

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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By-Laws of [The National Association of Securities Dealers, Inc.]the Corporation

ARTICLE I

DEFINITIONS

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

(a) through (b) No Change.

(c) “Board” means the Board of Governors of the [NASD]Corporation;

(d) “branch office” means an office defined as a branch office in the Rules of the [Association]Corporation;

(e) No Change.

(f) “Closing” means the closing of the consolidation of certain member firm regulatory functions of NYSE Regulation, Inc. and the Corporation;

[(f)](g) “Commission” means the Securities and Exchange Commission;

(h) “controlling” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of any corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such

person holds voting stock, in good faith, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity;

(i) “Corporation” means the National Association of Securities Dealers, Inc. or any future name of this entity;

[(g)](j) “day” means calendar day;

[(h)](k) “dealer” means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for such individual’s or entity’s own account, through a broker or otherwise, but does not include a bank, or any person insofar as such person buys or sells securities for such person’s own account, either individually or in some fiduciary capacity, but not as part of a regular business;

[(i)](l) “Delegation Plan” means the “Plan of Allocation and Delegation of Functions by NASD to Subsidiaries” as approved by the Commission, and as amended from time to time;

[(j)](m) “district” means a district established by the NASD Regulation Board pursuant to the NASD Regulation By-Laws;

(n) “Floor Member Governor” means a member of the Board appointed as such who is a person associated with a member (or a firm in the process of becoming a member) which is a specialist or floor broker on the New York Stock Exchange trading floor;

[(k)](o) “government securities broker” shall have the same meaning as in Section 3(a)(43) of the Act except that it shall not include financial institutions as defined

in Section 3(a)(46) of the Act;

[(1)](p) “government securities dealer” shall have the same meaning as in Section 3(a)(44) of the Act except that it shall not include financial institutions as defined in Section 3(a)(46) of the Act;

[(m)](q) “Governor” means a member of the Board;

(r) “Independent Dealer/Insurance Affiliate Governor” means a member of the Board appointed as such who is a person associated with a member which is an independent contractor financial planning member firm or an insurance company, or an affiliate of such a member;

[(n)](s) “Industry Director” means a Director of the NASD Regulation Board or NASD Dispute Resolution Board (excluding the Presidents) who: (1) is or has served in the prior [three years]year as an officer, director (other than as an independent director), [or] employee or controlling person 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; (2) 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; (3) 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; (4) 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; (5) 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 20 percent or more of the gross revenues received by the Director's firm or partnership; or (6)]or (2) has a consulting or employment relationship with or provides professional services to [the NASD, NASD Regulation, NASD Dispute Resolution, or a market for which NASD provides regulation]a self regulatory organization registered under the Act, or has had any such relationship or provided any such services at any time within the prior [three years]year;

[(o)](t) "Industry Governor" or "Industry committee member" means [a]the Floor Member Governor, the Independent Dealer/Insurance Affiliate Governor and the Investment Company Affiliate Governor and any other Governor (excluding the Chief Executive Officer of the [NASD and the President of NASD]Corporation and, during the Transitional Period, the Chief Executive Officer of NYSE Regulation, Inc.) or committee member who: (1) is or has served in the prior [three years]year as an officer, director [or] (other than as an independent director), employee or controlling person 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; (2) 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; (3) 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; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; (5) 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 Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; or (6) or (2) has a consulting or employment relationship with or provides professional services to [the NASD, NASD Regulation, NASD Dispute Resolution, or a market for which NASD provides regulation]a self regulatory organization registered under the Act, or has had any such relationship or provided any such services at any time within the prior [three years]year;

[(p)](u) "investment banking or securities business" means the business, carried on by a broker, dealer, or municipal securities dealer (other than a bank or department or division of a bank), or government securities 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;

(v) "Investment Company" means an "investment company" as such term is

defined in The Investment Company Act of 1940, as amended;

(w) “Investment Company Affiliate Governor” means a member of the Board appointed as such who is a person associated with a member which is an Investment Company or an affiliate of such a member;

(x) “Joint Public Governor” means the one Public Governor to be appointed as such by the Board of Directors of NYSE Group, Inc. and the Board in office prior to the Closing jointly;

(y) “Large Firm” means any broker or dealer admitted to membership in the Corporation which, at the time of determination, has 500 or more registered persons;

(z) “Large Firm Governor” means a member of the Board to be elected by Large Firm members, provided, however, that in order to be eligible to serve, a Large Firm Governor must be an Industry Governor and must be registered with a member which is a Large Firm member;

(aa) “Large Firm Governor Committee” means a committee of the Board comprised of all of the Large Firm Governors;

(bb) “Lead Governor” means a member of the Board elected as such by the Board, provided, however, that any member of the Board who is concurrently serving as a member of the Board of Directors of NYSE Group, Inc. shall not be eligible to serve as the Lead Governor;

(cc) “Mid-Size Firm” means any broker or dealer admitted to membership in the Corporation which, at the time of determination, has at least 151 and no more than 499 registered persons;

(dd) “Mid-Size Firm Governor” means a member of the Board to be elected by

Mid-Size Firm members, provided, however, that in order to be eligible to serve, a Mid-Size Firm Governor must be an Industry Governor and must be registered with a member which is a Mid-Size Firm member;

[(q)](ee) “member” means any broker or dealer admitted to membership in the [NASD]Corporation;

[(r)](ff) “municipal securities” means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond as defined by Section 3(a)(29) of the Act;

[(s)](gg) “municipal securities broker” means a broker, except a bank or department or division of a bank, engaged in the business of effecting transactions in municipal securities for the account of others;

[(t)](hh) “municipal securities dealer” means any person, except a bank or department or division of a bank, engaged in the business of buying and selling municipal securities for such person’s own account, through a broker or otherwise, but does not include any person insofar as such person buys or sells securities for such person’s own account either individually or in some fiduciary capacity, but not as a part of a regular business;

[(u) “NASD” means the National Association of Securities Dealers, Inc.;

[(v)](ii) “NASD Dispute Resolution” means NASD Dispute Resolution, Inc. or any future name of this entity;

[(j)](jj) “NASD Group Committee” means a committee of the Board comprised of

the five Public Governors and the Independent Dealer/Insurance Affiliate Governor appointed as such by the Board in office prior to Closing, and the Small Firm Governors which were nominated for election as such by the Board in office prior to Closing, and in each case their successors;

(kk) “NASD Public Governors” means the five Public Governors to be appointed as such by the Board in office prior to the Closing effective as of Closing;

[(w)](ll) “NASD Regulation” means NASD Regulation, Inc. or any future name of this entity;

[(x)](mm) “NASD Regulation Board” means the Board of Directors of NASD Regulation;

[(y)](nn) “National Adjudicatory Council” means a body appointed pursuant to Article V of the NASD Regulation By-Laws;

[(z)](oo) “[National] Nominating Committee” means the [National] Nominating Committee appointed pursuant to Article VII, Section 9 of these By-Laws;

[(aa) “Non-Industry Director” means a Director of the NASD Regulation Board or NASD Dispute Resolution Board (excluding the Presidents of NASD Regulation and NASD Dispute Resolution) who is: (1) a Public Director; (2) an officer or employee of an issuer of securities listed on a market for which NASD provides regulation; (3) an officer or employee of an issuer of unlisted securities that are traded in the over-the-counter market; or (4) any other individual who would not be an Industry Director;]

[(bb) “Non-Industry Governor” or “Non-Industry committee member” means a Governor (excluding the Chief Executive Officer and any other officer of the NASD, the President of NASD Regulation) or committee member who is: (1) a Public Governor or

committee member; (2) an officer or employee of an issuer of securities listed on a market for which NASD provides regulation; (3) an officer or employee of an issuer of unlisted securities that are traded in the over-the-counter market; or (4) any other individual who would not be an Industry Governor or committee member;]

(pp) “NYSE Group Committee” means a committee of the Board comprised of the five Public Governors and the Floor Member Governor appointed as such by the Board of Directors of NYSE Group, Inc., and the Large Firm Governors which were nominated for election as such by the Board of Directors of NYSE Group, Inc., and in each case their successors;

(qq) “NYSE Public Governors” shall mean the five Public Governors to be appointed as such by the Board of Directors of NYSE Group, Inc. effective as of Closing;

~~[(cc)]~~(rr) “person associated with a member” or “associated person of a member” means: (1) a natural person who is registered or has applied for registration under the Rules of the [Association]Corporation; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the [NASD]Corporation under these By-Laws or the Rules of the [Association]Corporation; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member;

~~[(dd)]~~(ss) “Public Director” means a Director of the NASD Regulation Board or NASD Dispute Resolution Board who is not an Industry Director and who otherwise has

no material business relationship with a broker or dealer or [the NASD, NASD Regulation, NASD Dispute Resolution, or a market for which NASD provides regulation] a self regulatory organization registered under the Act (other than serving as a public director of such a self regulatory organization);

[(ee)](tt) “Public Governor” or “Public committee member” means any Governor or committee member who is not the Chief Executive Officer of the Corporation or, during the Transitional Period, the Chief Executive Officer of NYSE Regulation, Inc., who is not an Industry Governor and who otherwise has no material business relationship with a broker or dealer or [the NASD, NASD Regulation, NASD Dispute Resolution, or a market for which NASD provides regulation] a self regulatory organization registered under the Act (other than serving as a public director of such a self regulatory organization);

[(ff)](uu) “registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer” means any broker, dealer, municipal securities broker or dealer, or government securities broker or dealer which is registered with the Commission under the Act;

[(gg)](vv) “Rules of the [Association] Corporation” or “Rules” means the numbered rules set forth in the [NASD Manual] manual of the Corporation beginning with the Rule 0100 Series, as adopted by the Board pursuant to these By-Laws, as hereafter amended or supplemented;

(ww) “Small Firm” means any broker or dealer admitted to membership in the Corporation which, at the time of determination, has at least 1 and no more than 150 registered persons;

(xx) “Small Firm Governor” means a member of the Board to be elected by Small Firm members, provided, however, that in order to be eligible to serve, a Small Firm Governor must be registered with a member which is a Small Firm member and must be an Industry Governor;

(yy) “Small Firm Governor Committee” means a committee of the Board comprised of all the Small Firm Governors; and

(zz) “Transitional Period” means the period commencing on the date of the Closing and ending on the third anniversary of the date of the Closing.

ARTICLE II

OFFICES

Location

Sec. 1. The address of the registered office of the [NASD]Corporation in the State of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. The [NASD]Corporation also may have offices at such other places both within and without the State of Delaware as the Board may from time to time designate or the business of the [NASD]Corporation may require.

Change of Location

Sec. 2. In the manner permitted by law, the Board or the registered agent may change the address of the [NASD’s]Corporation’s registered office in the State of Delaware and the Board may make, revoke, or change the designation of the registered agent.

ARTICLE III

QUALIFICATIONS OF MEMBERS AND ASSOCIATED PERSONS

Persons Eligible to Become Members and Associated Persons of Members

Sec. 1. (a) Any registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer authorized to transact, and whose regular course of business consists in actually transacting, any branch of the investment banking or securities business in the United States, under the laws of the United States, shall be eligible for membership in the [NASD]Corporation, except such registered brokers, dealers, or municipal securities brokers or dealers, or government securities brokers or dealers which are excluded under the provisions of Section 3.

(b) No Change.

Authority of Board to Adopt Qualification Requirements

Sec. 2. (a) No Change.

(b) In establishing and applying such standards, the Board may classify members and persons associated with such members, taking into account relevant matters, including the nature, extent, and type of business being conducted and of securities sold, dealt in, or otherwise handled. The Board may specify that all or any portion of such standards shall be applicable to any such class and may require the persons in any such class to be registered with the [NASD]Corporation.

(c) No Change.

Ineligibility of Certain Persons for Membership or Association

Sec. 3. (a) No registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer shall be admitted to membership, and no member shall be continued in membership, if such broker, dealer, municipal securities broker or

dealer, government securities broker or dealer, or member fails or ceases to satisfy the qualification requirements established under Section 2, if applicable, or if such broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member is or becomes subject to a disqualification under Section 4, or if such member fails to comply with the requirement that all forms filed pursuant to these By-Laws be filed via electronic process or such other process as the [NASD]Corporation may prescribe.

(b) through (c) No Change.

(d) Any member that is ineligible for continuance in membership may file with the Board an application requesting relief from the ineligibility pursuant to the Rules of the [Association]Corporation. A member may file such application on its own behalf and on behalf of a current or prospective associated person. The Board may, in its discretion, approve the continuance in membership, and may also approve the association or continuance of association of any person, if the Board determines that such approval is consistent with the public interest and the protection of investors. Any approval hereunder may be granted unconditionally or on such terms and conditions as the Board considers necessary or appropriate. In the exercise of the authority granted hereunder, the Board may conduct such inquiry or investigation into the relevant facts and circumstances as it, in its discretion, considers necessary to its determination, which, in addition to the background and circumstances giving rise to the failure to qualify or disqualification, may include the proposed or present business of a member and the conditions of association of any current or prospective associated person.

(e) through (g) No Change.

Definition of Disqualification

Sec. 4. A person is subject to a “disqualification” with respect to membership, or association with a member, if such person[:]is subject to any “statutory disqualification” as such term is defined in Section 3(a)(39) of the Act.

[(a) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, foreign equivalent of a self-regulatory organization, foreign or international securities exchange, contract market designated pursuant to Section 5 of the Commodity Exchange Act, or foreign equivalent of a contract market designated pursuant to any substantially equivalent foreign statute or regulation, or futures association registered under Section 17 of the Commodity Exchange Act or a foreign equivalent of a futures association designated pursuant to any substantially equivalent foreign statute or regulation, or has been and is denied trading privileges on any such contract market or foreign equivalent;]

[(b) is subject to]

[(1) an order of the Commission, other appropriate regulatory agency, or foreign financial regulatory authority:]

[(i) denying, suspending for a period not exceeding 12 months, or revoking such person’s registration as a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or limiting such person’s activities as a foreign person performing a function substantially equivalent to any of the above; or]

[(ii) barring or suspending for a period not exceeding 12 months

such person from being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or foreign person performing a function substantially equivalent to any of the above;]

[(2) an order of the Commodity Futures Trading Commission denying, suspending, or revoking such person's registration under the Commodity Exchange Act (7 U.S.C. § 1 et seq.); or]

[(3) an order by a foreign financial regulatory authority denying, suspending, or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof;]

[(c) by such person's conduct while associated with a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer, or while associated with an entity or person required to be registered under the Commodity Exchange Act, has been found to be a cause of any effective suspension, expulsion, or order of the character described in subsection (a) or (b) of this Section;]

[(d) by such person's conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion, or order by a

foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subsection (a) or (b) of this Section;]

[(e) has associated with him or her any person who is known, or in the exercise of reasonable care should be known, to him or her to be a person described in subsection (a), (b), (c), or (d) of this Section;]

[(f) has willfully made or caused to be made in any application for membership in a self-regulatory organization, or to become associated with a member of a self-regulatory organization, or in any report required to be filed with a self-regulatory organization, or in any proceeding before a self-regulatory organization, any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein;]

[(g) (1) has been convicted within ten years preceding the filing of any application for membership in the NASD, or to become associated with a member of the NASD, or at any time thereafter, of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which:]

[(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;]

[(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, government securities broker, government

securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, foreign person performing a function substantially equivalent to any of the above, or any entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation;]

[(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or]

[(iv) involves the violation of Sections 152, 1341, 1342, or 1343 or Chapters 25 or 47 of Title 18, United States Code, or a violation of a substantially equivalent foreign statute;]

[(2) has been convicted within ten years preceding the filing of any application for membership in the NASD, or to become associated with a member of the NASD, or at any time thereafter of any other felony;]

[(h) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, foreign person performing a function substantially equivalent to any of the above, entity or person required to be registered under the Commodity Exchange Act, or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company,

foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security;]

[(i) has been found by a foreign financial regulatory authority to have—]

[(1) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;]

[(2) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade; or]

[(3) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory

authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to such person's supervision.]

ARTICLE IV

MEMBERSHIP

Application for Membership

Sec. 1. (a) Application for membership in the [NASD]Corporation, properly signed by the applicant, shall be made to the [NASD]Corporation via electronic process or such other process as the [NASD]Corporation may prescribe, on the form to be prescribed by the [NASD]Corporation, and shall contain:

(1) an agreement to comply with the federal securities laws, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the [NASD]Corporation, NASD Regulation, or NASD Dispute Resolution, the Rules of the [Association]Corporation, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Rules of the [Association]Corporation;

(2) an agreement to pay such dues, assessments, and other charges in the manner and amount as from time to time shall be fixed pursuant to the [NASD] By-Laws of the Corporation, Schedules to the [NASD] By-Laws of the Corporation, and the Rules of the [Association]Corporation; and

(3) such other reasonable information with respect to the applicant as the [NASD]Corporation may require.

(b) Any application for membership received by the [NASD]Corporation shall be processed in the manner set forth in the Rules of the [Association]Corporation.

(c) Each applicant and member shall ensure that its membership application with the [NASD]Corporation is kept current at all times by supplementary amendments via electronic process or such other process as the [NASD]Corporation may prescribe to the original application. Such amendments to the application shall be filed with the [NASD]Corporation not later than 30 days after learning of the facts or circumstances giving rise to the amendment.

Similarity of Membership Names

Sec. 2. (a) No person or firm shall be admitted to or continued in membership in the [NASD]Corporation having a name that is identical to the name of another member appearing on the membership roll of the [NASD]Corporation or a name so similar to any such name as to tend to confuse or mislead.

(b) No member may change its name without prior approval of the [NASD]Corporation.

Executive Representative

Sec. 3. Each member shall appoint and certify to the Secretary of the [NASD]Corporation one “executive representative” who shall represent, vote, and act for the member in all the affairs of the [NASD]Corporation, except that other executives of a member may also hold office in the [NASD]Corporation, serve on the Board or committees appointed under Article IX, Section 1 or otherwise take part in the affairs of the [NASD]Corporation. A member may change its executive representative upon giving notice thereof via electronic process or such other process as the [NASD]Corporation

may prescribe to the Secretary, or may, when necessary, appoint, by notice via electronic process to the Secretary, a substitute for its executive representative. An executive representative of a member or a substitute shall be a member of senior management and registered principal of the member. Not later than January 1, 1999, each executive representative shall maintain an Internet electronic mail account for communication with the [NASD]Corporation and shall update firm contact information via the NASD Regulation Web Site or such other means as prescribed by the [NASD]Corporation.

Membership Roll

Sec. 4. The Secretary of the [NASD]Corporation shall keep a currently accurate and complete membership roll, containing the name and address of each member, and the name and address of the executive representative of each member. In any case where a membership has been terminated, such fact shall be recorded together with the date on which the membership ceased. The membership roll of the [NASD]Corporation shall at all times be available to all members of the [NASD]Corporation, to all governmental authorities, and to the general public.

Resignation of Members

Sec. 5. Membership in the [NASD]Corporation may be voluntarily terminated only by formal resignation. Resignations of members must be filed via electronic process or such other process as the [NASD]Corporation may prescribe and addressed to the [NASD]Corporation. Any member may resign from the [NASD]Corporation at any time. Such resignation shall not take effect until 30 days after receipt thereof by the [NASD]Corporation and until all indebtedness due the [NASD]Corporation from such member shall have been paid in full and so long as any complaint or action is pending

against the member under the Rules of the [Association]Corporation. The [NASD]Corporation, however, may in its discretion declare a resignation effective at any time.

Retention of Jurisdiction

Sec. 6. A resigned member or a member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint under the Rules of the [Association]Corporation based upon conduct which commenced prior to the effective date of the member's resignation from the [NASD]Corporation or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two years after the effective date of resignation, cancellation, or revocation.

Transfer and Termination of Membership

Sec. 7. (a) Except as provided hereinafter, no member of the [NASD]Corporation may transfer its membership or any right arising therefrom and the membership of a corporation, partnership, or any other business organization which is a member of the [NASD]Corporation shall terminate upon its liquidation, dissolution, or winding up, and the membership of a sole proprietor which is a member shall terminate at death, provided that all obligations of membership under the By-Laws and the Rules of the [Association]Corporation have been fulfilled.

(b) The consolidation, reorganization, merger, change of name, or similar change in any corporate member shall not terminate the membership of such corporate member provided that the member or surviving organization, if any, shall be deemed a successor to the business of the corporate member, and the member or the surviving organization shall continue in the investment banking and securities business, and shall possess the

qualifications for membership in the [NASD]Corporation. The death, change of name, withdrawal of any partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership member shall not terminate the membership of such partnership member provided that the member or surviving organization, if any, shall be deemed a successor to the business of the partnership member, and the member or surviving organization shall continue in the investment banking and securities business and shall possess the qualifications for membership in the [NASD]Corporation. If the business of any predecessor member is to be carried on by an organization deemed to be a successor organization by the [NASD]Corporation, the membership of such predecessor member shall be extended to the successor organization subject to the notice and application requirements of the Rules of the [Association]Corporation and the right of the [NASD]Corporation to place restrictions on the successor organization pursuant to the Rules of the [Association]Corporation; otherwise, any surviving organization shall be required to satisfy all of the membership application requirements of these By-Laws and the Rules of the [Association]Corporation.

Registration of Branch Offices

Sec. 8. (a) Each branch office of a member of the [NASD]Corporation shall be registered with and listed upon the membership roll of the [NASD]Corporation, and shall pay such dues, assessments, and other charges as shall be fixed from time to time by the Board pursuant to Article VI.

(b) Each member of the [NASD]Corporation shall promptly advise the [NASD]Corporation via electronic process or such other process as the

[NASD]Corporation may prescribe of the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office of such member not later than 30 days after the effective date of such change.

ARTICLE V

REGISTERED REPRESENTATIVES AND ASSOCIATED PERSONS

Qualification Requirements

Sec. 1. No Change.

Application for Registration

Sec. 2. (a) Application by any person for registration with the [NASD]Corporation, properly signed by the applicant, shall be made to the [NASD]Corporation via electronic process or such other process as the [NASD]Corporation may prescribe, on the form to be prescribed by the [NASD]Corporation and shall contain:

(1) an agreement to comply with the federal securities laws, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the [NASD]Corporation, NASD Regulation, and NASD Dispute Resolution, the Rules of the [Association]Corporation, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Rules of the [Association]Corporation; and

(2) such other reasonable information with respect to the applicant as the [NASD]Corporation may require.

(b) The [NASD]Corporation shall not approve an application for registration of any person who is not eligible to be an associated person of a member under the

provisions of Article III, Section 3.

(c) Every application for registration filed with the [NASD]Corporation shall be kept current at all times by supplementary amendments via electronic process or such other process as the [NASD]Corporation may prescribe to the original application. Such amendment to the application shall be filed with the [NASD]Corporation not later than 30 days after learning of the facts or circumstances giving rise to the amendment. If such amendment involves a statutory disqualification as defined in Section 3(a)(39) and Section 15(b)(4) of the Act, such amendment shall be filed not later than ten days after such disqualification occurs.

**Notification by Member to the [NASD]Corporation and Associated Person of
Termination; Amendments to Notification**

Sec. 3. (a) Following the termination of the association with a member of a person who is registered with it, such member shall, not later than 30 days after such termination, give notice of the termination of such association to the [NASD]Corporation via electronic process or such other process as the [NASD]Corporation may prescribe on a form designated by the [NASD]Corporation, and concurrently shall provide to the person whose association has been terminated a copy of said notice as filed with the [NASD]Corporation. A member that does not submit such notification and provide a copy to the person whose association has been terminated, within the time period prescribed, shall be assessed a late filing fee as specified by the [NASD]Corporation. Termination of registration of such person associated with a member shall not take effect so long as any complaint or action under the Rules of the [Association]Corporation is pending against a member and to which complaint or action such person associated with

a member is also a respondent, or so long as any complaint or action is pending against such person individually under the Rules of the [Association]Corporation. The [NASD]Corporation, however, may in its discretion declare the termination effective at any time.

(b) The member shall notify the [NASD]Corporation via electronic process or such other process as the [NASD]Corporation may prescribe by means of an amendment to the notice filed pursuant to subsection (a) in the event that the member learns of facts or circumstances causing any information set forth in said notice to become inaccurate or incomplete. Such amendment shall be filed with the [NASD]Corporation via electronic process or such other process as the [NASD]Corporation may prescribe and a copy provided to the person whose association with the member has been terminated not later than 30 days after the member learns of the facts or circumstances giving rise to the amendment.

Retention of Jurisdiction

Sec. 4. (a) A person whose association with a member has been terminated and is no longer associated with any member of [NASD]Corporation or a person whose registration has been revoked or canceled shall continue to be subject to the filing of a complaint under the [NASD]Corporation Rules based upon conduct that commenced prior to the termination, revocation, or cancellation or upon such person's failure, while subject to [NASD's]the Corporation's jurisdiction as provided herein, to provide information requested by [NASD]Corporation pursuant to the [NASD]Corporation's Rules, but any such complaint shall be filed within:

(i) No Change.

(ii) two years after the effective date of revocation or cancellation of registration pursuant to the [NASD]Corporation's Rules; or

(iii) No Change.

(b) A person whose association with a member has been terminated and is no longer associated with any member of [NASD]Corporation shall continue to be subject to a proceeding to suspend, consistent with Article VI, Section 3 of the By-Laws, his or her ability to associate with a member based on such person's failure to comply with an arbitration award or a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the [NASD]Corporation's Rules, provided that such proceeding is instituted within two years after the date of entry of such award or settlement.

ARTICLE VI

DUES, ASSESSMENTS, AND OTHER CHARGES

Power of the [NASD]Corporation to Fix and Levy Assessments

Sec. 1. The [NASD]Corporation shall prepare an estimate of the funds necessary to defray reasonable expenses of administration in carrying on the work of the [NASD]Corporation each fiscal year, and on the basis of such estimate, shall fix and levy the amount of admission fees, dues, assessments, and other charges to be paid by the members [of the NASD] and issuers and any other persons using any facility or system which the [NASD]Corporation, NASD Regulation, or NASD Dispute Resolution operates or controls. Fees, dues, assessments, and other charges shall be called and payable as determined by the [NASD]Corporation from time to time; provided, however, that such admission fees, dues, assessments, and other charges shall be equitably

allocated among members and issuers and any other persons using any facility or system which the [NASD]Corporation operates or controls. The [NASD]Corporation may from time to time make such changes or adjustments in such fees, dues, assessments, and other charges as it deems necessary or appropriate to assure equitable allocation of dues among members. In the event of termination of membership or the extension of any membership to a successor organization during any fiscal year for which an assessment has been levied and become payable, the [NASD]Corporation may make such adjustment in the fees, dues, assessments, or other charges payable by any such member or successor organization or organizations during such fiscal years as it deems fair and appropriate in the circumstances.

Reports of Members

Sec. 2. Each member, issuer, or other person shall promptly furnish all information or reports requested by the [NASD]Corporation in connection with the determination of the amount of admission fees, dues, assessments, or other charges.

Suspension or Cancellation

Sec. 3. (a) [NASD]The Corporation after 15 days notice in writing, may suspend or cancel the membership of any member or the registration of any person in arrears in the payment of any fees, dues, assessments, or other charges or for failure to furnish any information or reports requested pursuant to Section 2.

(b) [NASD]The Corporation after 15 days notice in writing, may suspend or cancel the membership of any member or suspend from association with any member any person, for failure to comply with an award of arbitrators properly rendered pursuant to the [NASD]Corporation's Rules, 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 for failure to comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the [NASD]Corporation's Rules.

Reinstatement of Membership or Registration

Sec. 4. Any membership or registration suspended or canceled under this Article may be reinstated by the [NASD]Corporation upon such terms and conditions as it shall deem just; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in the [NASD]Corporation.

Delegation

Sec. 5. The [NASD]Corporation may delegate its authority under this Article in a manner not inconsistent with the Delegation Plan.

ARTICLE VII

BOARD OF GOVERNORS

Powers and Authority of Board

Sec. 1. (a) The Board shall be the governing body of the [NASD]Corporation and, except as otherwise provided by applicable law, the Restated Certificate of Incorporation, or these By-Laws, shall be vested with all powers necessary for the management and administration of the affairs of the [NASD]Corporation and the promotion of the [NASD]Corporation's welfare, objects, and purposes. In the exercise of such powers, the Board shall have the authority to:

- (i) No Change.

(ii) adopt such other Rules of the [Association]Corporation and changes or additions thereto as it deems necessary or appropriate, provided, however, that the Board may at its option submit to the membership any such adoption, change, or addition to such Rules;

(iii) make such regulations, issue such orders, resolutions, exemptions, interpretations, including interpretations of these By-Laws and the Rules of the [Association]Corporation, and directions, and make such decisions as it deems necessary or appropriate;

(iv) through (vi) No Change.

(vii) organize and operate automated systems to provide qualified subscribers with securities information and automated services. The systems may be organized and operated by a division or subsidiary company of the [NASD]Corporation or by one or more independent firms under contract with the [NASD]Corporation as the Board may deem necessary or appropriate. The Board may adopt rules for such automated systems, establish reasonable qualifications and classifications for members and other subscribers, provide qualification standards for securities included in such systems, require members to report promptly information in connection with securities included in such systems, and establish charges to be collected from subscribers and others;

(viii) require the prompt reporting by members of such original and supplementary trade data as the Board deems appropriate. Such reporting requirements may be administered by the [NASD]Corporation, a division or subsidiary thereof, or a clearing agency registered under the Act; and

(ix) engage in any activities or conduct necessary or appropriate to carry out the [NASD]Corporation's purposes under its Restated Certificate of Incorporation and the federal securities laws.

(b) In the event of the refusal, failure, neglect, or inability of any Governor to discharge such Governor's duties, or for any cause affecting the best interests of the [NASD]Corporation the sufficiency of which the Board shall be the sole judge, the Board shall have the power, by the affirmative vote of two-thirds of the Governors then in office, to remove such Governor and declare such Governor's position vacant and that, subject to the Restated Certificate of Incorporation, such position shall be filled in accordance with [the provisions of Section 7.]these By-Laws; provided, that during the Transitional Period, (i) a Governor that is a member of the NYSE Group Committee may only be removed by the affirmative vote of a majority of the Governors who are members of the NYSE Group Committee and (ii) a Governor that is a member of the NASD Group Committee may only be removed by the affirmative vote of a majority of the Governors who are members of the NASD Group Committee.

(c) To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the [NASD]Corporation may delegate any power of the [NASD]Corporation or the Board to a committee appointed pursuant to Article IX, Section 1, the NASD Regulation Board, the NASD Dispute Resolution Board, or [NASD]the Corporation's staff in a manner not inconsistent with the Delegation Plan; provided, that during the Transitional Period, no such delegation shall occur without the prior affirmative vote of two-thirds of the Governors then in office.

Authority to Cancel or Suspend for Failure to Submit Required Information

Sec. 2. (a) The Board shall have authority, upon notice and opportunity for a hearing, to cancel or suspend the membership of any member or suspend the association of any person associated with a member for failure to file, or to submit on request, any report, document, or other information required to be filed with or requested by the [NASD]Corporation pursuant to these By-Laws or the Rules of the [Association]Corporation.

(b) Any membership or association suspended or canceled pursuant to this Section may be reinstated by the [NASD]Corporation pursuant to the Rules of the [Association]Corporation.

(c) The Board is authorized to delegate its authority under this Section in a manner not inconsistent with the Delegation Plan and otherwise in accordance with the Rules of the [Association]Corporation.

Authority to Take Action Under Emergency or Extraordinary Market Conditions

Sec. 3. 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 over-the-counter securities market, the operation of any automated system owned or operated by the [NASD]Corporation, or NASD Regulation, and the participation in any such system of any or all persons or the trading therein of any or all securities; and

(b) No Change.

Composition and Qualifications of the Board

Sec. 4. (a) The Board shall consist of no fewer than [15 nor more than 25

Governors, comprising (i) the Chief Executive Officer of the NASD, (ii) if the Board of Governors determines, from time to time, in its sole discretion, that the appointment of a second officer of the NASD to the Board of Governors is advisable, a second officer of the NASD, (iii) the President of NASD Regulation, (iv) the Chair of the National Adjudicatory Council, and (v) no fewer than 12 and no more than 22 Governors elected by the members of the NASD. The Governors elected by the members of the NASD shall include a representative of an issuer of investment company shares or an affiliate of such an issuer, a representative of an insurance company, a representative of a national retail firm, a representative of a regional retail or independent financial planning member firm, a representative of a firm that provides clearing services to other NASD members, and a representative of an NASD member having not more than 150 registered persons. The number of Non-Industry Governors shall exceed the number of Industry Governors. If the number of Industry and Non-Industry Governors is 13–15, the Board shall include at least four Public Governors. If the number of Industry and Non-Industry Governors is 16–17, the Board shall include at least five Public Governors. If the number of Industry and Non-Industry Governors is 18–23, the Board shall include at least six Public Governors.]16 nor more than 25 Governors. The number of Public Governors shall exceed the number of Industry Governors.

From and after the Transitional Period, the Board of Governors shall consist of (i) the Chief Executive Officer of the Corporation, (ii) a number of Public Governors determined by the Board, (iii) a Floor Member Governor, an Independent Dealer/Insurance Affiliate Governor and an Investment Company Affiliate Governor and (iv) three Small Firm Governors, one Mid-Size Firm Governor and three Large Firm

Governors.

(b) As soon as practicable following the annual election of Governors, the Board shall elect from among its members a Chair and such other persons having such titles as it shall deem necessary or advisable, to serve until the next annual election or until their successors are chosen and qualify. The Chair of the [National Adjudicatory Council may not serve as Chair of the Board. The Chair and] Board shall preside over all meetings of the Board, and shall not have any other power or authority except as otherwise expressly provided for herein. The Lead Governor shall preside at all meetings of the Board at which the Chair is not present, and shall have the authority to call, and will lead if the Chair of the Board is recused, executive sessions of the Board. Any other persons elected under this subsection shall have such powers and duties as may be determined from time to time by the Board. [The]Except as otherwise provided herein, the Board, by resolution adopted by a majority of the Governors then in office, (i) after the completion of the Transitional Period, may remove [the Chair and any person]the Chair and any person elected under this subsection from such position at any time and (ii) during the Transitional Period, may remove any person, other than the Chair, elected under this subsection from such position at any time.

Term of Office of Governors

Sec. 5. [(a) The Chief Executive Officer and, if appointed, the second officer of the NASD, and the President of NASD Regulation]

From and after the Transitional Period:

The Chief Executive Officer shall serve as [Governors]a Governor until a successor is elected, or until death, resignation, or removal [(or, in addition, in the case of

a second officer of the NASD, until the Board of Governors, in its sole discretion, determines that such appointment is no longer advisable)].

Public Governors and the Floor Member Governor, the Independent Dealer/Insurance Affiliate Governor and the Investment Company Affiliate Governor (the “Appointed Governors”) shall be appointed by the Board from candidates recommended to the Board by the Nominating Committee.

As of the first annual meeting of members following the Transitional Period, the Appointed Governors shall be divided by the Board into three classes, as equal in number as possible, with the first class holding office until the first succeeding annual meeting of members, the second class holding office until the second succeeding annual meeting of members and the third class holding office until the third succeeding annual meeting of members, or until a successor is duly appointed and qualified, or until death, resignation, disqualification, or removal. Each class shall initially contain as equivalent a number as possible of Appointed Governors who were members of the NYSE Group Committee during the Transitional Period or are successors to such Governor positions, on the one hand, and Appointed Governors who were members of the NASD Group Committee during the Transitional Period or are successors to such Governor positions, on the other hand, to the extent the Board determines such persons are to remain Governors after the Transitional Period. No Appointed Governor may serve more than two consecutive terms. If a Governor is appointed to fill a vacancy of such a Governor position for a term of less than one year, the Governor may serve up to two consecutive terms following the expiration of the Governor’s initial term. At each annual election following the first annual meeting of members following the Transitional Period, Appointed Governors

shall be appointed by the Board for a term of three years to replace those whose terms expire.

[(b) The Chair of the National Adjudicatory Council shall serve as a Governor for a term of one year,]As of the first annual meeting of members following the Transitional Period, the Large Firm Governors, the Mid-Size Firm Governor and the Small Firm Governors shall be divided into three classes, as equal in number as possible, with the first class, being comprised of one Large Firm Governor and one Small Firm Governor, holding office until the first succeeding annual meeting of members, the second class, being comprised of one Large Firm Governor, one Mid-Size Firm Governor and one Small Firm Governor, holding office until the second succeeding annual meeting of members and the third class, being comprised of one Large Firm Governor and one Small Firm Governor, holding office until the third succeeding annual meeting of members, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. [A Chair of the National Adjudicatory Council]A Governor elected by the members may not serve more than two consecutive [one-year] terms [as a Governor, unless a Chair of the National Adjudicatory Council is appointed to fill]. If a Governor is elected to fill a vacancy of such a Governor position for a term of less than one year [for such office. In such case, the Chair of the National Adjudicatory Council may serve an initial term as a Governor and], the Governor may serve up to two consecutive [one-year terms as a Governor]terms following the expiration of [such initial term. After serving as a Chair of the National Adjudicatory Council, an individual may serve as a Governor elected by the members of the NASD]the Governor's initial term. At each annual election following the first annual meeting of members following the Transitional Period,

Large Firm Governors, Small Firm Governors and the Mid-Size Firm Governor shall be elected for a term of three years to replace those whose terms expire.

[(c) The Governors elected by the members of the NASD shall be divided into three classes and hold office for a term of no more than three years, such term to be fixed by the Board at the time of the nomination or certification of each such Governor, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Governor elected by the members of the NASD may not serve more than two consecutive terms. If a Governor is elected by the Board to fill a term of less than one year, the Governor may serve up to two consecutive terms following the expiration of the Governor's initial term. The term of office of Governors of the first class shall expire at the January 1999 Board meeting, of the second class one year thereafter, and of the third class two years thereafter. At each annual election, commencing January 1999, Governors shall be elected for a term of three years to replace those whose terms expire.]

In the event of any vacancy among the Large Firm Governors, the Mid-Size Firm Governor or the Small Firm Governors, such vacancy shall only be filled by the Large Firm Governor Committee in the case of a Large Firm Governor vacancy, the Board in the case of a Mid-Size Firm Governor vacancy or the Small Firm Governor Committee in the case of a Small Firm Governor vacancy; provided, however, that in the event the remaining term of office of any Large Firm, Mid-Size Firm or Small Firm Governor position that becomes vacant is for more than 12 months, such vacancy shall be filled by the members entitled to vote thereon at a meeting thereof convened to vote thereon.

Disqualification

Sec. 6. Notwithstanding Section 5 or Article XXII, the term of office of a

Governor shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Governors, that: (a) the Governor no longer satisfies the classification for which the Governor was elected; and (b) the Governor's continued service as such would violate the compositional requirements of the Board set forth in Section 4 (or, in the case of the Transitional Period, Article XXII). If the term of office of a Governor terminates under this Section, and the remaining term of office of such Governor 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 Section 4 (or, in the case of the Transitional Period, Article XXII) by virtue of such vacancy.

[Filling of Vacancies]

[Sec. 7. If an elected Governor position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the Board shall elect by majority vote of the remaining Governors then in office, a person satisfying the classification (Industry, Non-Industry, or Public Governor) for the governorship as provided in Section 4 to fill such vacancy, except that if the remaining term of office for the vacant Governor position is not more than six months, no replacement shall be required. If the remaining term of office for the vacant Governor position is more than one year, the Governor elected by the Board to fill such position shall stand for election in the next annual election pursuant to this Article.]

Intentionally Deleted

Sec. 7. Intentionally Deleted

Meetings of Board; Quorum; Required Vote

Sec. 8. Meetings of the Board shall be held at such times and places, upon such

notice, and in accordance with such procedure as the Board in its discretion may determine. Special meetings of the Board of the Corporation may be called by the Board, the Chief Executive Officer of the Corporation, the Chair or the Lead Governor. Each of the Chief Executive Officer of the Corporation and the Chair, and with respect to matters from which the Chief Executive Officer of the Corporation and the Chair recuse themselves, the Lead Governor, shall have the authority to include matters on the agenda of a meeting of the Board. At all meetings of the Board, unless otherwise set forth in these By-Laws or required by law, a quorum for the transaction of business shall consist of a majority of the Board, including not less than 50 percent of the [Non-Industry] Public Governors. Any action taken by a majority vote at any meeting at which a quorum is present, except as otherwise provided in the Restated Certificate of Incorporation or these By-Laws, shall constitute the action of the Board. Governors or members of any committee appointed by the Board under Article IX, Section 1 may participate in a meeting of the Board or a committee by means of communications facilities that ensure all persons participating in the meeting can hear and speak to one another, and participation in a meeting pursuant to this By-Law shall constitute presence in person at such meeting. No Governor shall vote by proxy at any meeting of the Board.

The [National] Nominating Committee

Sec. 9. (a) [The National]Except as otherwise provided in these By-Laws, the Nominating Committee shall nominate and, in the event of a contested election, may, as described in Section 11(b), support: [Industry, Non-Industry, and Public]Large Firm, Mid-Size Firm, Small Firm, Public, Floor Member, Independent Dealer/Insurance Affiliate and Investment Company Affiliate Governors for each such vacant or new

Governor position on the [NASD] Board [for election by the membership]; Industry[, Non-Industry,] and Public Directors for each vacant or new position on the NASD Regulation Board and the NASD Dispute Resolution Board for election by the stockholder; and Industry[, Non-Industry,] and Public members for each vacant or new position on the National Adjudicatory Council for appointment by the NASD Regulation Board.

(b) [The National Nominating Committee shall consist of no fewer than six and no more than nine members. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members. If the National Nominating Committee consists of six members, at least two shall be Public committee members. If the National Nominating Committee consists of seven or more members, at least three shall be Public committee members. No officer or employee of the Association shall serve as a member of the National Nominating Committee in any voting or non-voting capacity. No more than three of the National Nominating Committee members and no more than two of the Industry committee members shall be current members of the NASD Board.]Except as otherwise provided in these By-laws, after the completion of the Transitional Period the Nominating Committee shall consist of such number of members of the Board as the Board shall determine from time to time; provided, however, that the Nominating Committee shall at all times be comprised of a number of members which is a minority of the entire Board and the Chief Executive Officer shall not be a member of the Nominating Committee. The number of Public Governors on the Nominating Committee shall equal or exceed the number of Industry Governors on the Nominating Committee.

[(c) A National Nominating Committee member may not simultaneously serve on the National 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 National Nominating Committee.]

[(d)](c) [Members of the National]After the completion of the Transitional Period, and except as otherwise provided in these By-Laws, members of the Nominating Committee shall be appointed annually by the Board and may be removed only by majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge such member's duties.

[(e)](d) The Secretary of the [NASD]Corporation shall collect from each nominee for Governor such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as [an Industry, Non-Industry, or Public]a Large Firm, Mid-Size Firm, Small Firm, Public, Floor Member, Independent Dealer/Insurance Affiliate and/or Investment Company Affiliate Governor, and the Secretary shall certify to the [National] Nominating Committee (or, in the case of Article XXII, the relevant body with the authority to nominate as specified therein) each nominee's classification.

[(f)](e) At all meetings of the [National] Nominating Committee, a quorum for the transaction of business shall consist of a majority of the [National] Nominating Committee[, including not less than 50 percent of the Non-Industry committee members]. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

Procedure for Nomination of Governors

Sec. 10. Prior to a meeting of members pursuant to Article XXI for the election of Governors, the [NASD]Corporation shall notify the members of the names of each nominee selected by the [National] Nominating Committee (or, in the case of Article XXII, the relevant body with the authority to nominate as specified therein) for each governorship up for election by the members, the classification of governorship ([Industry, Non-Industry, or Public Governor]Large Firm, Mid-Size Firm or Small Firm) for which the nominee is nominated, the qualifications of each nominee, and such other information regarding each nominee as the [National]Board or the Nominating Committee (or, in the case of Article XXII, the relevant body with the authority to nominate as specified therein) deems pertinent. A person who has not been so nominated may be included on the ballot for the election of Governors if: (a) within 45 days after the date of such notice, such person presents to the Secretary of the [NASD]Corporation (i) in the case of petitions solely in support of such person, petitions in support of his or her nomination duly executed by three percent of the members entitled to vote for such nominees' election, and no such member shall endorse more than one such nominee, or (ii) in the case of petitions in support of more than one person, petitions in support of the nominations of such persons duly executed by ten percent of the members entitled to vote for such nominees' election; and (b) the Secretary certifies that (i) the petitions are duly executed by the Executive Representatives of the requisite number of members entitled to vote for such nominee's/nominees' election, and (ii) the person(s) satisfies/satisfy the classification ([Industry, Non-Industry, or Public Governor]Large Firm, Mid-Size Firm or Small Firm) of the governorship(s) to be filled, based on such information provided by

the person(s) as is reasonably necessary to make the certification. The Secretary shall not unreasonably withhold or delay the certification. Upon certification, the election shall be deemed a contested election with respect to the category of Governor to which the nomination relates. After the certification of a contested election or the expiration of time for contesting an election under this Section, the Secretary shall deliver notice of a meeting of members pursuant to Article XXI, Section 3(a).

Communication of Views

Sec. 11. (a) The [NASD]Corporation, the Board, a committee appointed pursuant to Article IX, Section 1, and [NASD]the Corporation's staff shall not take any position publicly or with a member or person associated with or employed by a member with respect to any candidate in a contested election or nomination held pursuant to these By-Laws or the NASD Regulation By-Laws. A Governor or a member of any committee (other than the [National] Nominating Committee (or, in the case of Article XXII, the relevant body with the authority to nominate as specified therein)) may communicate his or her views with respect to any candidate if such Governor or committee member acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of the [NASD]Corporation, the [NASD] Board, or any committee (other than the [National] Nominating Committee (or, in the case of Article XXII, the relevant body with the authority to nominate as specified therein)). Except as provided herein, any candidate and his or her representatives may communicate support for the candidate to a member or person associated with or employed by a member.

(b) In a contested election, the [National] Nominating Committee (or, in the case of Article XXII, the relevant body with the authority to nominate as specified therein)

may support its nominees under this Article by sending to [NASD] members eligible to vote up to two mailings of materials in support of its nominees in lieu of mailings sent by its candidates under Article VII, Section 12. In addition to such mailings, in the event of mailings and or other communications to [the NASD] members by or on behalf of a candidate by petition in a contested election, the [National] Nominating Committee (or, in the case of Article XXII, the relevant body with the authority to nominate as specified therein) may respond in-kind, but shall not take a position unresponsive, to the contesting candidate's communications.

Administrative Support

Sec. 12. The Secretary of the [NASD]Corporation shall provide administrative support to the candidates in a contested election under this Article by sending to [NASD] members eligible to vote for such category of Governors up to two mailings of materials prepared by the candidates. The [NASD]Corporation shall pay the postage for the mailings. If a candidate wants such mailings sent, the candidate shall prepare such material on the candidate's personal stationery. The material shall state that it represents the opinions of the candidate. The candidate shall provide a copy of such material for each member [of the NASD]eligible to vote for such category of Governors. A candidate nominated by the [National] Nominating Committee (or, in the case of Article XXII, the relevant body with the authority to nominate as specified therein) may identify himself or herself as such in his or her materials. Any candidate may send additional materials to [NASD] members at the candidate's own expense. Except as provided in this Article, the [NASD]Corporation, the Board, any committee, and [NASD]the Corporation's staff shall not provide any other administrative support to a candidate in a contested election

conducted under this Article or a contested election or nomination conducted under the NASD Regulation By-Laws.

Election of Governors

Sec. 13. Governors that are to be elected by the members shall be elected by a plurality of the votes of the members of the [NASD]Corporation present in person or represented by proxy at the annual meeting of the [NASD]Corporation and entitled to vote [thereat] for such category of Governors. The annual meeting of the [NASD]Corporation shall be on such date and at such place as the Board shall designate pursuant to Article XXI. Except as otherwise provided in these By-Laws or the Restated Certificate of Incorporation, [A]ny Governor so elected must be nominated by the [National] Nominating Committee or certified by the Secretary pursuant to Section 10.

Maintenance of Compositional Requirements of the Board

Sec. 14. Each elected or appointed Governor shall update the information submitted under Section 9[(e)](d) regarding his or her classification as [an Industry, Non-Industry, or Public]a Large Firm, Mid-Size Firm, Small Firm, Public, Floor Member, Independent Dealer/Insurance Affiliate and/or Investment Company Affiliate Governor at least annually and upon request of the Secretary of the [NASD]Corporation, and shall report immediately to the Secretary any change in such classification.

Resignation

Sec. 15. Any Governor may resign at any time either upon written notice of resignation to the [Chair of the Board, the] Chief Executive Officer[,], 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.

ARTICLE VIII

OFFICERS, AGENTS, AND EMPLOYEES

Officers

Sec. 1. The Board shall elect a Chief Executive Officer, who shall be responsible for the management and administration of its affairs and shall be the official representative of the [NASD]Corporation in all public matters and who shall have such powers and duties in the management of the [NASD]Corporation as may be prescribed in a resolution by the Board, and which powers and duties shall not be inconsistent with the Delegation Plan. The Board shall elect a [Chief Operating Officer and] Secretary, who shall have such powers and duties conferred by these By-Laws and such other powers and duties as may be prescribed in a resolution by the Board. The Board may provide for such other executive or administrative officers as it shall deem necessary or advisable[, including, but not limited to, Executive Vice President, Senior Vice President, Vice President, and Treasurer of the NASD]. All such officers shall have such titles, powers, and duties, and shall be entitled to such compensation, as shall be determined from time to time by the Board. Each such officer shall hold office until a successor is elected and qualified or until such officer's earlier resignation or removal. Any officer may resign at any time upon written notice to the [NASD]Corporation.

Absence of Chief Executive Officer

Sec. 2. In the case of the absence or inability to act of the Chief Executive Officer of the [NASD]Corporation, or in the case of a vacancy in such office, the Board may appoint its Chair or such other person as it may designate to act as such officer pro tem,

who shall assume all the functions and discharge all the duties of the Chief Executive Officer.

Agents and Employees

Sec. 3. The Board may employ or authorize the employment and prescribe the powers and duties of such agents and employees as it deems necessary or advisable. The employment and compensation of such agents and employees shall be at the pleasure of the Board, provided that such determinations are not inconsistent with the requirements of the Delegation Plan. Except as provided in Article IX, Section 5(d), agents and employees of the [NASD]Corporation shall be under the supervision and control of the officers of the [NASD]Corporation, unless the Board provides by resolution that an agent or employee shall be under the supervision and control of the Board.

Employment of Counsel

Sec. 4. No Change.

Delegation of Duties of Officers

Sec. 5. The Board may delegate the duties and powers of any officer of the [NASD]Corporation to any other officer or to any Governor for a specified period of time and for any reason that the Board may deem sufficient.

Resignation and Removal of Officers

Sec. 6. (a) No Change.

(b) Any officer of the [NASD]Corporation may be removed, with or without cause, by resolution adopted by a majority of the Governors then in office at any regular or special meeting of the Board or by a consent adopted by all of the Governors then in office in accordance with applicable law. Such removal shall be without prejudice to the

contractual rights of the affected officer, if any, with the [NASD]Corporation.

Bond

Sec. 7. The [NASD]Corporation may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

ARTICLE IX

COMMITTEES

Appointment

Sec. 1. (a) The Corporation shall have the following committees of the Board: the NASD Group Committee (during the Transitional Period); the NYSE Group Committee (during the Transitional Period); the Small Firm Governor Committee; and the Large Firm Governor Committee, which in each case shall be comprised of the Governors specified herein and in the Restated Certificate of Incorporation to be the members thereof and shall have the authority provided for herein and in the Restated Certificate of Incorporation. The Corporation shall also have the following committees: the Audit Committee, the Finance Committee and, during the first year of the Transitional Period or as extended thereafter by resolution of the Board, the Integration Committee, which in each case shall have the authority provided for herein.

(b) Subject to Article VII, Section 1(c), the Board may appoint such other committees or subcommittees as it deems necessary or desirable, and it shall fix their powers, duties, and terms of office in a manner not inconsistent with these By-Laws or the Restated Certificate of Incorporation. Any such other committee or subcommittee consisting solely of one or more Governors, to the extent provided by these By-Laws or by resolution of the Board and to the extent not inconsistent with these By-Laws or the

Restated Certificate of Incorporation, shall have and may exercise all powers and authority of the Board in the management of the business and affairs of the [NASD]Corporation. Any such other committee having the authority to exercise the powers and authority of the Board shall have a [percentage of Non-Industry committee members at least as great as the percentage of Non-Industry Governors on the Board and a percentage of Public committee members at least as great as the percentage of Public Governors on the Board]number of Public Governors as members thereof in excess of the number of Industry Governors which are members thereof. During the Transitional Period, all committees of the Board having the authority to exercise the powers and authority of the Board (with the exception of the Large Firm Governor Committee, the Small Firm Governor Committee, the NASD Group Committee and the NYSE Group Committee), shall also have (i) a percentage of members (to the nearest whole number of committee members) that are members of the NASD Group Committee at least as great as the percentage of Governors on the Board that are members of the NASD Group Committee; and (ii) a percentage of members (to the nearest whole number of committee members) that are members of the NYSE Group Committee at least as great as the percentage of Governors on the Board that are members of the NYSE Group Committee.

Maintenance of Compositional Requirements of Committees

Sec. 2. Upon request of the Secretary of the [NASD]Corporation, each prospective committee member who is not a Governor 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[, Non-Industry,] or Public committee member. The Secretary shall certify to the Board each prospective committee

member's classification. Each committee member shall update the information submitted under this Section at least annually and upon request of the Secretary of the [NASD]Corporation, and shall report immediately to the Secretary any change in such classification.

Removal of Committee Member

Sec. 3. A member of the Audit Committee, the Finance Committee (other than the Chair thereof) or a committee or subcommittee appointed pursuant to Section 1(b) of this Article may be removed from such committee or subcommittee only by a majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge such member's duties.

Executive Committee

Sec. 4. (a) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by the General Corporation Law of the State of Delaware and other applicable law, and subject to the Restated Certificate of Incorporation and these By-Laws, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the [NASD]Corporation between meetings of the Board, and which may authorize the seal of the [NASD]Corporation to be affixed to all papers that may require it.

(b) The Executive Committee shall consist of no fewer than five and no more than eight Governors. The Executive Committee shall include the Chief Executive Officer of the [NASD, and at least one Director of NASD Regulation. The Executive Committee shall have a percentage of Non-Industry committee members at least as great as the percentage of Non-Industry Governors on the whole Board and a percentage of

Public committee members at least as great as the percentage of Public Governors on the whole]Corporation and the Chair of the Board.

(c) No Change.

(d) At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including not less than 50 percent of the [Non-Industry]Public committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

Audit Committee

Sec. 5. (a) The Board shall appoint an Audit Committee. The Audit Committee shall consist of four or five Governors, none of whom shall be officers or employees of the [Association]Corporation. [A majority of the Audit Committee members shall be Non-Industry Governors.] The Audit Committee shall include at least two Public Governors. A Public Governor shall serve as Chair of the Committee. An Audit Committee member shall hold office for a term of one year.

(b) The Audit Committee shall perform the following functions: (i) ensure the existence of adequate controls and the integrity of the financial reporting process of the [NASD]Corporation; (ii) recommend to the [NASD] Board, and monitor the independence and performance of, the certified public accountants retained as outside auditors by the [NASD]Corporation; and (iii) direct and oversee all the activities of the [NASD]Corporation's internal review function, including but not limited to management's responses to the internal review function.

(c) No member of the Audit Committee shall participate in the consideration or

decision of any matter relating to a particular [NASD] member, company, or individual if such Audit Committee member has a material interest in, or a professional, business, or personal relationship with, that member, company, or individual, or if such participation shall create an appearance of impropriety. An Audit Committee member shall consult with the General Counsel of the [NASD]Corporation to determine if recusal is necessary. If a member of the Audit Committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Audit Committee.

(d) The Audit Committee shall have exclusive authority to: (i) hire or terminate the Director of Internal Review; (ii) determine the compensation of the Director of Internal Review; and (iii) determine the budget for the Office of Internal Review. The Office of Internal Review and the Director of Internal Review shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Office of Internal Review also report to senior management of the [NASD]Corporation on matters the Audit Committee deems appropriate and may request that senior [NASD] management perform such operational oversight as necessary and proper, consistent with preservation of the independence of the internal review function.

(e) At all meetings of the Audit Committee, a quorum for the transaction of business shall consist of a majority of the Audit Committee, including not less than 50 percent of the [Non-Industry]Public committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

Finance Committee

Sec. 6. (a) The Board [may]shall appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of the [NASD]Corporation, including recommendations for the [NASD]Corporation's annual operating and capital budgets and proposed changes to the rates and fees charged by [NASD]Corporation.

(b) The Finance Committee shall consist of four or more Governors. The Chief Executive Officer of the [NASD]Corporation shall be a member of the Finance Committee. [The number of Non-Industry committee members shall equal or exceed the number of Industry committee members plus the Chief Executive Officer of the NASD.] A Finance Committee member shall hold office for a term of one year.

(c) At all meetings of the Finance Committee, a quorum for the transaction of business shall consist of a majority of the Finance Committee, including not less than 50 percent of the [Non-Industry]Public committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

(d) The Corporation shall also have an Investment Committee which shall not be a committee of the Board. The majority of the Investment Committee during the Transitional Period will be comprised of members of the Investment Committee immediately prior to the Closing, unless otherwise determined by the NASD Group Committee, and a minority of the Investment Committee during the Transitional Period will be comprised of members of the NYSE Group Committee.

Integration Committee

Sec. 7. (a) The Board shall appoint an Integration Committee. The Integration

Committee shall have a term not to exceed one year from the Closing unless continued for a longer period by resolution of the Board.

(b) The Chair of the Board shall be the Chair of the Integration Committee unless, in the case of the Integration Committee continuing beyond one year after Closing pursuant to Section 7(a), otherwise determined by the Board.

(c) At all meetings of the Integration Committee, a quorum for the transaction of business shall consist of a majority of the Integration Committee, including not less than 50 percent of the Public committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

ARTICLE X

COMPENSATION OF BOARD AND COMMITTEE MEMBERS

Sec. 1. The Board may provide for reasonable compensation of the Chair of the Board, the Governors, and the members of any committee. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the [NASD]Corporation, including those expenses incurred in connection with the support of a candidate or candidates by the [National] Nominating Committee in contested elections in accordance with the By-Laws.

ARTICLE XI

RULES

Sec. 1. To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among members of the [NASD]Corporation, to prevent fraudulent and manipulative acts and practices, to provide safeguards against unreasonable profits or unreasonable rates of commissions or

other charges, to protect investors and the public interest, 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 [NASD]Corporation and of the Act, the Board is hereby authorized to adopt such rules for the members and persons associated with members, and such amendments thereto as it may, from time to time, deem necessary or appropriate. If any such rules or amendments thereto are approved by the Commission as provided in the Act, they shall become effective Rules of the [Association]Corporation as of such date as the Board may prescribe. The Board is hereby authorized, subject to the provisions of the By-Laws and the Act, to administer, enforce, suspend, or cancel any Rules of the [Association]Corporation adopted hereunder.

ARTICLE XII

DISCIPLINARY PROCEEDINGS

Sec. 1. No Change.

Sec. 2. Except as otherwise permitted under these By-Laws or the Act, in any disciplinary proceeding under the Rules of the [Association]Corporation, any member or person associated with a member shall be given the opportunity to have a hearing at which such member or person associated with a member shall be entitled to be heard in person or by counsel or by a representative as provided in the Rules of the [Association]Corporation. Such persons may present any relevant material in accordance with the Rules of the [Association]Corporation. In any such proceeding against a member or against a person associated with a member to determine whether the member or the person associated with a member shall be disciplined:

(a) through (d) No Change.

ARTICLE XIII

POWERS OF BOARD TO IMPOSE SANCTIONS

Sec. 1. The Board is hereby authorized to impose appropriate sanctions applicable to members, including censure, fine, suspension, or expulsion from membership, suspension or bar from being associated with all members, limitation of activities, functions, and operations of a member, or any other fitting sanction, and to impose appropriate sanctions applicable to persons associated with members, including censure, fine, suspension or barring a person associated with a member from being associated with all members, limitation of activities, functions, and operations of a person associated with a member, or any other fitting sanction, for:

(a) breach by a member or a person associated with a member of any covenant with the [NASD]Corporation or its members;

(b) violation by a member or a person associated with a member of any of the terms, conditions, covenants, and provisions of the By-Laws of the [NASD]Corporation, NASD Regulation, or NASD Dispute Resolution, the Rules of the [Association] Corporation, or the federal securities laws, including the rules and regulations adopted thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the Treasury Department;

(c) failure by a member or person associated with a member to: (i) submit a dispute for arbitration as required by the Rules of the [Association]Corporation; (ii) appear or produce any document in the member's or person's possession or control as directed pursuant to the Rules of the [Association]Corporation; (iii) comply with an

award of arbitrators properly rendered pursuant to the Rules of the [Association]Corporation, 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 (iv) comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the Rules of the [Association]Corporation;

(d) and (e) No Change.

Sec. 2. No Change.

ARTICLE XIV - No Change.

ARTICLE XV

LIMITATION OF POWERS

Prohibitions

Sec. 1. Under no circumstances shall the Board or any officer, employee, or member of the [NASD]Corporation have the power to:

(a) make any donation or contribution from the funds of the [NASD]Corporation or to commit the [NASD]Corporation for the payment of any donations or contributions for political or charitable purposes; or

(b) use the name or the facilities of the [NASD]Corporation in aid of any political party or candidate for any public office.

Use of Name of the [NASD]Corporation by Members

Sec. 2. No member shall use the name of the [NASD]Corporation except to the extent that may be permitted by the Rules of the [Association]Corporation.

Unauthorized Expenditures

Sec. 3. No officer, employee, member of the Board or of any committee shall have any power to incur or contract any liability on behalf of the [NASD]Corporation not authorized by the Board. The Board may delegate to the Chief Executive Officer of the [NASD]Corporation or the Chief Executive Officer's delegate such authority as it deems necessary to contract on behalf of the [NASD]Corporation or to satisfy unanticipated liabilities during the period between Board meetings.

Conflicts of Interest

Sec. 4. (a) A Governor or a member of a committee shall not directly or indirectly participate in any adjudication of the interests of any party if such Governor 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 Governor or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the [Association]Corporation.

(b) No contract or transaction between the [NASD]Corporation and one or more of its Governors or officers, or between the [NASD]Corporation and any other corporation, partnership, association, or other organization in which one or more of its Governors 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 Governor'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 Governors, even though the disinterested governors 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 Governors even though the disinterested governors be less than a quorum. Only disinterested Governors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to any contract or transaction between the [NASD]Corporation and NASD Regulation, or NASD Dispute Resolution.

Municipal Securities

Sec. 5. No Change.

ARTICLE XVI

PROCEDURE FOR ADOPTING AMENDMENTS TO BY-LAWS

Sec. 1. A Governor or a committee appointed by the Board may propose amendments to these By-Laws. Any 25 members of the [NASD]Corporation by petition signed by such members may propose amendments to these By-Laws. Every proposed amendment shall be presented in writing to the Board, and a record shall be kept thereof. The Board may adopt any proposed amendment to these By-Laws by affirmative vote of a majority of the Governors then in office. The Board, upon adoption of any such amendment to these By-Laws, except as to spelling or numbering corrections or as otherwise provided in these By-Laws, shall forthwith cause a copy to be sent to and voted upon by each member of the [NASD]Corporation. If such amendment to these By-Laws is approved by a majority of the members voting within 30 days after the date of submission to the membership, and is approved by the Commission as provided in the Act, it shall become effective as of such date as the Board may prescribe.

ARTICLE XVII

CORPORATE SEAL

Sec. 1. The corporate seal shall have inscribed thereon the name of the [NASD]Corporation, the year of its organization and the words “Corporate Seal, Delaware.” Said seal may be used by causing it or a facsimile thereof to be imposed or affixed or reproduced or otherwise.

ARTICLE XVIII

CHECKS

Sec. 1. All checks or demands for money and notes of the [NASD]Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

ARTICLE XIX

ANNUAL FINANCIAL STATEMENT

Sec. 1. As soon as practicable after the end of each fiscal year, the Board shall send to each member of the [NASD]Corporation a reasonably itemized statement of receipts and expenditures of the [NASD]Corporation for such preceding fiscal year.

ARTICLE XX

RECORD DATES

Fixing of Date by Board

Sec. 1. In order that the [NASD]Corporation may determine the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or to express consent or dissent to corporate action in writing without a meeting, or for the purpose of any other lawful action, the Board may fix, in advance, a record date, pursuant

to Section 213 of the General Corporation Law of the State of Delaware. Only such members as shall be members of record on the date so fixed shall be entitled to notice of and to vote at such meeting or any adjournment thereof, or to give such consent or dissent.

Default Date

Sec. 2. No Change.

Adjournment

Sec. 3. No Change.

ARTICLE XXI

MEETINGS OF MEMBERS

Annual Meeting

Sec. 1. The annual meeting shall be on such date and at such place as the Board shall designate; provided, however, that, except for the first annual meeting following the Closing at which Large Firm Governors, the Mid-Size Governor and Small Firm Governors shall be elected, there shall be no annual meetings of members during the Transitional Period. The business of the meeting shall include: (a) election of the members of the Board pursuant to Article VII, Section 13; and (b) the proposal of business (i) by or at the direction of the [Chairman]Chief Executive Officer of the [Board]Corporation or the Board, or (ii) by any member entitled to vote at the meeting who complied with the notice procedures set forth in Section 3 and was a member at the time such notice was delivered to the Secretary of the [NASD]Corporation.

Special Meetings

Sec. 2. No Change.

Notice of Meeting; Member Business

Sec. 3. (a) Notice of each meeting shall be written or printed; shall state the date, time, and place of the meeting; shall state the purpose or purposes for which the meeting is called; and unless it is the annual meeting, indicate that the notice is being issued at the direction of the person or persons calling the meeting. The Secretary of the [NASD]Corporation shall deliver the notice to the Executive Representative of each member entitled to vote not less than 30 days nor more than 60 days before the date of an annual meeting and not less than ten days nor more than 60 days before the date of a special meeting. If mailed, the notice shall be deemed to be delivered when deposited with postage in the United States mail and addressed to the Executive Representative of the member as it appears on the records of the [NASD]Corporation. Such further notice shall be given as may be required by law. Meetings may be held without notice if all members entitled to vote are present (except as otherwise provided by law), or if notice is waived by those not present. Any previously scheduled meeting of the members may be postponed and any special meeting of the members may be canceled by resolution of the Board upon notice given to the members prior to the time previously scheduled for the meeting.

(b) For business other than the election of Governors to be brought properly before an annual meeting by a member pursuant to Section 1, the member must have given timely notice thereof in writing to the Secretary of the [NASD]Corporation and such other business must otherwise be a proper matter for member action. To be timely, a member's notice shall be delivered to the Secretary at the [NASD]Corporation's principal executive offices within 25 days after the date of the notice of the meeting.

Such member's notice shall set forth a brief description of the business desired to be brought before the meeting, any material interest of the member in such business, and the reasons for conducting such business at the meeting. In no event shall the announcement to the members of an adjournment of an annual meeting commence a new time period for the giving of a member's notice as described above.

(c) No Change.

Inspector

Sec. 4. At each meeting of the members, the polls shall be opened and closed, the proxies and ballots received and taken in charge, and all questions touching the qualification of voters and the validity of proxies and the acceptance or rejection of votes shall be decided by an inspector appointed by the Secretary of the [NASD]Corporation before the meeting, or in default thereof by the chairman of the meeting. If the inspector previously appointed fails to attend or refuses or is unable to serve, a substitute shall be appointed by the chairman of the meeting. The inspector shall not be a Governor, officer, or employee of the [NASD]Corporation or a director, officer, partner, or employee of an [NASD]Corporation subsidiary or member.

Conduct of Meetings

Sec. 5. The chairman of the meeting shall be the Chief Executive Officer of the [NASD]Corporation or his or her designee. The date and time of the opening and closing of the polls for each matter upon which the members will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of members as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations

as adopted by the Board, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations, and procedures and to do all such acts as, in the judgment of the chairman of the meeting, are appropriate for the proper conduct of the meeting. Such rules, regulations, or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to members, their duly authorized and constituted proxies, or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of members shall not be required to be held in accordance with the rules of parliamentary procedure.

ARTICLE XXII

TRANSITIONAL PERIOD

Notwithstanding anything herein to the contrary, to the extent there is any inconsistency between the other provisions of these By-Laws, including, without limitation, Sections 1, 4, 5 and 9 of Article VII hereof, and this Article XXII, the provisions of this Article XXII shall govern as of Closing and for the Transitional Period to the fullest extent permitted by applicable law:

Powers and Authority of Board

Sec. 1. The Board shall be the governing body of the Corporation and, except as otherwise provided by applicable law, the Restated Certificate of Incorporation, or these By-Laws, shall be vested with all powers necessary for the management and administration of the affairs of the Corporation and the promotion of the Corporation's welfare, objects, and purposes; provided, however, that (i) during the Transitional Period, the Board, after consultation with the Chief Executive Officer of the Corporation, shall have the exclusive authority to appoint any Lead Governor of the Corporation, (ii) during the Transitional Period, the Board, after receiving the recommendation of the Chief Executive Officer, shall have the exclusive authority to appoint the Chair of the Finance Committee and (iii) during the Transitional Period, the Nominating Committee will be jointly populated by the Chief Executive Officer and the Chief Executive Officer of NYSE Regulation, Inc. as of Closing (or his duly appointed or elected successor as Chair of the Board), subject to ratification of the appointees by the Board.

Composition and Qualifications of the Board

Sec. 2. (a) As of Closing, and for the Transitional Period, the Board shall consist of 23 authorized members, consisting of (i) the Chief Executive Officer of the Corporation, (ii) the Chief Executive Officer of NYSE Regulation, Inc., (iii) eleven Public Governors, (iv) a Floor Member Governor, an Independent Dealer/Insurance Affiliate Governor and an Investment Company Affiliate Governor and (v) three Small Firm Governors, one Mid-Size Firm Governor and three Large Firm Governors; provided, however that the Board shall not include such Small Firm Governors, Mid-Size Firm Governor or Large Firm Governors, but rather shall include three persons, who immediately prior to the Closing are Industry Governors, selected by the Board in office

prior to the Closing, three persons, who immediately prior to the Closing qualified as Industry Governors pursuant to the By-Laws in existence prior to the Closing, selected by the Board of Directors of NYSE Group, Inc. and one person, who immediately prior to the Closing qualified as an Industry Governor pursuant to the By-Laws in existence prior to the Closing, selected by the Board of Directors of NYSE Group, Inc. and the Board of Governors in office prior to the Closing jointly, until the election of such Small Firm Governors, Mid-Size Firm Governor and Large Firm Governors at the first annual meeting of members following the Closing (which shall be held as soon as practicable after the Closing).

(b) During the Transitional Period, the Chair shall be the Chief Executive Officer of NYSE Regulation, Inc. as of Closing so long as he remains a Governor. In the event the Chief Executive Officer of NYSE Regulation, Inc. as of the Closing ceases to be Chair during the Transitional Period, subject to the Restated Certificate of Incorporation and these By-Laws, the Chair shall be selected by the NYSE Group Committee from among its members; provided that the Chair so selected shall not be a member of the Board of Directors of NYSE Group, Inc.

Term of Office of Governors

Sec. 3. Upon the Closing, the term of office of each Governor in office immediately prior to the Closing who is not to be a Governor as of Closing pursuant to this Article XXII shall automatically, and without any further action, terminate, and such persons shall no longer be members of the Board of Governors.

The Chief Executive Officer shall serve as a Governor until a successor is elected, or until death, resignation, or removal.

The Chief Executive Officer of NYSE Regulation, Inc. as of Closing shall serve as a Governor during the Transitional Period, until death, resignation, or removal; provided, however, in the event of a vacancy during the Transitional Period with respect to this Governor position by virtue of death, resignation or removal, the then Chief Executive Officer of NYSE Regulation, Inc. shall serve as a Governor for the remainder of the Transitional Period, until death, resignation or removal; provided, further however, a person who becomes a Governor pursuant to the immediately preceding proviso shall not be qualified to serve as Chair.

Effective as of Closing, the Board of Directors of NYSE Group, Inc. shall appoint the NYSE Public Governors, the Board in office prior to the Closing shall appoint the NASD Public Governors and the Board of Directors of NYSE Group, Inc. and the Board in office prior to the Closing jointly shall appoint the Joint Public Governor.

The Public Governors appointed in accordance with the preceding paragraph shall hold office for the Transitional Period, or until death, resignation, disqualification, or removal. In the event of any vacancy among the NYSE Public Governors, the Joint Public Governor or NASD Public Governors during the Transitional Period, such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, the NYSE Group Committee in the case of a vacant NYSE Public Governor position, such vacancy shall only be filled by the Board, and nominations for persons to fill such vacancy shall be made by the Nominating Committee, in the case of a vacant Joint Public Governor position or such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, the NASD Group Committee in the case of a vacant NASD Public Governor position.

Effective as of Closing, the Board of Directors of NYSE Group, Inc. shall appoint the Floor Member Governor, the Board of Governors in office prior to the Closing shall appoint the Independent Dealer/Insurance Affiliate Governor and the Board of Directors of NYSE Group, Inc. and the Board of Governors in office prior to the Closing jointly shall appoint the Investment Company Affiliate Governor.

The Floor Member Governor, the Investment Company Affiliate Governor and the Independent Dealer/Insurance Affiliate Governor appointed in accordance with the preceding paragraph shall hold office for the Transitional Period, or until death, resignation, disqualification, or removal. In the event of any vacancy among the Floor Member Governor, the Investment Company Affiliate Governor or the Independent Dealer/Insurance Affiliate Governor during the Transitional Period, such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, the NYSE Group Committee in the case of a Floor Member Governor vacancy, such vacancy shall only be filled by the Board, and nominations for persons to fill such vacancy shall be made by the Nominating Committee, in the case of an Investment Company Affiliate Governor vacancy or such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, the NASD Group Committee in the case of an Independent Dealer/Insurance Affiliate Governor vacancy.

Three Large Firm Governors, three Small Firm Governors and one Mid-Size Governor shall be elected as Governors at the first annual meeting of members following the Closing (the "Initial Member Elected Governors"). The Initial Member Elected Governors shall hold office until the first annual meeting of members following the Transitional Period, or until a successor is duly elected and qualified, or until death,

resignation, disqualification, or removal.

In the event of any vacancy among the Large Firm Governors, the Mid-Size Firm Governor or the Small Firm Governors during the Transitional Period, such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, the NYSE Group Committee in the case of a Large Firm Governor vacancy, such vacancy shall only be filled by the Board, and nominations for persons to fill such vacancy shall be made by the Nominating Committee, in the case of a Mid-Size Firm Governor vacancy or such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, the NASD Group Committee in the case of a Small Firm Governor vacancy; provided, however, that in the event the remaining term of office of any Large Firm, Mid-Size Firm or Small Firm Governor position that becomes vacant is for more than 12 months, nominations shall be made as set forth above in this paragraph, but such vacancy shall be filled by the members entitled to vote thereon at a meeting thereof convened to vote thereon.

Upon the expiration of the Transitional Period, the term of office of the Chief Executive Officer of NYSE Regulation, Inc. as a member of the Board shall automatically, and without any further action, terminate, such person shall no longer be a member of the Board and the authorized number of members of the Board shall automatically be reduced by one.

Nominations at the First Annual Meeting Following Closing

Sec. 4. In the case of the first annual meeting of members following the Closing, nominations shall be by the Board of Directors of NYSE Group, Inc. with respect to Large Firm Governors, jointly by the Board of Directors of NYSE Group, Inc. and the

the Board in office prior to the Closing with respect to Small Firm Governors, instead of the Nominating Committee.

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By-Laws of NASD Regulation, Inc.

ARTICLE I - No Change.

ARTICLE II - No Change.

ARTICLE III - No Change.

ARTICLE IV

BOARD OF DIRECTORS

General Powers

Sec. 4.1 No Change.

Number of Directors

Sec. 4.2 No Change.

Qualifications

Sec. 4.3 (a) Directors need not be stockholders of NASD Regulation. [Only Governors of the NASD Board shall be eligible for election to the Board.] The number of Non-Industry Directors shall equal or exceed the number of Industry Directors. The Board shall include the President and the National Adjudicatory Council Chair, representatives of an issuer of investment company shares or an affiliate of such an issuer, and an insurance company or an affiliated NASD member. If the Board consists of 5–7 Directors, it shall include at least one Public Director. If the Board consists of eight to nine Directors, at least two Directors shall be Public Directors. If the Board

consists of ten to twelve Directors, at least three Directors shall be Public Directors, and if the Board consists of thirteen to fifteen Directors, at least four shall be Public Directors. The Chief Executive Officer of the NASD shall be an ex-officio non-voting member of the Board, except where the person also serves as President of NASD Regulation, in which case the person shall have all powers, including voting powers, granted to all other Directors pursuant to applicable law, the Restated Certificate of Incorporation, the Delegation Plan and these By-Laws.

(b) No Change.

Election

Sec. 4.4 No Change.

Resignation

Sec. 4.5 No Change.

Removal

Sec. 4.6 No Change.

Disqualification

Sec. 4.7 No Change.

Filling of Vacancies

Sec. 4.8 No Change.

Quorum and Voting

Sec. 4.9 No Change.

Regulation

Sec. 4.10 No Change.

Meetings

Sec. 4.11 No Change.

Notice of Meetings; Waiver of Notice

Sec. 4.12 No Change.

Committees

Sec. 4.13 No Change.

Conflicts of Interest; Contracts and Transactions Involving Directors

Sec. 4.14 No Change.

Action Without Meeting

Sec. 4.15 No Change.

Communication of Views Regarding Contested Election or Nomination

Sec. 4.16 No Change.

ARTICLE V

NATIONAL ADJUDICATORY COUNCIL

Appointment and Authority

Sec. 5.1 No Change.

Number of Members and Qualifications

Sec. 5.2 (a) No Change.

(b) The incumbent National Adjudicatory Council shall elect a Chair and a Vice Chair from among the members serving during the following term. The Chair and Vice Chair shall have such powers and duties as may be determined from time to time by the National Adjudicatory Council. The Chair also shall serve as a Director of the NASD Regulation Board [and a Governor of the NASD Board] for a one-year term as provided in the By-Laws and Restated Certificate of Incorporation of the NASD and these By-

Laws. The Board, by resolution adopted by a majority of Directors then in office and after notice to the NASD Board, may remove the Chair or Vice Chair from such position at any time for refusal, failure, neglect, or inability to discharge his or her duties.

Nomination Process

Sec. 5.3 No Change.

Term of Office

Sec. 5.4 No Change.

Resignation

Sec. 5.5 No Change.

Removal

Sec. 5.6 No Change.

Disqualification

Sec. 5.7 No Change.

Filling of Vacancies

Sec. 5.8 No Change.

Quorum and Voting

Sec. 5.9 No Change.

Meetings

Sec. 5.10 No Change.

Review Subcommittee

Sec. 5.11 No Change.

ARTICLE VI - No Change.

ARTICLE VII - No Change.

ARTICLE VIII - No Change.

ARTICLE IX - No Change.

ARTICLE X - No Change.

ARTICLE XI - No Change.

ARTICLE XII - No Change.

ARTICLE XIII - No Change.

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