

**EXHIBIT 5**

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

**SECOND AMENDED LIMITED LIABILITY COMPANY AGREEMENT OF  
NASDAQ PHLX LLC**

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**Section 14. Distributions.**

Distributions shall be made to the Stockholder at the times and in the aggregate amounts determined by the Board. Notwithstanding any provision to the contrary contained in this Agreement, (i) the Exchange shall not be required to make a distribution to the Stockholder 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 Stockholder using Regulatory Funds (as defined in the By-Laws).

**Section 15. Books and Records.**

The Board shall keep or cause to be kept complete and accurate books of account and records with respect to the Exchange's business within the United States. The books of the Exchange shall at all times be maintained by the Board. The Stockholder and its duly authorized representatives shall have the right to examine the Exchange books, records and documents during normal business hours. The Exchange, and the Board on behalf of the Exchange, shall not have the right to keep confidential from the Stockholder any information that the Board would otherwise be permitted to keep confidential from the Stockholder pursuant to Section 18-305(c) of the LLC Act. The Exchange's books of account shall be kept using the method of accounting determined by the Stockholder. The Exchange's independent auditor shall be an independent public accounting firm selected by the Board.

Other than as provided in this Section 15 with respect to the Securities and Exchange 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. Nothing in this LLC Agreement shall be interpreted as to limit or impede the rights of the Securities and Exchange 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 Securities and Exchange Commission.

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## **Section 20. Assignments.**

The Stockholder may not transfer or assign in whole or in part its limited liability company interest in the Exchange, unless such transfer or assignment is filed with and approved by the Securities and Exchange Commission pursuant to the rule filing procedure under Section 19 of the Exchange Act[except to an Affiliate of such Stockholder].

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## **BY-LAWS OF NASDAQ PHLX LLC**

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### **ARTICLE I DEFINITIONS**

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#### **(bb) Non-Industry Director**

The term "Non-Industry Director" shall mean 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] a national securities exchange operated by the Exchange or one of its affiliates; or (iii) any other individual who would not be an Industry Director.

#### **(cc) Non-Industry Member**

The term "Non-Industry member" means a member of any committee appointed by the Board of Directors who is (i) a Public member; (ii) an officer[, director,] or employee of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates; or (iii) any other individual who would not be an Industry member.

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#### **(gg) Public Director**

The term "Public Director" shall mean a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. For the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates shall not be precluded from being considered a "Public Director" solely on the basis of such directorship.

**(hh) Public Member**

The term "public member" means a member of any committee appointed by the Board of Directors who has no material business relationship with a broker or dealer, the Exchange[, ] or its affiliates, or FINRA. For the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates shall not be precluded from being considered a "public member" solely on the basis of such directorship.

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**ARTICLE V STANDING COMMITTEES**

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**Sec. 5-2. Committees Composed Solely of Directors**

(a) – (b) No change.

(c) The Board shall appoint a Regulatory Oversight Committee. The Committee shall oversee the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities; assess the Exchange's regulatory performance; and assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of Exchange's regulatory functions. In furtherance of its functions, the Regulatory Oversight Committee 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 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 at least three members, each of whom shall be a Public Director and an "independent director" as defined in Rule [4200]5605 of the Rules of The Nasdaq Stock Market.

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