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**[FIFTH AMENDED AND RESTATED BY-LAWS**

**OF**

**NYSE NATIONAL, INC.**

**FIFTH AMENDED AND RESTATED BY-LAWS**

**OF**

**NYSE NATIONAL, INC.**

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**[FIFTH]~~SIXTH~~ AMENDED AND RESTATED BY-LAWS  
OF  
NYSE NATIONAL, INC.**

**(a Delaware corporation)**

**ARTICLE I**

**DEFINITIONS**

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

**A.**

**Act**

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

**Affiliate**

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

**B.**

**Board**

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

**By-Laws**

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

**C.**

**Commission**

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

**D. Reserved**

**E.**

**ETP Holder**

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

**ETP Holder Representative**

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

**Exchange**

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

**F. – M. Reserved**

**N.**

**Non-Affiliated Director**

(1) The term “Non-Affiliated Director” shall have the meaning set forth in Section 3.2 hereof.

**O. Reserved**

**P.**

**Person**

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

**Person Associated with an ETP Holder**

(2) The term “Person Associated with an ETP Holder” or “Associated Person of an ETP Holder” shall mean any partner, officer, director, or branch manager of an ETP Holder (or any Person occupying a similar status or performing similar functions), any Person directly or indirectly controlling, controlled by, or under common control with an ETP Holder, or any employee of such ETP Holder, except that any Person Associated with an ETP Holder whose functions are solely clerical or ministerial shall not be included in the meaning of such terms.

**Public Director**

(3) The term “Public Director” shall have the meaning set forth in Section 3.2 hereof.

**Q.** Reserved

**R.**

**Rules**

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

**S.**

**Securities Act**

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

**Statutory Disqualification**

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

**ARTICLE II**

**REGISTERED OFFICE AND AGENT; OFFICES**

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

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

**ARTICLE III**

**BOARD OF DIRECTORS**

Section 3.1. Powers.

(a) The business and affairs of the Exchange shall be managed by its Board. The Board, acting in accordance with the terms of these By-Laws and the Rules, shall be vested with all powers necessary for the government of the Exchange as an “exchange” within the meaning of the Act, the regulation of the business conduct of the ETP Holders, and the promotion of the welfare, objects and purposes of the Exchange.

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

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

Section 3.2. General Composition.

(a) Subject to Section 3.2(b), the Board shall consist of a number of directors (“Directors”) as determined by the stockholders from time to time, provided that (1) at least fifty percent (50%) of the directors will be persons from the public and will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates (“Public Directors”); and (2) at least twenty percent (20%) of the directors shall consist of individuals nominated by the ETP Holders of the Exchange (“Non-Affiliated Directors”). For purposes of calculation of the minimum number of Non-Affiliated Directors, if 20 percent of the Directors is not a whole number, such number of Directors to be nominated and selected by the ETP Holders of the Exchange will be rounded up to the next whole number. The term of office of a director shall not be affected by any decrease in the authorized number of directors.

(b) Nominees for a Director position shall provide the Secretary such information as is reasonably necessary to serve as the basis for a determination of the nominee’s qualifications as a Director, for purposes of Section 3.2(a) of these Bylaws, and the Secretary shall make such determination concerning the nominee’s qualifications.

(c) At the first annual meeting and at each subsequent annual meeting of the stockholders, except as otherwise provided by the Bylaws, the stockholders shall elect directors to serve until the next annual meeting or until their successors are elected and qualified.

(d) Except as otherwise provided in these Bylaws or the Rules, the stockholders shall nominate directors for election at the annual meeting of the stockholders. Such nominations shall comply with the Rules and these Bylaws.

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

Section 3.3. Terms of Office.

Each director shall hold office for a term that expires at the annual meeting of the stockholders next following his or her election, provided that if he or she is not re-elected and his or her successor is not elected and qualified at the meeting and there remains a vacancy on the Board, he or she shall continue to serve until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. A director may serve for any number of terms, consecutive or otherwise.

Section 3.4. Nomination and Election.

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

(b) The Nominating Committee shall publish the name(s) of one or more ETP Holders or Persons Associated with an ETP Holder (in any combination) as its nominee(s) for Non-Affiliated Directors of the Board of Directors of the Exchange. The Nominating Committee shall name sufficient nominees so that at least twenty percent (20%) of the Directors consist of Non-Affiliated Directors. The names of the nominees shall be published on a date in each year (the "Announcement Date") sufficient to accommodate the process described in this Section 3.4(b). After the name of proposed nominee(s) is published, ETP Holders in good standing may submit a petition to the Exchange in writing to nominate additional eligible candidate(s) to fill Non-Affiliated Director position(s) during the next term. If a written petition of at least 10 percent of ETP Holders in good standing is submitted to the Nominating Committee within two weeks after the Announcement Date, such person(s) shall also be nominated by the Nominating Committee; provided, however, that no ETP Holder, either alone or together with other ETP Holders that are deemed its affiliates, may account for more than 50% of the signatories to the petition endorsing a particular petition nominee for the Non-Affiliated Director position(s) on the Board of Directors of the Exchange. Each petition for a petition candidate must include a completed questionnaire used to gather information concerning director candidates (the Exchange shall provide the form of questionnaire upon the request of any ETP Holder). Notwithstanding anything to the contrary, the Nominating Committee shall determine whether any petition candidate is eligible to serve on the Board of Directors (including whether such person is free of any statutory disqualification (as defined in section 3(a)(39) of the Exchange Act)), and such determination shall be final and conclusive.

(c) In the event that the number of nominees exceeds the number of available seats, the Nominating Committee shall submit the contested nomination to the ETP Holders for selection. ETP Holders shall be afforded a confidential voting procedure and shall be given no less than 20 calendar days to submit their votes. Each ETP Holder in good standing may select one nominee for the contested seat on the Board of Directors; provided, however that no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates, may account for more than 20% of the votes cast for a particular nominee for the Non-Affiliated Director position(s) on the Board of Directors of the Exchange. With respect to the contested position, the nominee for the Board of Directors receiving the most votes of ETP Holders shall be submitted by the Nominating Committee to the Board of Directors of the Exchange. Similarly, the Nominating Committee shall submit uncontested nominees to the Board of Directors. Tie votes shall be decided by the Board of Directors at its first meeting following the election.

Section 3.5. Chairman. The Board, acting through a vote of a majority of its directors, shall elect a Chairman of the Board from among the directors of the Exchange. Unless another director is appointed by the Board for such purpose in the Chairman's absence, the Chairman shall preside at all meetings of the stockholders and the Board. The Chairman shall also have such other duties, authority and obligations as may be given to him or her by these By-Laws or by the Board.

Section 3.6. Vacancies.

(a) (i) Notwithstanding any provision herein to the contrary, any vacancy in the Board, however occurring, including a vacancy resulting from an increase in the number of the directors, may be filled (i) by the Chairman of the Board, subject to the approval by a majority of the directors then in office, or (ii) by action taken by the stockholders of the Exchange, and those vacancies resulting from removal from office by a vote of the stockholders for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs. Any vacancy or newly-created directorship will be filled with a person who satisfies the classification (e.g., public) associated with the vacant seat. A director elected to fill a vacancy shall hold office until the next annual meeting of stockholders, subject to the election and qualification of his or her successor and to his or her earlier death, resignation, disqualification or removal. In the case of a vacancy in the office of the Chairman of the Board, the Board of Directors may designate an Acting Chairman among the directors then in office.

(ii) If the Board fills a vacancy resulting from a Non-Affiliated Director position becoming vacant prior to the expiration of such Non-Affiliated Director's term, or resulting from the creation of an additional Non-Affiliated Director position required by an increase in the size of the Board, then the Board shall follow the procedures set forth in this Section 3.6(a)(ii). In such an event, the Nominating Committee shall either (i) recommend an individual to the Board to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the Board from which the Board shall elect the individual to fill such vacancy. The Board shall elect, pursuant to this Section 3.6(a)(ii), only individuals recommended by the Nominating Committee. Any vacancy filled pursuant to this Section 3.6(a)(ii), shall be filled by the vote of a majority of the directors then in office, although less than a quorum.

(b) In the event any director fails to maintain any of the qualifications for such director set forth in these By-Laws or the Certificate of Incorporation of the Exchange, of which failure the Board shall be the sole judge, such director shall, upon determination of the Board that such director is no longer qualified, cease to be a director, such director's office shall be deemed vacant and the vacancy may be filled by the Board with a person who so qualifies for such director's position in compliance with Section 3.6(a) above.

Section 3.7. Removal. As set forth in the Certificate of Incorporation of the Exchange, except as provided herein, any director may be removed from office by a vote of the stockholders at any time with or without cause; provided, however, that any Non-Affiliated Director may only be removed for cause. For purposes of this Section 3.7, "cause" shall [mean only]include (i) a breach of a director's duty of loyalty to the Exchange or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) actions resulting in liability under Section 174 of the General Corporation Law of the State of Delaware, or (iv) transactions from which a director derived an improper personal benefit. Any director may be removed for cause by the holders of a majority of the shares of capital stock then entitled to be voted at an election of directors.

Section 3.8. Place of Meetings; Mode. Any meeting of the Board may be held at such place, within or without the State of Delaware, as shall be designated in the notice of such meeting, but if no such designation is made, then the meeting will be held at the principal



business office of the Exchange. Members of the Board or any committee of the Board may participate in a meeting of the Board or committee by conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 3.9. Regular Meetings. Regular meetings of the Board may be held, with or without notice, at such time or place as the Board of Directors may designate for the purpose of conducting such business as may be properly conducted at such a meeting[may from time to time be specified in a resolution adopted by the Board].

Section 3.10. Special Meetings.

(a) Special meetings of the Board may be called on a minimum of [two (2)]one (1) day[s] notice to each director by the Chairman of the Board or the Chief Executive Officer, and shall be called by the Secretary upon the written request of three (3) directors then in office.

(b) [The person or persons calling a special meeting of the Board shall fix the time and place at which the meeting shall be held, and such time and place shall be specified in the notice of such meeting.] Notice of any special meeting shall be given to each director by written, electronic or telephonic means at his or her business address or such other address as he or she may have advised the Secretary of the Exchange to use for such purpose. If delivered, notice shall be deemed to be given when delivered to such address or to the director to be notified. If mailed, such notice shall be deemed to be given two[five (5)] business days after deposit in the United States mail, postage prepaid, of a letter addressed to the appropriate location. Notice may also be given by telephone, electronic transmission or other means not specified in this section, and in each such case shall be deemed to be given when actually received by the director to be notified.

Section 3.11. Voting; Quorum and Action by the Board. Each director shall be entitled to one (1) vote. Except as otherwise required by law, a[A]t all meetings of the Board, the presence of a majority of the number of directors then in office shall constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board except as may be otherwise specifically provided by statute, the Certificate of Incorporation or these By-Laws.

Section 3.12. Waiver of Notice. A written waiver of notice, signed by a director entitled to notice of a meeting of the Board, whether before or after the time of the meeting stated in the notice, shall be deemed equivalent to the giving of such notice to that director. Attendance of a director at a meeting of the Board or of a committee of the Board of which the director is a member shall constitute a waiver of notice of such meeting, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 3.13. Presumption of Assent. A director of the Exchange who is present at a duly convened meeting of the Board or of a committee of the Board at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken

unless his or her dissent or election to abstain shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent or election to abstain to such action with the person acting as the secretary of the meeting before the adjournment of the meeting or shall forward such dissent or election to abstain by registered or certified mail to the Secretary of the Exchange immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a director who voted in favor of such action.

Section 3.14. Action in Lieu of Meeting. Unless otherwise [restricted by statute]provided by law, the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing(s) or electronic transmission(s) are filed with the minutes of proceedings of the Board or the committee.

Section 3.15. Compensation. The directors may be paid their reasonable expenses, if any, of attendance at each meeting of the Board and at each meeting of a committee of the Board of which they are members. The shareholders shall have authority to fix compensation of all directors for services to the Exchange as directors, officers or otherwise.

## ARTICLE IV

### STOCKHOLDERS

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

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

Section 4.3. List of Stockholders. The Exchange[Secretary of the Exchange, or such other person designated by the Secretary or the Board,] shall have charge of the stock ledger of the Exchange and shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a

period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting, and may be inspected by any stockholder who is present.

Section 4.4. Quorum and Vote Required for Action.

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

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

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

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

been directed by the Board to be submitted to the stockholders for their action by written consent. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not so consented in writing.]

## ARTICLE V

### COMMITTEES

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

Section 5.2. Appointment; Vacancies; and Removal.

(a) The Board, shall appoint, consistent with these By-Laws, the members of all committees of the Board, and the Board may, at any time, with or without cause, remove any member of a committee so appointed, unless otherwise provided herein.

(b) Any vacancy occurring in a committee shall be filled by the [Chief Executive Officer of the Exchange for the remainder of the term, with the approval of the] Board of Directors.

Section 5.3. General Provisions.

(a) Except as otherwise provided in this Article V, each committee shall be comprised of at least three (3) people and may include persons who are not members of the Board; provided, however, that such committee members who are not also members of the Board shall only participate in committee actions to the extent permitted by law. In appointing new members to committees of the Board, the Board is responsible for determining that any such committee meets the composition requirements set forth in this Article V.

(b) The presence of a majority of the members of a committee shall be necessary to constitute a quorum for the transaction of business at a meeting of a committee.

(c) The act of a majority of the members present at any meeting at which there is a quorum shall be the act of such committee, except as may be otherwise specifically required by the Bylaws of the Exchange, these Rules, or applicable law.

(d) Unless otherwise restricted by the Bylaws of the Exchange, these Rules, applicable law, or rules of the particular committee, members of a committee or of any subcommittee thereof may participate in meetings by means of conference call or similar communications equipped by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at the meeting.

(e) No member of a committee shall participate in the adjudication of any matter in which he or she is personally interested, although his or her presence at a meeting at which such matter is considered shall count toward the quorum requirements for the meeting.

Section 5.4. Powers and Duties of Committees. To the extent not prohibited by law, all committees shall have such duties and may exercise such authority as may be prescribed for them in these By-Laws, the Rules or by the Board.

Section 5.5. Conduct of Proceedings. Except as otherwise provided in these By-Laws or by the Board, each committee may determine the manner in which its proceedings shall be conducted. Any action required or permitted to be taken at any meeting of any committee may be taken without a meeting if a written consent to the action is signed by all of the members of the committee and the written consent is filed with the minutes of the proceedings of the committee.

Section 5.6. Regulatory Oversight Committee.

(a) The Board shall, on an annual basis, appoint the Regulatory Oversight Committee (“ROC”).

(b) The ROC shall consist of at least three members, each of whom shall be a Public Director of the Exchange. The Board, on affirmative vote of a majority of directors then in office, may, at any time remove a member of the ROC for cause. A failure of the member to qualify as a Public Director shall constitute a basis to remove a member of the ROC for cause. If the term of office of a ROC committee member terminates under this section, and the remaining term of office of such committee member at the time of termination is not more than three months, during the period of vacancy the relevant committee shall not be deemed to be in violation of the compositional requirements of such ROC by virtue of such vacancy.

(c) The ROC shall oversee the Exchange’s regulatory and self-regulatory organization responsibilities and evaluate the adequacy and effectiveness of the Exchange’s regulatory and self-regulatory organization responsibilities; assess the Exchange’s regulatory performance; and advise and make recommendations to the Board or other committees of the Board about the Exchange’s regulatory compliance, effectiveness and plans. In furtherance of its functions, the ROC shall (i) review the regulatory budget of the Exchange and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (ii) meet regularly with the Chief Regulatory Officer in executive session; (iii) in consultation with the Chief Executive Officer of the Exchange, establish the goals, assess the performance, and recommend the compensation of the Chief Regulatory Officer; and (iv) keep the Board informed with respect to the foregoing.

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

Section 5.8. Committee for Review. The Committee for Review shall preside over all appeals related to disciplinary and adverse action determinations in accordance with the

Exchange Rules. The Committee for Review shall consist of at least one Public Director and at least one Non-Affiliated Director. If the Public Director recuses himself or herself from an appeal, due to a conflict of interest or otherwise, such Public Director may be replaced by a Non-Affiliated Director for purposes of the applicable appeal if there is no other Public Director able to serve as the replacement.

Section 5.9. Business Conduct Committee. The Business Conduct Committee shall preside over all disciplinary proceedings in accordance with Exchange Rules and as may be specified in the charter of the Business Conduct Committee. The Business Conduct Committee members shall be appointed by the Board in a composition consistent with applicable regulatory requirements and the Exchange By-Laws and Rules.

## ARTICLE VI

### OFFICERS

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

Section 6.2. Tenure and Appointment. Each officer of the Exchange shall be appointed by the Board and shall hold office until his or her successor is appointed and qualified, or until his or her earlier death, disqualification, resignation, retirement or removal.

Section 6.3. Removal and Vacancies. Any officer of the Exchange may be removed at any time by the Board, with or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Vacancies in any office of the Exchange may be filled for the unexpired term by the Board.

Section 6.4. Powers and Duties. Each of the offices of the Exchange shall, unless otherwise ordered by the Board, have such powers and duties as customarily pertain to the respective office, and such further powers and duties as from time to time may be conferred by the Board, or by an officer delegated such authority by the Board.

## ARTICLE VII

### INDEMNIFICATION

Section 7.1. Indemnification.

(a) The Exchange shall, to the fullest extent permitted by law, as those laws may be amended and supplemented from time to time, indemnify any director or officer made, or threatened to be made, a party to any action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of being a director or officer of the Exchange or a predecessor corporation or, at the Exchange's request, a director, officer, partner, member, employee or agent of another corporation or other entity; provided, however, that the Exchange

shall indemnify any director or officer in connection with a proceeding initiated by such person only if such proceeding was authorized in advance by the Board of Directors of the Exchange. The indemnification provided for in this Section 7.1 shall: (i) not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement or vote of stockholders or disinterested directors or otherwise, both as to action in their official capacities and as to action in another capacity while holding such office; (ii) continue as to a person who has ceased to be a director or officer; and (iii) inure to the benefit of the heirs, executors and administrators of an indemnified person.

(b) Expenses incurred by any such person in defending a civil or criminal action, suit or proceeding by reason of the fact that he is or was a director or officer of the Exchange (or was serving at the Exchange's request as a director, officer, partner, member, employee or agent of another corporation or other entity) shall be paid by the Exchange in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Exchange as authorized by law. Notwithstanding the foregoing, the Exchange shall not be required to advance such expenses to a person who is a party to an action, suit or proceeding brought by the Exchange and approved by a majority of the Board of Directors of the Exchange that alleges willful misappropriation of corporate assets by such person, disclosure of confidential information in violation of such person's fiduciary or contractual obligations to the Exchange or any other willful and deliberate breach in bad faith of such person's duty to the Exchange or its stockholders.

(c) The foregoing provisions of this Section 7.1 shall be deemed to be a contract between the Exchange and each director or officer who serves in such capacity at any time while this bylaw is in effect, and any repeal or modification thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts. The rights provided to any person by this bylaw shall be enforceable against the Exchange by such person, who shall be presumed to have relied upon it in serving or continuing to serve as a director or officer or in such other capacity as provided above.

(d) The Board of Directors in its discretion shall have power on behalf of the Exchange to indemnify any person, other than a director or officer, made or threatened to be made a party to any action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person, or his or her testator or intestate, is or was an officer, employee or agent of the Exchange or, at the Exchange's request, is or was serving as a director, officer, partner, member, employee or agent of another corporation or other entity.

(e) To assure indemnification under this Section 7.1 of all directors, officers, employees and agents who are determined by the Exchange or otherwise to be or to have been "fiduciaries" of any employee benefit plan of the Exchange that may exist from time to time, Section 145 of the Delaware General Corporation Law shall, for the purposes of this Section 7.1, be interpreted as follows: an "other enterprise" shall be deemed to include such an employee benefit plan, including without limitation, any plan of the Exchange that is governed by the Act of Congress entitled "Employee Retirement Income Security Act of 1974," as amended from

time to time; the Exchange shall be deemed to have requested a person to serve an employee benefit plan where the performance by such person of his duties to the Exchange also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to such Act of Congress shall be deemed "fines." [

(a) The Exchange may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Exchange) by reason of the fact that he or she is or was an employee or agent of the Exchange, or is or was serving at the request of the Exchange as an employee or agent of another Exchange, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Exchange and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that such person did not act in good faith and in a manner which they reasonably believed to be in or not opposed to the best interests of the Exchange, and, with respect to any criminal action or proceeding, had reasonable cause to believe that their conduct was unlawful.

(b) The Exchange may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Exchange to procure a judgment in its favor by reason of the fact that he or she is or was an employee or agent of the Exchange, or is or was serving at the request of the Exchange as an employee or agent of another Exchange, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees and expenses) actually or reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Exchange and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Exchange unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) To the extent that an employee or agent of the Exchange has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, they shall be indemnified by the Exchange against expenses (including attorneys' fees and expenses) actually and reasonably incurred by them in connection therewith.

(d) Any indemnification under subsections (a) and (b) (unless ordered by a court) shall be made by the Exchange only as authorized in the specific case upon a determination that indemnification of the employee or agent is proper in the circumstances



because he or she has met the applicable standard of conduct set forth in subsections (a) and (b) and under applicable law. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination (1) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (3) if there are no such directors, or, if such directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders.

(e) The Exchange shall indemnify, to the fullest extent permitted by applicable law as such may be amended from time to time, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was an officer, a floor official or a member of the Board of Directors or any committee thereof, or is or was serving at the request of the Exchange as an officer or member of the board of directors or any committee thereof of another Exchange, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding; provided, however, that the Exchange is not authorized to provide indemnification of any officer, floor official, director, or ETP Holder committee member for any acts or omissions or transactions from which a director may not be relieved of liability as set forth in Section 102(b)(7) of the General Corporation Law of the State of Delaware.

(f) The indemnification provided by this Section 7.1 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of the stockholders or disinterested directors or otherwise, both as to action in this official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be an officer, floor official, director, ETP Holder committee member, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) The Exchange may purchase and maintain insurance on behalf of any person who is or was an officer, floor official, director, ETP Holder committee member, employee or agent of the Exchange, or is or was serving at the request of the Exchange as a director, officer, employee or agent of another Exchange, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Exchange would have the power to indemnify him against such liability under the provisions of this Section 7.1

(h) For purposes of this Section 7.1, references to "the Exchange" shall include, in addition to the resulting Exchange, any constituent Exchange (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its officers, floor officials, directors, ETP Holder committee members and employees or agents, so that any person who is or was an officer, floor official, director, ETP Holder committee member, employee or agent of such constituent Exchange, or is or was serving at the request of such constituent Exchange as a director, officer, employee or agent of another Exchange, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this

Section 7.1 with respect to the resulting or surviving Exchange as he would have with respect to such constituent Exchange if its separate existence had continued.

(i) For purposes of this Section 7.1, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the Exchange” shall include any service as a director, officer, employee or agent of the Exchange which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Exchange” as referred to in this Section 7.1.

(j) If any provision or provisions of this Section 7.1 shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions (including, without limitation, each portion of this Section 7.1 containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.]

## **ARTICLE VIII**

### **AMENDMENTS**

Section 8.1. By-Laws. As set forth in the Certificate of Incorporation of the Exchange, the Board shall have the power to adopt, amend or repeal the By-Laws. The By-Laws may also be amended or repealed, or new By-Laws of the Exchange may be adopted, by action taken by the stockholders of the Exchange. Notwithstanding the foregoing, neither this sentence nor any provision of Sections 3.1 through 3.7, Section 3.11, or Section 4.5 of these By-Laws may be amended or repealed without action of the stockholders of the Exchange. By-Laws adopted, altered or amended shall become effective in accordance with the provisions of Section 19(b) of the Act. Before any amendment to, alteration or repeal of any provision of the Bylaws of the Exchange under this Article VIII shall be effective, those changes shall be submitted to the Board and if the same must be filed with or filed with and approved by the Commission, then the proposed changes to the Bylaws of the Exchange shall not become effective until filed with or filed with and approved by the Commission, as the case may be.

Section 8.2. Rules. The Rules may be amended or repealed, or new Rules may be adopted, by the Board.

## **ARTICLE IX**

### **CERTIFICATES OF STOCK AND THEIR TRANSFER**

Section 9.1. Form and Execution of Certificates. Every holder of stock in the Exchange shall be entitled to have a certificate signed by, or in the name of, the Exchange by any

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

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

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

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

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

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

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

## ARTICLE X

### SELF-REGULATORY FUNCTION OF THE EXCHANGE

Section 10.1. Management of the Exchange. In connection with managing the business and affairs of the Exchange, the Board shall consider applicable requirements for registration as a national securities exchange under Section 6(b) of the Act, including, without limitation, the requirements that (a) the Rules shall be designed to protect investors and the public interest and (b) the Exchange shall be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its “members,” as that term is defined in Section 3 of the Act (such statutory members being referred to in these By-Laws as “ETP Holders”) and persons associated with ETP Holders, with the provisions of the Act, the rules and regulations under the Act, and the Rules of the Exchange.

Section 10.2. Participation in Board and Committee Meetings. All meetings of the Board (and any committees of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters) or relating to the structure of the market which the Exchange regulates shall be closed to all persons other than members of the Board and officers, staff, counsel or other advisors whose participation is necessary or appropriate to the proper discharge of such regulatory functions and any representatives of the Commission. In no event shall members of the Board of Directors of NYSE Group, Inc. who are not also members of the Board, or any officers, staff, counsel or advisors of the Exchange (or any committees of the Exchange), be allowed to participate in any meetings of the Board (or any committee of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters) or relating to the structure of the market which the Exchange regulates.

Section 10.3. Books and Records; Confidentiality of Information and Records Relating to SRO Function. The books and records of the Exchange shall be maintained at a location within the United States. All books and records of the Exchange reflecting confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices, and audit information) shall be retained in confidence by the Exchange and its personnel and will not be used by the Exchange for any non-

regulatory purposes and shall not be made available to any person (including, without limitation, any ETP Holder) other than to personnel of the Commission, and those personnel of the Exchange, members of committees of the Exchange, members of the Board, hearing officers and other agents of the Exchange to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of the Exchange. Nothing in this Section 10.3 shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Exchange to disclose such confidential information to the Commission.

Section 10.4. Regulatory Fees and Penalties. Any regulatory assets or any regulatory fees, fines or penalties collected by the Exchange's regulatory staff will be applied to fund the legal, regulatory and surveillance operations of the Exchange, and the Exchange shall not distribute such assets, fees fines or penalties to pay dividends or be distributed to any other entity.

## ARTICLE XI

### GENERAL PROVISIONS

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

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

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

Section 11.4. Subsidiaries. The Board may constitute any officer of the Exchange its proxy, with power of substitution, to vote the equity interests of any subsidiary of the Exchange and to exercise, on behalf of the Exchange, any and all rights and powers incident to the ownership of those equity interests, including the authority to execute and deliver proxies, waivers and consents. In the absence of specific action by the Board of Directors, the Chief Executive Officer and Secretary of the Corporation shall have authority to represent the Corporation and to vote, on behalf of the Corporation, the securities of other corporations, both domestic and foreign, held by the Corporation.

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

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