

**EXHIBIT 5**

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

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

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ARTICLE FOURTH

A. – B. No change.

C. 1. – 5. No change.

6. Notwithstanding anything herein to the contrary, subparagraph 2 of this paragraph C. of this Article Fourth shall not be applicable to any Excess Shares beneficially owned by any person as may be approved for such exemption by the Board prior to the time such person beneficially owns more than five percent (5%) of the outstanding shares of stock entitled to vote on the election of a majority of directors at such time. For so long as Nasdaq shall control, directly or indirectly, any Self-Regulatory Subsidiary, a resolution of the Board to approve an exemption for any person under this subparagraph 6 of this paragraph C. of this Article Fourth shall not be permitted to become effective until such resolution has been filed with and approved by the Securities and Exchange Commission under Section 19 of the Exchange Act. The Board, however, may not approve an exemption under [Section]this subparagraph 6[(b)]: (i) for a registered broker or dealer or an Affiliate thereof (provided that, for these purposes, an Affiliate shall not be deemed to include an entity that either owns ten percent or less of the equity of a broker or dealer, or the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity); or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act. The Board may approve an exemption for any other stockholder if the Board determines that granting such exemption would (A) not reasonably be expected to diminish the quality of, or public confidence in, Nasdaq or [The NASDAQ Stock Market LLC]the Self-Regulatory Subsidiaries or the other operations of Nasdaq and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, [and ](B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system, and (C) promote the prompt and accurate clearance and

settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), assure the safeguarding of securities and funds in the custody or control of the Self-Regulatory Subsidiaries that are clearing agencies or securities and funds for which they are responsible, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. For purposes of this provision, “Self-Regulatory Subsidiary” shall mean any subsidiary of Nasdaq that is a self-regulatory organization as defined under Section 3(a)(26) of the Exchange Act.

7. No change.

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

### **Article I Definitions**

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

(a) – (q) No change.

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

(s) “Self-Regulatory Subsidiary” means [each of (i) The NASDAQ Stock Market LLC; (ii) NASDAQ OMX BX, Inc.; (iii) Boston Stock Exchange Clearing Corporation; (iv) NASDAQ OMX PHLX LLC; and (v) Stock Clearing Corporation of Philadelphia.] any subsidiary of the Corporation that is a self-regulatory organization as defined under Section 3(a)(26) of the Act; and

(t) No change.

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

#### **Sec. 12.1 – Sec. 12.4**

No change.

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

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

#### **Sec. 12.6 – Sec. 12.7**

No change.

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