registration statement under the Securities Act and in accordance with all applicable state securities laws or (ii) upon delivery to the Exchange of an opinion of counsel satisfactory to the counsel for the Exchange that such sale, transfer or disposition may be effected pursuant to a valid exemption from the registration requirements of the Securities Act and all applicable state securities laws and (b) upon delivery to the Exchange of such certificates or other documentation as counsel to the

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Exchange shall deem necessary or appropriate in order to ensure that such sale, transfer or other disposition complies with the Securities Act and all applicable state securities laws.

Section 9.5. Transfers of Stock. Upon surrender to the Exchange or the transfer agent of the Exchange of a certificate for shares of stock of the Exchange duly endorsed or accompanied by proper evidence of succession, assignment or other authority to transfer, it shall be the duty of the Exchange to issue a new certificate to the person entitled to the new certificate, cancel the old certificate and record the transaction upon its books, provided the Exchange or a transfer agent of the Exchange shall not have received a notification of adverse interest and that the conditions of Section 8-401 of Title 6 of the Delaware Code have been met.

Section 9.6. Registered Stockholders. The Exchange shall be entitled to treat the holder of record (according to the books of the Exchange) of any share or shares of its stock as the holder in fact of those shares and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other party whether or not the Exchange shall have express or other notice of that claim or interest, except as expressly provided by the laws of the State of Delaware.

**ARTICLE X****SELF-REGULATORY FUNCTION OF THE EXCHANGE**

## Section 10.1. Management of the Exchange.

[(a)] In connection with managing the business and affairs of the Exchange, the Board shall consider applicable requirements for registration as a national securities exchange under Section 6(b) of the Act, including, without limitation, the requirements that (a) the Rules shall be designed to protect investors and the public interest and (b) the Exchange shall be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its “members,” as that term is defined in Section 3 of the Act (such statutory members being referred to in these By-Laws as “ETP Holders”) and persons associated with ETP Holders, with the provisions of the Act, the rules and regulations under the Act, and the Rules of the Exchange.

[(b)] For so long as CBSX controls NSX, NSX shall promptly inform the CBOE Stock Exchange. LLC board of directors, in writing, in the event that NSX has, or experiences, a deficiency related to its ability to carry out its obligations as a national securities exchange under the Act, including if NSX does not have or is not appropriately allocating such financial, technological, technical and personnel resources as may be necessary or appropriate for NSX to meet its obligations under the Act.]

Section 10.2. Participation in Board and Committee Meetings. All meetings of the Board (and any committees of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters) shall be closed to all persons other than members of the Board 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 [CBOE Stock Exchange, LLC] National Stock Exchange Holdings, Inc. who are not also members of the Board, or any officers, staff, counsel or advisors of [CBOE Stock Exchange, LLC] National Stock Exchange Holdings, Inc. who are not also officers, staff, counsel or advisors of the Exchange (or any committees of the Exchange), be allowed to participate in any meetings of the Board (or any committee of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters).

Section 10.3. Books and Records; Confidentiality of Information and Records Relating to SRO Function. The books and records of the Exchange shall be maintained at a location within the United States. All books and records of the Exchange reflecting 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) shall be retained in confidence by the Exchange and its personnel and will not be used by the Exchange for any non-regulatory purposes and shall not be made available to any person (including, without limitation, any ETP Holder) other than to personnel of the Commission, and those personnel of the Exchange, members of committees of the Exchange, members of the Board, hearing officers and other agents of the Exchange to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of the Exchange. Nothing in this Section 10.3 shall be interpreted as to limit or impede the rights of the Commission to access and examine such



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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 Exchange to disclose such confidential information to the Commission.

Section 10.4. Regulatory Fees and Penalties. Any revenues received by the Exchange from fees derived from its regulatory function or regulatory penalties will not be used to pay dividends and shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities), or, as the case may be, shall be used to pay restitution and disgorgement of funds intended for customers.

## **ARTICLE XI**

### **GENERAL PROVISIONS**

Section 11.1. Fiscal Year. The fiscal year of the Exchange shall be as determined from time to time by the Board.

Section 11.2. Dividends. Subject to any provisions of any applicable statute or the Certificate of Incorporation, dividends may be declared upon the capital stock of the Exchange by, and in the absolute discretion of, the Board; and any such dividends may be paid in cash, property or shares of stock of the Exchange, as determined by the Board, and shall be declared and paid on such dates and in such amounts as are determined by the Board.

Section 11.3. Reserves. Before payment of any dividends, there may be set aside out of any funds of the Exchange available for dividends such sum or sums as the Board from time to time, in its absolute discretion, determines to be proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Exchange, or for such other purpose as the Board shall determine to be conducive to the interests of the Exchange, and the Board may modify or abolish any such reserve in the manner in which it was created.

Section 11.4. Subsidiaries. The Board may constitute any officer of the Exchange its proxy, with power of substitution, to vote the equity interests of any subsidiary of the Exchange and to exercise, on behalf of the Exchange, any and all rights and powers incident to the ownership of those equity interests, including the authority to execute and deliver proxies, waivers and consents.

Section 11.5. Power to Vote Stock. Unless otherwise instructed by the Board, the Chief Executive Officer of the Exchange shall have the power and authority on behalf of the Exchange to attend and to vote at any meeting of stockholders, partners or equity holders of any corporation, partnership or any other entity in which the Exchange may hold stock, partnership or other equity interests, as the case may be, and may exercise on behalf of the Exchange any and all of the rights and powers incident to the ownership of such stock, partnership or other equity interest at such meeting, and shall have the power and authority to execute and deliver proxies, waivers and consents on behalf of the Exchange in connection with the exercise by the Exchange of the rights and powers incident to the ownership of such stock, partnership or other equity interest. The Board and the Chief Executive Officer may from time to time confer like powers upon any other person or persons.

Section 11.6. Severability. If any provision of these By-Laws, or the application of any provision of these By-Laws to any person or circumstances, is held invalid, the remainder of these By-Laws and the application of such provision to other persons or circumstances shall not be affected.