

EXHIBIT 5

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

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Article Sixth

- A. A director or officer of Nasdaq shall not be liable to Nasdaq or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, except to the extent that such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended.
- B. Any repeal or modification of paragraph A shall not adversely affect any right or protection of a director or officer of Nasdaq existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

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BY-LAWS OF NASDAQ, INC.

Article I Definitions

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

(a)–(j) No change.

(k) An “Executive Officer” of a member or member organization means those officers covered in Rule 16a1(f) under the Act, as if the member or member organization were an issuer within the meaning of such Rule[.];

(l) No change.

(m) “Industry Director” or “Industry committee member” means a Director (excluding any Staff Directors) or committee member who (1) is, or within the last year was, or has an immediate family member who is, or within the last year was, a member of a Self-Regulatory Subsidiary; (2) is, or within the last year was, employed by a member or a member organization of a Self-Regulatory Subsidiary; (3) has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization of a Self-Regulatory Subsidiary; (4) has within the last year received from any member or member organization of a Self-Regulatory Subsidiary more than \$100,000 per year in direct compensation, or received from such members or member organizations in the aggregate an amount of direct compensation that in any one

year is more than 10 percent of the Director’s annual gross compensation for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); or (5) is affiliated, directly or indirectly, with a member or member organization of a Self- Regulatory Subsidiary;

(n)–(o) No change.

(p) “Nominating & Governance Committee” means the Nominating & Governance Committee appointed pursuant to these By-Laws as the same may be renamed from time to time or any successor of such committee delegated with similar duties;

(q)–(r) No change.

(s) “Self-Regulatory Subsidiary” means any subsidiary of the Corporation that is a self-regulatory organization as defined under Section 3(a)(26) of the Act; and[.]

(t) No change

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Article II Offices

Sec. 2.1 Location

No change.

Sec. 2.2 Change of Location

No change.

Article III Meetings of Stockholders

Sec. 3.1 Annual Meetings of Stockholders

(a) Nominations of persons for election to the Board and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (i) pursuant to the Corporation’s notice of meeting (or any supplement thereto), (ii) by or at the direction of the Board or the Nominating & Governance Committee, (iii) by any stockholder of the Corporation who (A) is a stockholder of record of the Corporation (and, with respect to any beneficial owner, if such person is different from the[shareholder] stockholder of record, on whose behalf such nomination or other business is made or proposed to be brought, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time the notice provided for in this Section 3.1 is delivered to the Secretary of the Corporation and at the time of the meeting, (B) is entitled to vote at the meeting and (C) complies with the notice procedures set forth in this Section 3.1 or (iv) with respect to nominations of persons for election to the Board, pursuant to Section 3.6 of these By-Laws.

(b) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 3.1(a)(iii), the stockholder must have given timely notice thereof (including, in the case of a nomination, timely delivery of the completed and signed questionnaire, representation and agreement required by Section 3.1(b)(i)(D)), and timely updates or supplements to such notice, in writing and in proper form to the Secretary of the Corporation and any such proposed business other than the nominations of persons for election to the Board must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth day nor earlier than the close of business on the one hundred twentieth day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty days before or more than seventy days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth day prior to such annual meeting and not later than the close of business on the later of the ninetieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. In addition, to be timely, a stockholder's notice shall further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the annual meeting and as of the 10th business day prior to the annual meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered in writing to the Secretary at the principal executive offices of the Corporation not later than the fifth business day after the record date for the annual meeting (in the case of the update and supplement required to be made as of the record date), and not later than the eighth business day prior to the date for the annual meeting or, if practicable, any adjournment or postponement thereof and, if not practicable, on the first practicable date prior to the date to which the annual meeting has been adjourned or postponed (in the case of the update and supplement required to be made as of the 10th business day prior to the annual meeting or any adjournment or postponement thereof). Such stockholder's notice shall set forth:

(i) as to each person, if any, whom a Proposing Person proposes to nominate for election or reelection as a director, (A) all information with respect to such proposed nominee that would be required to be disclosed pursuant to clause (iii) of this Section 3.1(b) if such proposed nominee were a Proposing Person, (B) all information relating to such proposed nominee that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Section 14(a) under the Act and the rules thereunder (including such proposed nominee's written consent to being named in the Corporation's proxy statement as a nominee of such Proposing Person and in the accompanying proxy card and to serving as a director if elected), (C) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among any Proposing Person, on the one hand, and such proposed nominee and any of his or her respective affiliates and

associates, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such [Requesting]Proposing Person were the “registrant” for purposes of such rule and the proposed nominee were a director or executive officer of such registrant, and (D) a completed and signed questionnaire, representation and agreement in accordance with Section 3.5. The Corporation may require any proposed nominee to furnish such other information [(i)]as it may reasonably require to determine whether the [eligibility of such]proposed nominee is qualified under the Restated Certificate of Incorporation, these By-Laws, the rules and regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation to serve as a director and/or independent director of the Corporation[or (ii) that could be material to a reasonable stockholder’s understanding of the independence, or lack of independence, of such proposed nominee];

(ii) No change.

(iii) as to each Proposing Person

(A)–(B) No change.

(C) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any other[s acting in concert with any of the foregoing]_ person;

(D)–(H) No change.

(I) any significant equity interest or any Synthetic Equity Interest or Short Interest in any principal competitor of the Corporation (as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914) held by such Proposing Person;

(J) any direct or indirect interest of such Proposing Person in any contract with the Corporation, any affiliate of the Corporation (as reflected on the most recent Form 10-K of the Corporation) or any principal competitor of the Corporation (as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914) (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement);

(K) any pending or threatened litigation in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or Directors, or any affiliate of the Corporation (as reflected on the most recent Form 10-K of the Corporation);

(L) any material transaction occurring, in whole or in part, during the then immediately preceding 12-month period between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation (as reflected on the most recent Form 10-K of the Corporation), or any principal competitor of the

Corporation (as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914), on the other hand;

(M)-(N) No change.

(O) a representation whether the Proposing Person intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (2) otherwise to solicit proxies or votes from stockholders in support of such proposal or nomination and/or (3) to solicit proxies or votes in support of any proposed nominee in accordance with Rule 14a-19 promulgated under the Act.

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(c) No change.

(d) Notwithstanding anything in the second sentence of Section 3.1(b) to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased effective at the annual meeting and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 3.1 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the Corporation. The number of nominees a Proposing Person may nominate for election at the annual meeting on its own behalf (or in the case of a Proposing Person giving the notice on behalf of a beneficial owner, the number of nominees a Proposing Person may nominate for election at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual meeting.

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Sec. 3.2 Special Meetings of Stockholders

(a) Special meetings of the stockholders of the Corporation may only be called (i) at any time by the Board pursuant to a resolution adopted by a majority of the total number of directors the Corporation would have if there were no vacancies and (ii) by the Secretary following his or her receipt of a written request in proper form for a special meeting (a "Special Meeting Request") by one or more stockholders holding of record, in the aggregate, at least 15 percent of the outstanding shares of capital stock of the Corporation entitled to vote on the matter or matters to be brought before the proposed special meeting (the "Requisite Percentage"), which shares are determined to be "Net Long Shares" in accordance with this Section 3.2, and having held such Net Long Shares continuously for at least one year as of the date of such request (the "Requisite Holders"). For purposes of determining Requisite Holders under this Section 3.2, "Net Long Shares" shall be limited to the number of shares beneficially owned, directly or indirectly, by any stockholder or beneficial owner that constitute such person's "net long position" as defined in Rule 14e-4 under the Act, provided that (A) for the purposes of such

definition, references in such Rule to “the date the tender offer is first publicly announced or otherwise made known by the bidder to the holders of the security to be acquired” shall be the date of the relevant Special Meeting Request and all dates in the one year period prior thereto, the “highest tender offer price or stated amount of the consideration offered for the subject security” shall refer to the closing sales price of the Corporation’s capital stock on the NASDAQ Stock Market on such date (or, if such date is not a trading day, the next succeeding trading day), the “person whose securities are the subject of the offer” shall refer to the Corporation, a “subject security” shall refer to the issued and outstanding voting stock of the Corporation; and (B) the net long position of such stockholder shall be reduced by any shares as to which such person does not have the right to vote or direct the vote at the proposed special meeting or as to which such person has entered into a derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares. In addition, to the extent any affiliates of the stockholder or beneficial owner are knowingly [acting in concert]coordinating with the stockholder or beneficial owner with respect to the calling of the special meeting, the determination of Net Long Shares may include the effect of aggregating the Net Long Shares (including any negative number) of such affiliate or affiliates. Whether shares constitute Net Long Shares shall ultimately be decided by the Board in its reasonable determination. In determining whether a special meeting of stockholders has been requested by the Requisite Holders representing in the aggregate at least the Requisite Percentage, multiple Special Meeting Requests delivered to the Secretary will be considered together only if (i) each Special Meeting Request identifies substantially the same purpose or purposes of the special meeting and substantially the same matters proposed to be acted on at the requested special meeting (in each case as determined in good faith by the Board) and (ii) such Special Meeting Requests have been dated and delivered to the [s]Secretary within 60 days of the earliest dated Special Meeting Request. To be in proper form, a Special Meeting Request must comply with this Section 3.2. The Board shall determine whether a Special Meeting Request is in proper form[and such determination shall be binding on the Corporation and the stockholders].

(b) No change.

(c) Notwithstanding anything in these By-Laws to the contrary, a Special Meeting Request shall not be valid and the special meeting requested in such Special Meeting Request shall not be called by the Secretary if (i) such Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law, (ii) such Special Meeting Request is delivered to the Secretary during the period commencing 90 days prior to the one-year anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting, (iii) a Similar Item was presented at any meeting of stockholders held within 120 days prior to the date on which such Special Meeting Request was delivered to the Secretary or (iv) a Similar Item is included in the Corporation’s notice of meeting as an item of [B]business to be presented at a stockholder’s meeting that has been called but not yet held. The Board may adjourn or reschedule any previously scheduled special meeting of the stockholders.

(d)-(i) No change.

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Sec. 3.3 General

(a) Only such persons who are nominated in accordance with the procedures set forth in this Article III (including, with respect to annual meetings, Section 3.6 of these By-Laws) shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Article III. Except as otherwise provided by law, the chairman of the meeting (or, in advance of any meeting of stockholders, the Board of Directors or an authorized committee thereof) shall have the power and duty (i) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Article III (including whether the Proposing Person solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such nomination or proposal in compliance with such Proposing Person's representation as required by Section 3.1(b)(iii)(O)) and (ii) if any proposed nomination or business was not made or proposed in compliance with this Article III, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted.

Notwithstanding the foregoing provisions of this Article III, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 3.3, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. Notwithstanding anything to the contrary in these Bylaws, unless otherwise required by law, if any Proposing Person (i) provides notice pursuant to Rule 14a-19(b) promulgated under the Act with respect to any proposed nominee and (ii) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) promulgated under the Act (or fails to timely provide reasonable evidence sufficient to satisfy the Corporation that such Proposing Person has met the requirements of Rule 14a-19(a)(3) promulgated under the Act in accordance with the following sentence), then the nomination of each such proposed nominee shall be disregarded, notwithstanding that proxies or votes in respect of the election of such proposed nominees may have been received by the Corporation (which proxies and votes shall be disregarded). Upon request by the Corporation, if any Proposing Person provides notice pursuant to Rule 14a-19(b) promulgated under the Act, such Proposing Person shall deliver to the Corporation, no later than five (5) business days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Act.

(b)-(c) No change.

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Sec. 3.4 Conduct of Meetings

The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting who shall be an officer or director of the Corporation and who shall be the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding officer 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 stockholders of record of the Corporation, 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 person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

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Sec. 3.5 Submission of Questionnaire, Representation and Agreement

No change.

Sec. 3.6 Proxy Access

(a)-(c) No change.

(d) For purposes of this Section 3.6, an Eligible Stockholder shall be deemed to “own” only those outstanding shares of common stock of the Corporation as to which the stockholder possesses both:

(i) the full voting and investment rights pertaining to the shares; and

(ii) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares:

(x) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, including any short sale;

(y) borrowed by such stockholder or any of its affiliates for any purposes or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell; or

(z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding common stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, or if exercised by either party would have, the purpose or effect of:

(1) reducing in any manner, to any extent or at any time in the future, such stockholder's or its affiliates' full right to vote or direct the voting of any such shares; and/or

(2) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or its affiliates.

A stockholder shall "own" shares held in the name of a nominee or other intermediary so long as the stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A stockholder's ownership of shares shall be deemed to continue during any period in which the stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the stockholder. A stockholder's ownership of shares shall be deemed to continue during any period in which the stockholder has loaned such shares provided that the stockholder has the power to recall such loaned shares on three (3) business days' notice, has recalled such loaned shares as of the date of the Notice of Proxy Access Nomination and holds such shares through the date of the annual meeting. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the common stock of the Corporation are "owned" for these purposes shall be determined by the Board or any committee thereof[, in each case, in its sole discretion]. For purposes of this Section 3.6, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the rules and regulations of the Act. An Eligible Stockholder shall include in its Notice of Proxy Access Nomination the number of shares it is deemed to own for the purposes of this Section 3.6.

(e)-(g) No change.

(h) The Corporation shall not be required to include, pursuant to this Section 3.6, a Stockholder Nominee in its proxy materials for any meeting of stockholders, any such nomination shall be disregarded and no vote on such Stockholder Nominee will occur, notwithstanding that proxies in respect of such vote may have been received by the Corporation:

(i) No change.

(ii) who is not independent under the listing standards of the NASDAQ Stock Market, any applicable rules of the SEC and any publicly disclosed standards used by the Board in determining and disclosing independence of the Corporation's directors, in each case as determined by the Board[in its sole discretion];

(iii-vii) No change.

(viii) if such Stockholder Nominee or the applicable Eligible Stockholder shall have provided information to the Corporation in respect to such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, as determined by the Board or any committee thereof[, in each case, in its sole discretion]; or

(ix) No change.

(i) Notwithstanding anything to the contrary set forth herein, the Board or the chairman of the meeting of stockholders shall declare a nomination by an Eligible Stockholder to be invalid, and such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the Corporation, if:

(i) the Stockholder Nominee(s) and/or the applicable Eligible Stockholder shall have breached its or their obligations under this Section 3.6, as determined by the Board or the chairman of the meeting of stockholders[, in each case, in its or his sole discretion]; or (ii) the Eligible Stockholder (or a qualified representative thereof) does not appear at the meeting of stockholders to present any nomination pursuant to this Section 3.6.

(j) No change.

(k) The Board (or any other person or body authorized by the Board) shall have the exclusive power and authority to interpret the provisions of this Section 3.6 of these By-Laws and make all determinations deemed necessary or advisable in connection with this Section 3.6 as to any person, facts or circumstances.[All such actions, interpretations and determinations that are done or made by the Board (or any other person or body authorized by the Board) shall be final, conclusive and binding on the Corporation, the stockholders and all other parties].

(l) No change.

(m) This Section 3.6 shall be the exclusive method for stockholders to include nominees for director in the Corporation's proxy materials other than nominees included pursuant to, and in compliance with, Section 14a-19 of the Act.

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Article IV Board of Directors

Sec. 4.1 General Powers

No change.

Sec. 4.2 Number of Directors

No change.

Sec. 4.3 Qualifications

Directors need not be stockholders of the Corporation. The number of Non-Industry Directors shall equal or exceed the number of Industry Directors. The Board shall include at least two Public Directors. The Board may include[at least one, but no more than two,] Issuer Directors. The Board shall include no more than one Staff Director, unless the Board consists of ten or more Directors. In such case, the Board shall include no more than two Staff Directors.

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Sec. 4.4 – Sec. 4.8

No change.

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Sec. 4.9 Quorum and Voting

(a) 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 total number of directors constituting the Board. In the absence of a quorum, a majority of the Directors present may adjourn the meeting to another time and place[until a quorum be present]. Notice of the time, place and purpose(s) of any such adjourned meeting shall be given in accordance with these Bylaws; provided that to the extent notice of the time, place and purpose(s) of such adjourned meeting is announced at the meeting at which the adjournment is taken, notice need only be given to the Directors not present thereat.

(b) No change.

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Sec. 4.10 Regulation

No change.

Sec. 4.11 Meetings

No change.

Sec. 4.12 Notice of Meetings; Waiver of Notice

(a) Notice of any meeting of the Board shall be deemed to be duly given to a Director if: (i) mailed to the address last made known in writing to the Corporation by such Director as the address to which such notices are to be sent, at least seven days before the day on which such meeting is to be held; (ii) sent to the Director at such address by [telegraph,

telefax, cable, radio, wireless] facsimile, e-mail or other means of [written] electronic transmission, not later than the day before the day on which such meeting is to be held; or (iii) delivered to the Director personally or orally, by telephone or otherwise, not later than the day before the day on which such meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) Notice of any meeting of the Board need not be given to any Director if waived by that Director in writing or by electronic transmission [(or by telegram, telefax, cable, radio, wireless, e-mail or other means of written electronic transmission and subsequently confirmed in writing or by electronic transmission)] whether before or after the holding of such meeting, or if such Director is present at such meeting, subject to Article X, Section 10.3(b).

(c) No change.

Sec. 4.13 Committees

(a) The Corporation has opted into Section 141(c)(2) of Delaware law. The Board may, by resolution or resolutions adopted by the Board, appoint one or more committees. Except as herein provided, vacancies in membership of any committee shall be filled by the Board. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a committee may be removed from such committee only by the Board, after appropriate notice.

(b) No change.

(c) Except as otherwise provided by applicable law, no committee shall have the power or authority of the Board with regard to: (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by Delaware law to be submitted to stockholders for approval or (b) adopting, amending or repealing any By-Law of the Corporation [amending the Restated Certificate of Incorporation or the By-Laws of the Corporation; adopting an agreement of merger or consolidation; recommending to the stockholders the sale, lease, or exchange of all or substantially all the Corporation's property and assets; or recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution. Unless the resolution of the Board expressly so provides, no committee shall have the power or authority to authorize the issuance of stock].

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs

of the Corporation between meetings of the Board, and which may authorize the seal of the Corporation to be affixed to all papers that may require it. The number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors on the Executive Committee. The Executive Committee shall include at least two Public Directors.[An Executive Committee member shall hold office for a term of one year.]

(e) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of the Corporation, including recommendations for the Corporation's annual operating and capital budgets and proposed changes to the rates and fees charged by the Corporation.[A Finance Committee member shall hold office for a term of one year.]

(f) The Board shall appoint a Management Compensation Committee consisting of at least two members. The Management Compensation Committee shall consider and recommend compensation policies, programs, and practices for employees of the Corporation. The number of Non-Industry Directors on the Management Compensation Committee shall equal or exceed the number of Industry Directors on the Management Compensation Committee.[. A Management Compensation Committee member shall hold office for a term of one year.]Each member of the Management Compensation Committee shall be an independent director within the meaning of, and shall meet the eligibility requirements set forth in, the rules of the NASDAQ Stock Market.

(g) The Board shall appoint an Audit Committee.[(i)]The Audit & Risk Committee (such committee as the same may be renamed from time to time or any successor of such committee delegated with similar duties, the "Audit Committee") shall consist of three or more Directors, each of whom shall be an independent director within the meaning of the rules of the NASDAQ Stock Market and Section 10A of the Act. The number of Non-Industry Directors on the Audit Committee shall equal or exceed the number of Industry Directors on the Audit Committee. The Audit Committee shall include two Public Directors.[A Public Director shall serve as Chair of the Audit Committee. An Audit Committee member shall hold office for a term of one year.]

(h) The Board may appoint a Nominating & Governance Committee. The Nominating & Governance Committee shall nominate Directors for each vacant or new Director position on the Board.

(i) No change.

(ii) Members of the Nominating & Governance Committee shall be appointed annually by the Board and may be removed by [majority vote of]the Board.

(iii) No change.

(i) No change.

(j) Unless otherwise provided by these By-Laws, a majority of the members of a committee then in office shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

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Sec. 4.14 Conflicts of Interest; Contracts and Transactions Involving Directors

No change.

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Sec. 4.15 Action Without Meeting

No change.

Article V Reserved

No Change.

Article VI Compensation

No change.

Article VII Officers, Agents, and Employees

Sec. 7.1 Principal Officers

The principal officers of the Corporation shall be elected by the Board and [shall]may include a Chair of the Board, a Chief Executive Officer, one or more[a] Presidents, a Secretary, a Treasurer, and such other officers as may be designated by the Board. One person may hold the offices and perform the duties of any two or more of said principal offices, except the offices and duties of [President and Vice President or of President]Chief Executive Officer and Secretary. None of the principal officers, except the Chair of the Board, need be Directors of the Corporation.

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Sec. 7.2 No change.

Sec. 7.3 Subordinate Officers, Agents, or Employees

In addition to the principal officers, the Corporation may have one or more subordinate officers, agents, and employees as the Board may deem necessary, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board, the Chief Executive Officer[, the President], or any officer designated by the Board, may from time to time determine. Agents and employees of the Corporation shall be under the supervision and control of the officers of the Corporation, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.

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Sec. 7.4 Delegation of Duties of Officers

No change.

Sec. 7.5 Resignation and Removal of Officers

(a) Any officer may resign at any time upon notice of resignation to the Board, the Chief Executive Officer[, the President,] or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) No change.

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Sec. 7.6 Bond

No change.

Sec. 7.7 Chair of the Board

No change.

Sec. 7.8 Chief Executive Officer

No change.

Sec. 7.9 President

[The President shall, in the absence of the Chair of the Board and the Chief Executive Officer, preside at all meetings of the Board and stockholders at which the President is present. The President shall have general supervision over the business and affairs of the Corporation.]The Board or the Chief Executive Officer may appoint one or more Presidents and each[The] President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board. [The]Each President shall exercise such other powers and perform such other duties as may be assigned to[the] such President from time to time by the Board or the Chief Executive Officer.

Sec. 7.10 Vice President

[The Board shall elect]The Board, the Chief Executive Officer or any other person delegated such power by the Board or Chief Executive Officer, may appoint one or more Vice Presidents. [In the absence or disability of the President or if the office of President becomes vacant, the Vice Presidents in the order determined by the Board, or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board at any time to extend or restrict such powers and duties or to assign them to others.]Any Vice President

may have such additional designations in such Vice President's title as the Board, the Chief Executive Officer, or the authorized person appointing such Vice President may determine. [The Vice Presidents shall generally assist the President in such manner as the President shall direct.]Each Vice President shall have all powers and duties usually incident to the office of a Vice President, except as specifically limited by the Board, the Chief Executive Officer or the authorized person appointing such Vice President. Each Vice President shall exercise such other powers and perform such other duties as may be assigned to such Vice President from time to time by the Board, the Chief Executive Officer or the authorized person appointing such Vice President. The term "Vice President" used in this Section shall include the positions of Executive Vice President, Senior Vice President, and Vice President.

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Sec. 7.11 Secretary

The Secretary shall act as Secretary of all meetings of the stockholders and of the Board at which the Secretary is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of the Corporation, and shall have supervision over the care and custody of the corporate records and the corporate seal of the Corporation. The Secretary shall be empowered to affix the corporate seal to documents, the execution of which on behalf of the Corporation under its seal, is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board. The Secretary shall exercise such other powers and perform such other duties as may be assigned to the Secretary from time to time by the Board, the Chief Executive Officer or any other person delegated such power by the Board or Chief Executive Officer[or the President].

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Sec. 7.12 Assistant Secretary

No change.

Sec. 7.13 Treasurer

The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of the Corporation and shall cause the funds of the Corporation to be deposited in the name of the Corporation in such banks or other depositories as the Board may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of the Corporation. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to the Treasurer from time to time by the Board, the Chief Executive Officer or any other person delegated such power by the Board or Chief Executive Officer[or the President].

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Sec. 7.14 Assistant Treasurer

No change.

Article VIII Indemnification

Sec. 8.1 Indemnification of Directors, Officers, Employees, and Agents

(a)-(h) No change.

(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by the Corporation, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action, the Corporation shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

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Sec. 8.2 Indemnification Insurance

No change.

Article IX Capital Stock

Sec. 9.1 Certificates

No change.

Sec. 9.2 Signatures

(a) Shares of capital stock of the Corporation represented by certificates shall be signed in the name of the Corporation by two authorized officers which shall include, without limitation, [with one being]the Chair of the Board, the Chief Executive Officer, the President, any[or a] Vice President, [and the other being]the Secretary, the Treasurer[, or such other officer that may be authorized by the Board]. Such certificates may be sealed with the corporate seal of the Corporation or a facsimile thereof.

(b) No change.

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Sec. 9.3 Stock Ledger

(a) No change.

(b) The Corporation shall, to the fullest extent permitted by law, be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. The Corporation shall not be bound to recognize any equitable

or other claim to or interest in any share of capital stock on the part of any other person, whether or not the Corporation shall have express or other notice thereof, except as required by law.

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Sec. 9.4 Transfers of Stock

No change.

Sec. 9.5 Cancellation

No change.

Sec. 9.6 Lost, Stolen, Destroyed, and Mutilated Certificates

In the event that any certificate for shares of capital stock of the Corporation shall be mutilated, the Corporation shall issue a new certificate or uncertificated shares in place of such mutilated certificate. In the event that any such certificate shall be lost, stolen, or destroyed, the Corporation may, in the discretion of the Board or a committee appointed thereby with power so to act, issue a new certificate for capital stock or uncertificated shares in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Corporation[Board or such committee] may, in its discretion, require the owner of a lost or destroyed certificate, or the owner's representatives, to furnish to the Corporation a bond with an acceptable surety or sureties and in such sum as will be sufficient to indemnify the Corporation against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate or uncertificated shares. A new certificate or uncertificated shares may be issued without requiring a bond when, in the judgment of the Corporation[Board], it is proper to do so.

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Sec. 9.7 Fixing of Record Date

No change.

Article X Miscellaneous Provisions

Sec. 10.1 Corporate Seal

No change.

Sec. 10.2 Fiscal Year

No change.

Sec. 10.3 Waiver of Notice

No change.

Sec. 10.4 Execution of Instruments, Contracts, Etc.

Except as otherwise provided by law, all contracts and other documents requiring signature entered into by or on behalf of the Corporation, including, without limitation, all (i) checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money, (ii) deeds, bonds, mortgages, contracts, and other obligations or instruments, and (iii) applications, instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, shall, in each case, be executed by such officer(s), employee(s), agent(s), or other person(s) as the Board, a duly authorized committee thereof, or the Chief Executive Officer may designate from time to time. The authority to execute any contract or document in the name and on behalf of the Corporation granted in accordance with this Section may (1) be general or confined to specific instances, (2) be designated by name, title, or role, (3) include the power to delegate signature authority further to one or more other persons, whether by name, title, or role, to the extent authorized by the Board, a duly authorized committee thereof, or the Chief Executive Officer, and (4) be revoked at any time by the Board, any committee thereof, or the Chief Executive Officer. (a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of the Corporation by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board, any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board, may authorize any officer, employee, or agent, in the name of and on behalf of the Corporation, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances. (b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of the Corporation by any principal officer or subordinate officer of the Corporation, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of the Corporation. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.]

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Sec. 10.5 Form of Records

Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time and otherwise comply with applicable law.

[Any records maintained by the Corporation in the regular course of business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.]

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Article XI Amendments; Emergency By-Laws

Sec. 11.1 By Stockholders

No change.

Sec. 11.2 By Directors

No change.

Sec. 11.3 Review by Self-Regulatory Subsidiaries

No change.

Sec. 11.4 Emergency By-Laws

The Board may adopt emergency By-Laws subject to repeal or change by action of the stockholders which shall, notwithstanding any different provision of law, the Restated Certificate of Incorporation, or these By-Laws, be operative during any emergency resulting from any emergency resulting from an attack on the United States or on a locality in which the Corporation conducts its business or customarily holds meetings of its Board of Directors or its stockholders, or during any nuclear or atomic disaster or during the existence of any catastrophe, including, but not limited to, an epidemic or pandemic, and a declaration of a national emergency by the United States government, or other similar emergency condition, irrespective of whether a quorum of the Board of Directors or a standing committee thereof can be readily convened for action[nuclear or atomic disaster, an attack on the United States or on a locality in which the Corporation conducts its business or customarily holds meetings of the Board or the stockholders, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action]. Such emergency By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency. Nothing contained in this Section 11.4 shall be deemed exclusive of any other provisions for emergency powers consistent with other sections of Delaware law which have been or may be adopted by corporations created under Delaware law.

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Article XII The Self-Regulatory Subsidiaries**Sec. 12.1 Self-Regulatory Organization Functions of the Self-Regulatory Subsidiaries**

No change.

Sec. 12.2 Cooperation with the Commission

No change.

Sec. 12.3 Consent to Jurisdiction

No change.

Sec. 12.4 Further Assurances

No change.

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

No change.

Sec. 12.6 Amendments to the Certificate of Incorporation

No change.

Sec. 12.7 Self-Regulatory Subsidiaries

No change.

Article XIII Forum Selection

Unless the Corporation consents in writing to the selection of an alternative forum, (A) (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of Delaware law, the Restated Certificate of Incorporation or these By-Laws (as either may be amended or restated) or as to which Delaware law confers jurisdiction on the Court of Chancery of the State of Delaware or (iv) any action asserting a claim governed by the internal affairs doctrine of the law of the State of Delaware shall, to the fullest extent permitted by law, be exclusively brought in the Court of Chancery of the State of Delaware or, if such court does not have subject matter jurisdiction thereof, the federal district court of the State of Delaware; and (B) the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a

cause of action arising under the Securities Act of 1933, as amended. Notwithstanding the foregoing, This Section 13.1 shall not apply to claims seeking to enforce any liability or duty created by the Act. To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 13.1.

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