

Additions double underlined  
Deletions [bracketed]

**THIRD AMENDED AND RESTATED  
BYLAWS OF EDGX EXCHANGE, INC.  
(a Delaware corporation)**

[As of April 1, 2012]

**ARTICLE I**

**Definitions**

When used in these Bylaws, unless the context otherwise requires, the terms set forth below shall have the following meanings:

- (a) “Act” means the Securities Exchange Act of 1934, as amended [and in effect from time to time and any successor statute].
- (b) [“Affiliate” means, with respect to any Person, any other person directly or indirectly through one or more intermediaries Controlling or Controlled by, or under direct or indirect common Control with, such Person. “Affiliated” shall have the correlative meaning.] An “affiliate” of, or person “affiliated” with a specific person, is 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.
- (c) “Board” or “Board of Directors” means the Board of Directors of the Company.
- (d) [“Business Day” shall mean a day other than Saturday or Sunday on which commercial banks in New York are not required or permitted under applicable laws or regulations to close.] “broker” shall have the same meaning as in Section 3(a)(4) of the Act.
- [(e) “Chairman” shall have the meaning set forth in Article III, Section 5.]
- [(f)] (e) “Commission” means the [United States] Securities and Exchange Commission.
- [(g)] (f) “Company” means EDGX Exchange, Inc., a Delaware corporation.
- [(h) “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the

ownership of voting securities or general partnership or managing member interests, by contract or otherwise. “Controlling” and “Controlled” shall have correlative meanings.]

[(i) “Designating Owner” shall mean a member of Direct Edge Holdings that holds (together with its Affiliates) at least a 15% Percentage Interest (as defined in the Holdings Operating Agreement) in Direct Edge Holdings.]

[(g) “day” means calendar day.]

[(h) “dealer” shall have the same meaning as in Section 3(a)(5) of the Act.]

[(j) “DGCL” means the General Corporation Law of the State of Delaware.]

[(k) “Direct Edge Holdings” means Direct Edge Holdings LLC, a Delaware limited liability company.]

[(l) “Direct Edge” means Direct Edge, Inc., a Delaware corporation, that is a wholly owned subsidiary of Direct Edge Holdings.]

[(m)] (i) “Director” means the persons elected or appointed to the Board of Directors from time to time in accordance with the Certificate of Incorporation and these Bylaws.

[(n)] (j) “Exchange” means the national securities exchange operated by the Company.

[(o)] (k) “Exchange Member” means any registered broker or dealer that has been admitted to membership in the [Exchange] national securities exchange operated by the Company. An Exchange Member is not a stockholder of the Company by reason of being an Exchange Member. An Exchange Member [shall] will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act.

[(p) “Exchange Member Director” means an officer, director, employee or agent of an Exchange Member, other than an Owner Exchange Member, who is elected as a Director in accordance with Article III, Section 4.]

[(q) “Exchange Member Nominating Committee” means the Exchange Member Nominating Committee elected pursuant to these Bylaws.]

[(r)] (l) “[Exchange Member] Executive Representative” means the person identified to the Company by an Exchange Member as the individual authorized to represent, vote and act on behalf of the Exchange Member. An Exchange Member may change its [Exchange Member] Executive Representative or appoint a substitute for its [Exchange Member] Executive Representative upon giving notice thereof to the Secretary of the Company via electronic process or such other process as the Company may prescribe. An [Exchange Member] Executive Representative of an Exchange Member or a substitute shall be a member of senior management [and registered principal] of the Exchange Member.

[(s) “Holdings Operating Agreement” means the Fifth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC, dated as of June 12, 2010, by and among the members of Direct Edge Holdings, as such Agreement may be amended from time to time.]

[(t) (m) “Independent Director” means a Director who has no material relationship with [(i) the Company or any [Affiliate] affiliate of the Company, or [(ii) any Exchange Member or any [Affiliate] affiliate of any such Exchange Member; *provided*, however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of the Company[, Direct Edge, Direct Edge Holdings or EDGX Exchange, Inc.] or its stockholder.

(n) “Independent member” means a member of any committee who has no material relationship with the Company or any affiliate of the Company, or any Exchange Member or any affiliate of any such Exchange Member, other than as a committee member. The term Independent member may but is not required to refer to an Independent Director who serves on a committee.

(o) “Industry Director” means a Director who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director’s firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director’s, officer’s, or employee’s professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director’s or member’s firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years.

(p) “Industry member” means a member of any committee or hearing panel who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a

broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years.

(q) "List of Candidates" means the list of nominees for Member Representative Director positions as nominated by the Member Nominating Committee and amended by petitions filed by Exchange Members. The List of Candidates is submitted to Exchange Members for the final selection of nominees to be elected by stockholders to serve as Member Representative Directors.

(r) "Member Nominating Committee" means the Member Nominating Committee elected pursuant to these Bylaws.

[(u) "List of Candidates" shall have the meaning set forth in Article III, Section 4(e).]

(s) "Member Representative Director" means a Director who has been appointed as such to the initial Board of Directors pursuant to Article III, Section 4(g) of these Bylaws, or elected by stockholders after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to these Bylaws and confirmed as the nominee of Exchange Members after majority vote of Exchange Members, if applicable. A Member Representative Director must be an officer, director, employee, or agent of an Exchange Member that is not a Stockholder Exchange Member.

(t) "Member Representative member" means a member of any committee or hearing panel who is an officer, director, employee or agent of an Exchange Member that is not a Stockholder Exchange Member.

[(v)] (u) "Nominating [and Governance] Committee" means the Nominating [and Governance] Committee elected pursuant to these Bylaws.

(v) "Non-Industry Director" means a Director who is (i) an Independent Director; or (ii) any other individual who would not be an Industry Director.

(w) “Non-Industry member” means a member of any committee who is (i) an Independent member; or (ii) any other individual who would not be an Industry member.

[(w) “Owner Director” shall mean a Director nominated by a Designating Owner pursuant to Article III, Section 4(g) and elected by the stockholders of the Company.]

[(x) “Owner Exchange Member” means an Exchange Member that also maintains, directly or indirectly, an ownership interest in the Company.]

[(y)] (x) [“Person”] “person” shall mean[s] [any individual] a natural person, partnership, [joint stock company,] corporation, [entity, association, trust,] limited liability company, [joint venture, unincorporated organization, and any] entity, government, [governmental department or agency] or political subdivision [of any], agency or instrumentality of a government.

[(z)] (y) “person associated with an Exchange Member” or “associated person of an Exchange Member” means any partner, officer, or director[, or branch manager] of an Exchange [Member] member (or [other] person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with, such Exchange [Member] member, or any employee of such Exchange [Member] member, except that any person associated with an Exchange [Member] member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Bylaws.

[(aa) “Petition Candidates” shall have the meaning set forth in Article III, Section 4(c).]

[(bb)] (z) “[Petition] Record Date” means a date at least thirty-five (35) days before the date announced as the date for the annual meeting of stockholders and set as the last date on which Exchange Members may petition to add to the List of Candidates and used to determine whether Exchange Members are entitled to vote on the final List of Candidates.

[(cc) “Petition Deadline” shall have the meaning set forth in Article III, Section 4(c).]

[(dd)] (aa) “registered broker or dealer” means any registered broker or dealer, as defined in Section 3(a)(48) of the Act, that is registered with the Commission under the Act.

[(ee)] (bb) “Rules” or “Exchange Rules” shall have the same meaning as set forth in Section 3(a)(27) of the Act[, with respect to the Company].

[(ff) “SRO” means a “self-regulatory organization” as defined in Section 3(a)(26) of the Act.]

[(gg) “statutory disqualification” shall have the meaning set forth in Section 3(a)(39)

of the Act.]

[(hh)] (cc) “stockholder” means any [Person] person who maintains a direct ownership interest in the Company. The sole stockholder of the Company shall be Direct Edge, Inc.

(dd) “Stockholder Exchange Member” means an Exchange Member that also maintains, directly or indirectly, an ownership interest in the Company.

(ee) “statutory disqualification” shall have the same meaning as in Section 3(a)(39) of the Act.

[Definitions in these Bylaws apply equally to both the singular and plural forms of the defined terms. The terms “include” and “including” and other words of similar import shall be deemed to be followed by the phrase “without limitation.” The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to these Bylaws as a whole and not to any particular section or subsection. The headings appear as a matter of convenience only and shall not affect the interpretation of these Bylaws.]

## **ARTICLE II**

### **Office and Agent**

#### **Section 1. Principal Business Office**

The principal business office of the Company shall be located at 545 Washington Boulevard, 6<sup>th</sup> fl., Jersey City, New Jersey 07310, or such other location as may hereafter be determined by the Board of Directors. The Company may have such other office or offices as the Board of Directors may from time to time designate or as the purposes of the Company may require from time to time.

#### **Section 2. Registered Office**

The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

#### **Section 3. Registered Agent**

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

## **ARTICLE III**

## **Board of Directors**

### **Section 1. Powers**

(a) [Subject to the Company's Certificate of Incorporation, the] The business and affairs of the Company shall be managed by [the] its Board, except to the extent that the authority, powers and duties of such management shall be delegated to a committee or committees of the Board pursuant to these Bylaws or the Rules. The Board of Directors shall have the power to do any and all acts necessary, convenient or incidental to[,] or for the furtherance of[,] the purposes described herein, including all powers, statutory or otherwise. To the fullest extent permitted by applicable law and these Bylaws[,] the Board may delegate any of its powers to a committee appointed pursuant to Article V or to any officer, employee or agent of the Company.

(b) The Board shall have the power to adopt, amend or repeal the Rules in accordance with Article X, Section 1.

(c) The Board may adopt such rules, regulations and requirements for the conduct of the business and management of the Company, not inconsistent with [applicable] law, the Certificate of Incorporation or these Bylaws, as the Board may deem proper. A Director shall, in the performance of such Director's duties, be fully protected, to the fullest extent permitted by [applicable] law, in relying in good faith upon the books of account or reports made to the Company by any of its officers, by an independent certified public accountant, by an appraiser selected with reasonable care by the Board or any committee of the Board or by any agent of the Company, or in relying in good faith upon other records of the Company.

(d) In connection with managing the business and affairs of the Company, 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 [the] its "members," as that term is defined in Section 3 of the Act (such statutory members being referred to in these Bylaws as "Exchange Members[,]") and [Persons] persons associated with Exchange Members, with the provisions of the Act, the rules and regulations under the Act, and the Rules of the Exchange.

(e) In light of the unique nature of the Company[,] and its operations[, its] and in light of the Company's status as a [SRO] self-regulatory organization, the Board, when evaluating any proposal, shall, to the fullest extent permitted by applicable law, take into account all factors that the Board deems relevant, including, without limitation, to the extent deemed relevant: (i) the potential impact [of such proposal] thereof on the integrity, continuity and stability of the [Exchange] national securities exchange operated by the Company and the other operations of the Company, [and] on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (ii) whether such [proposal] would promote just and equitable principles of trade, foster cooperation and coordination with [Persons] persons engaged in regulating, clearing, settling, [or] processing information with respect to[,] and

facilitating transactions in[,] securities or assist in the removal of impediments to[,] or perfection of[,] the mechanisms for a free and open market and a national market system.

**Section 2. Composition of the Board**

(a) The Board of Directors shall consist of four (4) or more Directors, the number thereof to be determined from time to time by resolution of the Board of Directors, subject to the compositional requirements of the Board set forth in Article III, Section 2(b).

(b) At all times the Board of Directors shall consist of one (1) Director who is the Chief Executive Officer of the Company and who shall be considered to be an Industry Director, and sufficient numbers of Non-Industry (including Independent), Industry and Member Representative Directors to meet the following composition requirements:

- (i) the number of Non-Industry Directors, including at least one Independent Director, shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors elected pursuant to Article III, Section 4; and
- (ii) the number of Member Representative Directors shall be at least twenty (20) percent of the Board.

[(a) Subject to Article III, Sections 2(b), 4(g) and 6(a), the Board shall consist of nineteen (19) Directors. A majority of the directorships shall be Independent Directors. The Board shall be comprised initially as follows:

- (i) The Chief Executive Officer of the Company;
- (ii) Four (4) Owner Directors (subject to increase or decrease pursuant to Article III, Section 2(b) and Section 4(g));
- (iii) Ten (10) Independent Directors (subject to increase or decrease pursuant to Article III, Section 2(b)); and
- (iv) Four (4) Exchange Member Directors (subject to increase or decrease pursuant to Article III, Section 2(b)).

Each Director shall serve until his or her term expires as provided in Article III, Section 3.]

[(b) The Board may, by resolution, add or remove Director positions to the Board, provided that (i) the number of Director positions shall not be fewer than seven (7) nor more than twenty-five (25), (ii) no removal of a Director position shall have the effect of shortening the term of any incumbent Director, and (iii) the Board at all times shall include a directorship for the Chief Executive Officer of the Company, a majority of Independent Directors, at least twenty percent (20%) Exchange Member Directors, and a number of Owner Director positions that equals the number of Owner Directors that the Designating Owners are entitled to nominate and that the stockholders of the Company have elected. If an Owner Director position needs to be

added pursuant to Article III, Section 4(g), such Owner Director position shall be nominated by the applicable Designating Owner and elected by the stockholders of the Company (or any other agreement entered into by a stockholder of the Company related to the election, removal and/or replacement of a Director), and additional Director positions shall be added and filled at the same time as the election of the new Owner Director, as required to comply with the requirements set forth in this Article III, Section 2(b) (*i.e.*, to comply with the requirement that there be a majority of Independent Directors and at least twenty percent (20%) Exchange Member Directors). So long as the Board includes the Chief Executive Officer of the Company, a majority of Independent Directors, at least twenty percent (20%) Exchange Member Directors, and the requisite number of Owner Directors, any remaining newly created Director positions may be filled by persons who do not qualify as Independent Directors, Exchange Member Directors or Owner Directors (“At-Large Directors”).]

(c) The Secretary shall collect from each nominee for Director such information as is reasonably necessary to serve as the basis for a determination of the nominee’s classification as [an] a Member Representative, Non-Industry, or Independent Director [or Exchange Member Director], if applicable, and the Secretary shall certify to the Nominating [and Governance] Committee or the [Exchange] Member Nominating Committee each nominee’s classification, if applicable. Directors shall update the information submitted under this subsection at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

(d) A Director may not be subject to a statutory disqualification. [A Director need not be a stockholder of the Company. A Director will no longer qualify to be Director upon a determination by the Board (i) that the Director no longer satisfies the classification for which the Director was elected, (ii) that the Director’s continued service as such would violate the compositional requirements of the Board set forth in Article III, Section 2(b); or (iii) the Director is subject to statutory disqualification.]

### **Section 3. Terms of Office; Classes**

(a) [The Chief Executive Officer will no longer qualify to be a Director when such individual ceases to be Chief Executive Officer of the Company, and, upon the happening of such event, that individual shall cease being a Director.] The Board term of the Chief Executive Officer shall expire when such individual ceases to be Chief Executive Officer of the Company.

(b) [The Board of] Each of the Non-Industry and Industry Directors (excluding the Chief Executive Officer, but including Member Representative Directors) shall be divided into three (3) classes, designated Class I, Class II and Class III, which shall be as nearly equal in number and classification as the total number of such Directors then serving on the Board permits. Directors other than the Chief Executive Officer shall serve staggered three-year terms, with the term of office of one [(1)] class expiring each year. A Director may serve for any number of terms, consecutive or otherwise. In order to commence such staggered three-year terms, Directors in Class I shall hold office until the [first] second annual election of the Board of Directors [following adoption of these Bylaws], Directors in Class II shall initially hold office until the [second] third annual election of the Board of Directors [following adoption of these Bylaws], and Directors in Class III shall initially hold office until the [third] fourth annual

election of the Board of Directors [following adoption of these Bylaws]. Commencing with the [first] second annual election of the Board of Directors [following adoption of these Bylaws], the term of office for each class of Directors elected at such time shall be three [(3)] years from the date of their election. [In] Notwithstanding the foregoing, in the case [of the addition] of any new Director [position, the] as contemplated by Article III, Section 2(a), such Director [filling such position] shall be added to a class, as determined by the Board at the time of such Director's initial election or appointment, and shall have an initial term expiring at the same time as the term of the class to which such Director has been added.

**Section 4.** Nomination[,] and Election [and Appointment]

(a) The Nominating [and Governance] Committee each year shall nominate Directors for each Director position [(other than Owner Director positions and the Director position filled by the Chief Executive Officer)] standing for election at the annual meeting of stockholders that year, or, to the extent necessary, at a special meeting of stockholders. For positions requiring persons who qualify as [Exchange] Member Representative Directors, the Nominating [and Governance] Committee shall nominate only those persons whose names have been approved and submitted by the [Exchange] Member Nominating Committee, and approved by, if applicable, Exchange Members pursuant to the procedures set forth below in this [Article III,] Section 4.

(b) The [Exchange] Member Nominating Committee shall consult with the Nominating [and Governance] Committee [and], the Chairman and Chief Executive Officer, and shall solicit comments from Exchange Members for the purpose of approving and submitting names of candidates for election to the position of [Exchange] Member Representative Director. A Member Representative Director must be an officer, director, employee, or agent of an Exchange Member that is not a Stockholder Exchange Member.

(c) Not later than sixty (60) days prior to the date announced as the date for the annual or special meeting of stockholders, the [Exchange] Member Nominating Committee shall report to the Nominating [and Governance] Committee and the Secretary the initial nominees for [Exchange] Member Representative Director positions on the Board that have been approved and submitted by the [Exchange] Member Nominating Committee. The Secretary shall promptly notify Exchange Members of those initial nominees. Exchange Members may identify other candidates ("Petition Candidates" for purposes of this Section 4) for the [Exchange] Member Representative Director positions by delivering to the Secretary, at least thirty-five (35) days before the date announced as the date for the annual or special meeting of stockholders (the ["Petition Deadline"] "Record Date" for purposes of this Section 4), a written petition, which shall designate the candidate by name and office and shall be signed by [Exchange Member] Executive Representatives [representing] of ten percent (10%) or more of the Exchange Members. An Exchange Member may endorse as many candidates as there are [Exchange] Member Representative Director positions to be filled. No Exchange Member, together with its [Affiliates] affiliates, may account for more than fifty percent (50%) of the signatures endorsing a particular candidate, and any signatures of such Exchange Member, together with its [Affiliates] affiliates, in excess of the fifty percent (50%) limitation shall be disregarded.

(d) Each petition for a Petition Candidate must include a completed questionnaire used to gather information concerning [Exchange] Member Representative Director candidates and must be filed with the Company[. The] (the Company shall provide the form of questionnaire upon the request of any Exchange Member).

(e) If no valid petitions from Exchange Members are received by the [Petition Deadline] Record Date, the initial nominees approved and submitted by the [Exchange] Member Nominating Committee shall be nominated as [Exchange] Member Representative Directors by the Nominating [and Governance] Committee. If one or more valid petitions from Exchange Members are received by the [Petition Deadline] Record Date, the Secretary shall include such additional nominees, along with the initial nominees nominated by the [Exchange] Member Nominating Committee, on a list of nominees (the "List of Candidates"). Upon completion, the List of Candidates shall be sent by the Secretary to all Exchange Members that were Exchange Members on the [Petition Date] Record Date, by any means, including electronic transmission, to confirm the nominees for the [Exchange] Member Representative Director positions. The List of Candidates shall be accompanied by a notice regarding the time and date of an election to be held at least twenty (20) days prior to the annual or special stockholders' meeting to confirm the Exchange Members' selections of nominees for [Exchange] Member Representative Directors.

(f) With respect to the election held to determine the final nomination of [Exchange] Member Representative Directors, each Exchange Member shall have the right to cast one (1) vote for each available [Exchange] Member Representative Director nomination; *provided*, however, that [(i)] any such vote must be cast for a person on the List of Candidates, and [(ii)] that no Exchange Member, together with its [Affiliates] affiliates, may account for more than twenty percent (20%) of the votes cast for a candidate, and any votes cast by such Exchange Member, together with its [Affiliates] affiliates, in excess of such twenty percent (20%) limitation shall be disregarded. The votes shall be cast by written ballot, electronic transmission or any other means as set forth in a notice to the Exchange Members sent by the Company prior to such election. Only votes received prior to 5:00 p.m. Eastern Time on the date of the election shall count for the nomination of a [an Exchange] Member Representative Director. The persons on the List of Candidates who receive the most votes shall be selected as the nominees for the [Exchange] Member Representative Director positions to be elected by stockholders.

[(g) Each Designating Owner shall have the right to nominate an Owner Director. If a Designating Owner ceases to be a Designating Owner, then upon the happening of such event, the individual serving as an Owner Director nominated by such Designating Owner will no longer qualify to be an Owner Director, will cease being an Owner Director, and will be deemed to have automatically resigned. In addition, such Owner Director position on the Board shall immediately terminate. The stockholders of the Company will take all such actions required or necessary to effect this Section 4(g).]

#### **Section 5. Chairman of the Board**

The [Directors] Chief Executive Officer shall [choose among themselves who will] be the Chairman of the Board ([the] "Chairman")[, who may also be the Chief Executive Officer]. The

Chairman shall preside at all meetings of the Board at which the Chairman is present; *provided*, however, that [if the Chairman is the Chief Executive Officer or other member of management of the Company,] he or she shall not participate in executive sessions of the Board. The Chairman shall exercise such other powers and perform such other duties as may be assigned to the Chairman from time to time by the Board. The Board of Directors shall designate a Lead Director from among the Board's Independent Directors to preside over executive sessions of the Board. The Board shall publicly disclose the identity of the Lead Director and the means by which interested parties may communicate with the Lead Director.

## **Section 6. Vacancies**

(a) Whenever any Director position, other than a [an Owner Director or Exchange] Member Representative Director position, becomes vacant prior to the election of a successor at the end of such Director's term, whether because of death, disability, disqualification, removal or resignation, and whenever any newly-created Director position, other than a [an Owner Director or Exchange] Member Representative Director position, becomes available because of an increase in the number of Directors, the Nominating [and Governance] Committee shall nominate, and [a majority of Directors then in office, though less than a quorum or a sole remaining Director,] stockholders shall elect, a person satisfying the classification (Industry, Non-Industry, or Independent [or At-Large] Director), if applicable, for the directorship to fill such vacancy until the expiration of the remaining term or to fill such newly-created Director position until the expiration of such position's designated term; *provided*, however, that if the remaining term of office of a Director at the time of such Director's vacancy is not more than six (6) months, during the period of vacancy the Board shall not be deemed to be in violation of Article III, Section 2(b) by virtue of such vacancy[; and *further provided*, that any vacancy 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].

(b) Whenever any [Exchange] Member Representative Director position becomes vacant prior to the election of a successor at the end of such [Exchange] Member Representative Director's term, whether because of death, disability, disqualification, removal, or resignation, and whenever any newly-created [Exchange] Member Representative Director position becomes available because of an increase in the number of Directors, then the [Exchange] stockholders shall follow the procedures set forth in this Section 6(b). In such event, the Member Nominating Committee shall [nominate, and a majority of Directors then in office, though less than a quorum or a sole remaining Director, shall elect, a person satisfying the classification for the Exchange Member Director position] either (i) recommend an individual to the stockholders to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the stockholders from which the stockholders shall elect the individual to fill such vacancy. A Member Representative Director elected pursuant to this Section 6(b) shall serve until the expiration of the remaining term or [to fill such newly-created Exchange Member Director position] until the expiration of such position's designated term; *provided*, however, that if the remaining term of office of a [an Exchange] Member Representative Director at the time of such [Exchange Member] Director's vacancy is not more than six (6) months, during the period of vacancy the Board shall not be deemed to be in violation of Article III, Section 2(b) by virtue of such vacancy[; and *further provided*, that any vacancy 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].

[(c) Subject to the terms of Article III, Section 4(g) and Section 2(d), whenever any Owner Director position becomes vacant prior to the election of a successor at the end of such Owner Director's term, whether because of death, disability, disqualification, removal or resignation, and whenever any newly-created Owner Director position becomes available pursuant to Article III, Section 4(g), the Designating Owner that nominated an Owner Director for such vacant Owner Director position or that is entitled to nominate an Owner Director for such newly-created Owner Director position shall nominate, and a majority of the Directors then in office though less than a quorum or a sole remaining Director, shall elect, the individual nominated by such Designating Owner to fill such vacancy until the expiration of the remaining term or to fill such newly-created Owner Director position until the expiration of such position's designated term; *provided*, however, that if the remaining term of office of an Owner Director at the time of such Owner Director's vacancy is not more than six (6) months, during the period of vacancy the Board shall not be deemed to be in violation of Article III, Section 2(b) by virtue of the applicable Designating Owner failing to nominate an Owner Director to fill such vacancy; and *further provided*, that any vacancy 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.]

#### **Section 7. Removal and Resignation**

(a) [Any] Except as hereinafter provided, any Director may be removed or expelled with or without cause by [a] majority vote of [the] stockholders, and may be removed by the Board of Directors in the manner provided by Article III, Section 7(b) below; *provided*, however, that any [Exchange] Member Representative Director may only be removed [only by a majority vote of the stockholders] for cause, which shall include [such Exchange Member Director's], without limitation, such Director being subject to a statutory disqualification[, and any Owner Director may be removed only by a majority vote of the stockholders acting or for cause, which shall include such Owner Director's being subject to a statutory disqualification. Upon the removal of an Owner Director, the Designating Owner that nominated such removed Owner Director shall have the right to nominate a replacement Owner Director pursuant to Article III, Section 6].

(b) A Director shall be removed immediately upon a determination by the Board, by a majority vote of the remaining Directors, (a) that the Director no longer satisfies the classification for which the Director was elected; and (b) that the Director's continued service as such would violate the compositional requirements of the Board set forth in Article III, Section 2(b).

[(b)] (c) Any Director may resign at any time either upon notice of resignation to the Chairman of the Board, the [Chief Executive Officer] President or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

**Section 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 [shall] will be held at the principal business office of the Company. 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 9. Regular Meetings**

Regular meetings of the Board may be held, with or without notice, at such time or place as may from time to time be specified in a resolution adopted by the Board.

**Section 10. Special Meetings**

(a) Special meetings of the Board may be called on a minimum of two (2) days' notice to each Director by the Chairman or the [Chief Executive Officer] President, 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 at his or her business address or such other address as he or she may have advised the Secretary 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 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 11. Exchange Member Meetings**

The Company shall not be required to hold meetings of the Exchange Members.

**Section 12. Voting, Quorum and Action by the Board**

Each Director shall be entitled to one (1) vote. At all meetings of the Board, the presence of a majority of the number of Directors then in office[, but in no event less than 1/3 of the total number of Directors,] shall constitute a quorum for the transaction of business. If a quorum shall not be present at any meeting of the Board, the Directors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. 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 Bylaws.

**Section 13. Presumption of Assent**

A Director of the Company 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 Company 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 [13] 14. Action in Lieu of Meeting**

Unless otherwise restricted by statute, the Certificate of Incorporation or these Bylaws, 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) [is] are filed with the minutes of proceedings of the Board or the committee.

**Section [14] 15. Waiver of Notice**

(a) Whenever notice is required to be given by [applicable] law, the Certificate of Incorporation or these Bylaws, a waiver thereof by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board, or members of a committee [thereof], need be specified in any waiver of notice.

(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a 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 [15] 16. Compensation of Board and Committee Members**

The Board may provide for reasonable compensation of the Chairman, the Directors and the members of committees [of the Board]. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the Company.

**Section 17. Interpretation of Bylaws**

The Board shall have the power to interpret these Bylaws and any interpretation made by it shall be final and conclusive.

**Section [16] 18. Conflicts of Interest; Contracts and Transactions Involving Directors**

(a) [To the fullest extent permitted by law, a] A Director or a member of any committee [of the Board] may not participate in the consideration or decision of any matter relating to a particular Exchange Member, company, or [other Person] individual if such Director or committee member has a material interest in, or a professional, business, or personal relationship with, that Exchange Member, company, or [Person] individual, or if such participation shall create an appearance of impropriety. [Exchange Member Directors shall not be deemed to be personally interested in the determination of matters that may affect the Exchange Members as a whole or certain groups of Exchange Members, and Exchange Member Directors shall not be prohibited from participating in such determinations in the normal course of conducting the Company's business.] In any such case, the Director or committee member shall recuse himself or herself or shall be disqualified. If a member of the Board or any committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Board or applicable committee.

(b) No contract or transaction between the Company and one or more of its Directors or officers, or between the Company and any other corporation, partnership, association or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason[, or solely because the director or officer is present at or participates in the meeting of the Board or committee which authorizes the contract or transaction, or solely because any such Director's or officer's votes are counted for such purpose,] if: (i) the material facts pertaining to such Director's or officer's relationship or interest and [as to] the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (ii) the material facts [as to the Director's or officer's relationship or interest and as to] are disclosed or become known to the Board or committee after the contract or transaction [are disclosed or are known to the stockholders entitled to vote thereon, and] is entered into, and the Board or committee in good faith ratifies the contract or transaction [is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Company as of the time it is authorized, approved or ratified, by the Board, a committee or the stockholders.] by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum.

## ARTICLE IV

### Stockholders

#### **Section 1.** Annual Meeting; Election of Directors and Other Matters

(a) 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 and members of the Nominating [and Governance] Committee and [Exchange] Member Nominating Committee, and for conducting such other business as may properly come before the meeting. Written 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[, unless otherwise required by law, the Certificate of Incorporation or these Bylaws].

(b) The first annual meeting of the stockholders shall be held prior to the Company's commencement of operations as an Exchange.

## **Section 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] President, 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 Company entitled to vote. Written 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[, unless otherwise required by law, the Certificate of Incorporation or these Bylaws]. Business transacted at any special meeting of stockholders shall be limited to the purpose(s) stated in the notice of the meeting.

## **Section 3. List of Stockholders**

The Secretary of the Company, or such other person designated by the Secretary or the Board, shall have charge of the stock ledger of the Company 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 [the principal] a place [of business of the Company] 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. 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 [applicable law] statute, the Certificate of Incorporation or these Bylaws. 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 [applicable law] statute 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 5. Voting of Shares; Proxies**

Unless otherwise provided in the Certificate of Incorporation or these Bylaws, each stockholder of the Company 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 Company before or at the time of the meeting.

**Section 6. Action in Lieu of Meeting**

[Any] As set forth in the Certificate of Incorporation of the Company, 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 Company 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.

**Section 7. Assignment**

The stockholder may not transfer or assign, in whole or in part, its ownership interest(s) in the Company.

**ARTICLE V**

**Committees of the Board**

**Section 1. Number of Committees**

The committees of the Board shall consist of a Compensation Committee, an Audit Committee, [an Executive Committee,] a Regulatory Oversight Committee, an Appeals Committee, and such other committees as may be from time to time established by the Board [for a specific and limited purpose]. Committees shall have such authority as is vested in them

by these Bylaws 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 2. Appointment and Removal; Vacancies; Term**

(a) [The Board, after consultation with the] The Chairman, [may designate] with the approval of the Board, shall appoint, consistent with these Bylaws, the members of all committees of the Board, as well as the chair of each committee, and the [Board] Chairman may, at any time, with or without cause, remove any member of a committee so appointed, [after consultation] with the [Chairman] approval of the Board. 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 [except as set forth herein, every] such committee [shall have at least a majority of Independent Directors. In designating] members who are not also members of the Board shall only participate in committee actions to the extent permitted by law. In appointing members to committees of the Board, the [Board] Chairman is responsible for determining that any such committee meets the composition requirements set forth in this Article V. [The Board, after consultation with the Chairman, 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. Except as otherwise set forth in these Bylaws, the Board, after consultation with the Chairman, may have non-voting observers attend committee meetings.]

(b) Upon request of the Secretary, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Independent member. The Secretary shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this subsection at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

[(b)] (c) [A] The term of office of a committee member shall [be removed] terminate immediately upon a determination by the Board, by a majority vote of the Directors, (i) that the committee member no longer satisfies the classification for which the committee member was selected[,]; and (ii) that the committee member's continued service as such would violate the compositional requirements of such committee set forth in this Article V.

[(c)] (d) Any vacancy occurring in a committee shall be filled by [the Board, after consultation with] the Chairman[,], for the remainder of the term, with the approval of the Board.

[(d)] (e) Except as otherwise provided by [these] the Bylaws [or by the Board], members of a committee shall hold office for a one-year period.

## **Section 3. Powers and Duties of Committees**

To the extent provided in the resolution of the Board, any committee that consists solely of one or more Directors shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company.

**Section [3] 4. Conduct of Proceedings**

Except as otherwise provided in these Bylaws or by the Board, each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

**Section [4] 5. Voting, Quorum and Action by Committees**

Each committee member shall be entitled to one (1) vote. Unless otherwise required by the Bylaws, the presence of a majority of the number of committee members serving on a committee shall constitute a quorum for the transaction of business of such committee. If a quorum shall not be present at any meeting of a committee, the committee members present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. The act of a majority of the committee members present at any meeting at which there is a quorum shall be the act of such committee except as may be otherwise specifically provided by [applicable law] statute or these Bylaws.

**Section [5] 6. Specified Committees**

(a) The Chairman, with the approval of the Board, shall appoint a Compensation Committee. The Compensation Committee shall consider and recommend compensation policies, programs, and practices for officers and other employees of the Company. Each voting member of the Compensation Committee shall be a Non-Industry Director.

[(a) The Board, after consultation with the Chairman, shall designate the members of a Compensation Committee, which shall consist of three Independent Directors. The Compensation Committee shall consider and recommend compensation policies, programs and practices for officers and other employees of the Company and shall assist the Board in fulfilling its responsibilities to ensure the structures of compensation systems of the Exchange do not interfere with the Exchange's ability to fulfill its responsibilities as an SRO. The Board, after consultation with the Chairman, may designate non-voting observers who shall be permitted to attend and participate in committee meetings.]

(b) [The Board, after consultation with the] The Chairman, [shall designate] with the [members] approval of the Board, shall appoint an Audit Committee[, which shall consist solely] consisting of Directors[, including a]. A majority of [Independent] the Audit Committee members shall be Non-Industry Directors. [An Independent] A Non-Industry Director shall serve as Chairman of the Audit Committee. The Audit Committee shall perform the following primary functions, as well as such other functions as may be specified in the charter of the Audit Committee: [(i) assist the Board in fulfilling its responsibilities to oversee the financial soundness and compliance resources and the effectiveness of financial and compliance control processes related to the operation of the Company; (ii) take appropriate actions to oversee overall corporate policy for quality activities and reporting of a SRO, sound business risk management practices and ethical behavior; (iii)] (A) provide oversight over the Company's financial reporting process and the financial information that is provided to stockholders[, regulatory

authorities] and others; [(iv)] (B) provide oversight over the systems of internal controls[, technology and information integrity] established by management and the Board and the Company's legal and compliance process; [(v)] (C) select, evaluate and, where appropriate, replace [any] the Company's independent auditors [retained by the Company to perform internal or other audit functions directly for the Company; (vi)] (or nominate the independent auditors to be proposed for ratification by stockholders); and (D) direct and oversee all the activities of the Company's internal audit function, including but not limited to management's responsiveness to internal audit recommendations [and selecting and replacing and determining the compensation of the head of the Internal Audit Department (or if such position is outsourced, selecting and replacing and determining the compensation of the third party provider), in consultation with management; and (vii) oversee enterprise risk and technology operations, including security and business continuity measures]. The Audit Committee shall have exclusive authority to: (A) hire or terminate the head of the Company's Internal Audit Department; (B) determine the compensation of the head of the Internal Audit Department; and (C) determine the budget for the Internal Audit Department. The Internal Audit Department and its head shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Internal Audit Department also report to senior management of the Company on matters the Audit Committee deems appropriate and may request that senior management of the Company perform such operational oversight as necessary and proper, consistent with preservation of the independence of the internal audit function. [Nothing herein shall prohibit or be deemed to be in conflict with the ability of the Exchange to retain a third party to perform all or a portion of its audit function, provided that the Exchange shall supervise and have primary responsibility for any action undertaken by a third-party auditor retained to perform all or a portion of the Exchange's audit function.]

(c) [The Board, after consultation with the] The Chairman, [shall designate] with the [members] approval of the Board, shall appoint a Regulatory Oversight Committee[, which shall consist solely of Independent Directors]. The Regulatory Oversight Committee shall [assist the Board in fulfilling its responsibilities to] oversee the adequacy and effectiveness of the Exchange's regulatory and [SRO] self-regulatory organization responsibilities, including those responsibilities with regard to each of its facilities, as defined in Section 3(a)(2) of the [Exchange] Act[;], assess [the] Exchange's regulatory performance, [and] assist the Board and committees of the Board in reviewing the regulatory plan[;] and [oversee] the overall effectiveness of [the] Exchange's [performance of its] regulatory functions and, in consultation with the Chief Executive Officer of the Company, establish the goals, assess the performance, and fix the compensation of the Chief Regulatory Officer of the Company. Each member of the Regulatory Oversight Committee shall be a Non-Industry Director.

(d) [The Board, after consultation] The Chairman, with the [Chairman] approval of the Board, shall appoint an Appeals Committee[, which shall consist solely of two Independent Directors and one Exchange Member Director]. The Appeals Committee shall preside over all appeals related to disciplinary and adverse action determinations in accordance with the Exchange Rules. The Appeals Committee shall consist of one Independent Director, one Industry Director, and one Member Representative Director. If the Independent Director recuses himself or herself from an appeal, due to a conflict of interest or otherwise, such Independent Director may be replaced by a Non-Industry Director for purposes of the applicable appeal if

there is no other Independent Director able to serve as the replacement.

(e) [The Board, after consultation] The Chairman, with the [Chairman] approval of 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 Company between meetings of the Board [and to facilitate coordination of Board processes]. The number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors on the Executive Committee. The percentage of Independent Directors on the Executive Committee shall be at least as great as the percentage of Independent Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee shall be at least as great as the percentage of Member Representative Directors on the whole Board.

(f) The Chairman, with the approval of 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 Company, including recommendations for Company's annual operating and capital budgets.

## **ARTICLE VI**

### **Nominating Committees [of the Exchange]**

#### **Section 1.** Election of Nominating [and Governance] Committee and [Exchange] Member Nominating Committee

The Nominating [and Governance] Committee and the [Exchange] Member Nominating Committee shall each be elected on an annual basis by a vote of the stockholders. [Each] The stockholder shall appoint the initial Nominating Committee and Member Nominating Committee consistent with the compositional requirements of this Article VI. In each subsequent year, each of the Nominating [and Governance] Committee and [Exchange] Member Nominating Committee, after completion of its respective duties for nominating Directors for election to the Board for that year, shall nominate candidates to serve on the succeeding year's Nominating [and Governance] Committee or [Exchange] Member Nominating Committee, as applicable, such candidates to be voted on by [the] stockholders at the annual meeting of stockholders. Additional candidates for the [Exchange] Member Nominating Committee may be nominated and elected pursuant to the same process as provided for in Article III, Section 4.

#### **Section 2.** Nominating [and Governance] Committee

The Nominating [and Governance] Committee shall [be responsible for (a) developing and recommending governance policies to the Board; (b) nominating] nominate candidates for election to the Board at the annual stockholder meeting and all other vacant or new Director positions on the Board [(other than Owner Director positions) and]. The Nominating Committee, in making such nominations, is responsible for ensuring that candidates meet the

compositional requirements of Article III, Section 2(b)[;]. The number of Non-Industry members on the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee. A Nominating Committee member may simultaneously serve on the Nominating Committee and the Board, unless the Nominating Committee is [(c)] nominating Director candidates [and chairpersons to serve on committees of the Board; and (d) overseeing an annual self-evaluation of the independent Directors and each Board committee. The Nominating and Governance Committee shall also oversee the implementation and effectiveness of the Bylaws, committee charters, policies and other governance documents as needed; review and recommend best practices in corporate governance; and oversee an orientation for new Directors. The Nominating and Governance Committee shall consist solely of three Independent Directors, one of whom shall be in each class. The Nominating and Governance Committee shall have such other duties and may exercise such other authority as may be prescribed by resolution of the Board and the Charter of] for the Director's class, as explained in Article III, Section 3. Notwithstanding the preceding sentence, a Director may serve on the Nominating [and Governance] Committee [as adopted by resolution of] in his or her final year of service on the Board. Following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee.

**Section 3.** [Exchange] Member Nominating Committee

The [Exchange] Member Nominating Committee shall nominate candidates for each [Exchange] Member Representative Director position on the Board that is to be elected by Exchange Members or stockholders under the terms of these Bylaws [and all other vacant or new Exchange Member Director positions on the Board]. Each member of the [Exchange] Member Nominating Committee shall be a Member Representative member. [qualify as an Exchange Member Director, except that such committee member is not required to be a Director. Upon request of the Secretary, any such prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification. The Secretary shall certify to the Board such prospective committee member's classification. Such committee member shall update the information submitted under this subsection at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.]

**ARTICLE VII**

**Officers, Agents and Employees**

**Section 1.** General

The officers of the Company shall include a Chief Executive Officer [and], a President, a Chief Regulatory Officer, a Secretary, a Treasurer, and such other officers [(including a Secretary)] as in the Board's opinion are desirable for the conduct of the business of the Company. Any two or more offices may be held by the same person, except that the offices of the [Chief Executive Officer] President and Secretary may not be held by the same person.

**Section 2.** Appointment and Tenure

Each officer of the Company shall be appointed by the Board on an annual basis, and shall hold office until his or her successor is appointed and qualified or until his or her earlier death, disability, disqualification, removal or resignation. An officer may serve for any number of terms, consecutive or otherwise.

**Section 3. Resignation and Removal of Officers; Vacancies**

(a) Any officer may resign at any time upon notice of resignation to the Chairman[, the] and Chief Executive Officer, the President or the Secretary[, or a designee of the Board, if none such officers are then appointed]. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

(b) Any officer of the Company may be removed, with or without cause, by the Board. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with the Company.

(c) Vacancies in any office of the Company may be filled for the unexpired term by the Board.

**Section 4. Compensation**

The Compensation of the Chief Executive Officer shall be fixed by the Compensation Committee. Except as otherwise provided in Article V, Section 6(c) of these Bylaws, [The] the salaries of all other officers and agents of the Company shall be fixed by the Chief Executive Officer, in consultation with the Compensation Committee.

**Section 5. Powers and Duties; Delegation**

Each of the officers of the Company 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. The Board may delegate the duties and powers of any officer of the Company to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient.

**Section 6. Chief Executive Officer**

The Chief Executive Officer [may] shall be the Chairman of the Board and shall preside at all meetings of the Board at which the Chief Executive Officer is present; provided, however, that he or she shall not participate in executive sessions of the Board. The Chief Executive Officer shall be the chief executive officer of the Company, shall have general supervision over the business and affairs of the Company, and shall serve at the pleasure of the Board. The Chief Executive Officer shall have all powers and duties usually incident to the office of the Chief Executive Officer, except as specifically limited by a resolution of the

Board. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to the Chief Executive Officer from time to time by the Board.

**Section 7. President**

The President shall, in the absence of the Chairman and Chief Executive Officer, preside at all meetings of the Board at which the President is present. The President shall have general supervision over the operations of the Company. 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 President shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board.

**Section 8. Vice President**

The Board shall 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 may determine. The Vice Presidents shall generally assist the President in such manner as the President shall direct. 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 President. The term "Vice President" used in this Section shall include the positions of Executive Vice President, Senior Vice President, and Vice President.

**Section [7] 9. Chief Regulatory Officer**

An officer of the Company with the position of Executive Vice President or Senior Vice President shall be designated as the Chief Regulatory Officer of the Company. The Chief Regulatory Officer shall have general supervision of the regulatory operations of the Company, including responsibility for overseeing the Company's surveillance, examination and enforcement functions and for administering any regulatory services agreements with another [SRO] self-regulatory organization to which the Company is a party. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Company in executive session at regularly scheduled meetings of such committee, and at any time upon request of the Chief Regulatory Officer or any member of the Regulatory Oversight Committee. The Chief Regulatory Officer may, but is not required to, also serve as the General Counsel of the Company.

**Section [8] 10. Secretary**

The Secretary shall act as Secretary of all meetings 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 Company, and shall have supervision over the care and custody of the books and records of the Company. The Secretary shall be empowered to affix the Company's seal, if any, to documents, the execution of

which on behalf of the Company 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, [or] the Chief Executive Officer or the President.

**Section 11. Assistant Secretary**

In the absence of the Secretary or in the event of the Secretary's inability or refusal to act, any Assistant Secretary, approved by the Board, shall exercise all powers and perform all duties of the Secretary. An Assistant Secretary shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Secretary from time to time by the Board or the Secretary.

**Section 12. Treasurer**

The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of the Company and shall cause the funds of the Company to be deposited in the name of the Company 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 Company. 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 the President.

**Section 13. Assistant Treasurer**

In the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assistant Treasurer, approved by the Board, shall exercise all powers and perform all duties of the Treasurer. An Assistant Treasurer shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Treasurer from time to time by the Board or the Treasurer.

**ARTICLE VIII**

**Indemnification**

**Section 1. Indemnification of Directors, Officers, Employees [And] and Other Agents**

The Company shall indemnify its Directors and executive officers to the fullest extent not prohibited by the Delaware General Corporation Law; provided, however, that the Company may limit the extent of such indemnification by individual contracts with its Directors and executive officers; and, provided, further, that the Company shall not be required to indemnify any Director or executive officer in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against the Company or its Directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by

law, (ii) the proceeding was authorized by the Board of Directors of the Company or (iii) such indemnification is provided by the Company, in its sole discretion, pursuant to the powers vested in the Company under the Delaware General Corporation Law.

(a) *Other Officers, Employees and Other Agents.* The Company shall have the power to indemnify its other officers, employees and other agents as set forth in the Delaware General Corporation Law.

[(a)] (b) *[Right to Indemnification] Expenses.* The Company shall [indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended,] advance to any person [(a “Covered Person”)] who was or is [made] a party or is threatened to be made a party [or is otherwise involved in any] to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative[, arbitrate] or investigative [(a “proceeding”)], by reason of the fact that he [or she, or a person for whom he or she is the legal representative,] is or was a [d]Director or executive officer, of the Company or[, while a director or officer of the Company,] is or was serving at the request of the Company as a [d]Director[, or executive officer[, employee or agent] of another corporation [or of a], partnership, joint venture, trust[, or other enterprise [or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and], prior to the final disposition of the proceeding, promptly following request therefor, all expenses [(including attorneys’ fees) reasonably] incurred by [such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 1(c) of this Article VIII, the Company shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board.] any Director or executive officer in connection with such proceeding upon receipt of an undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Article VIII or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Article VIII, Section 1, no advance shall be made by the Company to an executive officer of the Company (except by reason of the fact that such executive officer is or was a Director of the Company in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to the proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Company.

[(b) *Prepayment of Expenses.* The Company shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys’ fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition, *provided*, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all

amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VIII or otherwise.]

(c) [*Claims.* If a claim for indemnification (following the final disposition of such proceeding) or advancement of expenses under this Article VIII is not paid in full within thirty days after a written claim therefor by the Covered Person has been received by the Company, the Covered 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 Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.] *Enforcement.* Without the necessity of entering into an express contract, all rights to indemnification and advances to Directors and executive officers under this Article VIII shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the Company and the Director or executive officer. Any right to indemnification or advances granted by this Article VIII to a Director or executive officer shall be enforceable by or on behalf of the person holding such right in the forum in which the proceeding is or was pending or, if such forum is not available or a determination is made that such forum is not convenient, in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting his claim. The Company shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the Delaware General Corporation Law for the Company to indemnify the claimant for the amount claimed. Neither the failure of the Company (including its Board of Directors, independent legal counsel or its Stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Company (including its Board of Directors, independent legal counsel or its Stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

(d) [*Nonexclusivity*] *Non Exclusivity of Rights.* To the fullest extent permitted by the Company's Certificate of Incorporation and the [DGCL] Delaware General Corporation Law, the rights conferred on any [Covered Person] person by this Article VIII shall not be exclusive of any other [rights that] right which such [Covered Person] person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, [these] Bylaws, agreement, vote of [stockholders] Stockholders or disinterested [d]Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The Company is specifically authorized to enter into individual contracts with any or all of its [d]Directors, officers, employees or agents [with respect to] respecting indemnification and advances, to the fullest extent permitted by the [DGCL] Delaware General Corporation Law and the Company's Certificate of Incorporation.

(e) *Other Sources.* The Company's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer,

employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.]

[(f)] (e) Survival of Rights. The rights conferred on any [Covered Person] person by this Article VIII shall continue as to a person who has ceased to be a Director or executive officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

[(g)] (f) Insurance. The Company, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Article VIII.

(g) Amendments. Any repeal or modification of this Article VIII shall only be prospective and shall not affect the rights under this Article VIII in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the Company.

[(h)] Amendments. Any modification or repeal of the provisions of this Article VIII shall not adversely affect any right or protection hereunder of any Covered Person in respect of any proceeding (regardless of when such proceeding is first threatened, commenced or completed) arising out of, or related to, any act or omission occurring prior to the time of such repeal or modification.]

[(i)] Other Indemnification and Advancement of Expenses. This Article VIII shall not limit the right of the Company, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.]

[(j)] (h) Saving Clause. If this Article VIII or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify each [Covered Person] Director and executive officer to the fullest extent permitted by any applicable portion of this Article VIII that shall not have been invalidated or by any other applicable law.

[(k)] (i) Certain Definitions. For the purposes of this Article VIII, the following definitions shall apply:

- (i) The term “proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement and appeal of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative.
- (ii) The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or

kind incurred in connection with any proceeding, including expenses of establishing a right to indemnification under this Article VIII or any applicable law.

[(ii)](iii) The term the “Company” shall include, in addition to the resulting [entity] corporation, any constituent [entity] corporation (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 directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent [entity] corporation, or is or was serving at the request of such constituent [entity] corporation as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving [entity] corporation as he would have with respect to such constituent [entity] corporation if its separate existence had continued.

(iv) References in this Article VIII to a “Director,” “officer,” “employee,” or “agent” of the Company shall include, without limitation, situations where such person is serving at the request of the Company as a director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

**Section 2.** Exchange Not Liable

Except as provided in the Exchange Rules, the Company shall not be liable for any loss or damage sustained by any current or former Exchange Member [related to] growing out of the use or enjoyment by such Exchange Member of the facilities afforded by the Company (or any predecessor or successor thereof) or its subsidiaries.

**ARTICLE IX**

**Amendments; Emergency Bylaws**

**Section 1.** By [the] Stockholders or Board

These Bylaws may be altered, amended or repealed, or new Bylaws may be adopted, (i) by the written consent of the stockholders of the Company, or (ii) at any regular or special meeting of the Board by a resolution adopted by the Board[; *provided*, however, that the Board shall not be entitled to amend or repeal, or adopt any new Bylaws that contradict or are inconsistent with, any of the provisions of Article III that relate to Owner Directors; Article V, Section 1; and this Article IX, Section 1, and any of the defined terms set forth in Article I that are used therein or related thereto].

**Section 2.** Emergency Bylaws

The Board may adopt emergency Bylaws subject to repeal or change by action of the stockholders of the Company [that] which shall, notwithstanding any different provision of [applicable] law, the Certificate of Incorporation or these Bylaws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which the Company conducts its business or customarily holds meetings of the Board, 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 Bylaws may make any provision that may be practicable and necessary under the circumstances of the emergency.

**Section 3. Authority to Take Action Under Extraordinary Market Conditions**

The Board, or such [Person] person or [Persons] persons as may be designated by the Board, in the event of extraordinary market conditions, shall have the authority to take any action regarding:

(a) the trading in[, ] or operation of[, ] the national securities exchange operated by the Company or any other organized securities markets that may be operated by the Company, the operation of any automated system owned or operated by the Company, and the participation in any such system of any or all [Persons] persons or the trading therein of any or all securities; and

(b) the operation of any or all offices or systems of Exchange Members, if, in the opinion of the Board or the [Person] person or [Persons] persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.

**ARTICLE X**

**Exchange Authorities**

**Section 1. Rules**

The Board, acting in accordance with the terms of these Bylaws and the Rules, shall be vested with all powers necessary for the governance of the Company as an “exchange” within the meaning of the Act. To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among Exchange Members, to collaborate with governmental and other agencies in the promotion of fair practices and the elimination of fraud, and in general to carry out the purposes of the Company and of the Act, the Board is hereby authorized to adopt such rules and such amendments thereto as it may, from time to time, deem necessary or appropriate. If any such rules or amendments thereto are approved by the Commission or otherwise become effective as provided in the Act, they shall become operative Exchange Rules as of the date of Commission approval or effectiveness under the Act unless a later operative date is declared by the Company. The Board is hereby authorized, subject to the provisions of these Bylaws and the Act, to administer, enforce, interpret, issue exemptions from, suspend, or cancel any Rules adopted hereunder.

**Section 2. Disciplinary Proceedings**

(a) The Board is authorized to establish procedures relating to disciplinary proceedings involving Exchange Members and their associated [Persons] persons.

(b) The Board is authorized to impose appropriate sanctions applicable to Exchange Members, including censure, fine, suspension, or expulsion from membership, suspension or bar from being associated with all Exchange Members, limitation of activities, functions and operations of an Exchange Member, or any other fitting sanction, and to impose appropriate sanctions applicable to [Persons] persons associated with Exchange Members, including censure, fine, suspension, or barring a [Person] person associated with an Exchange Member from being associated with all Exchange Members, limitation of activities, functions and operations of a [Person] person associated with an Exchange Member or any other fitting sanction, for:

- (i) a breach by an Exchange Member or a [Person] person associated with an Exchange Member of any covenant with the Company or its stockholders;
- (ii) violation by an Exchange Member or a [Person] person associated with an Exchange Member of any of the terms, conditions, covenants, and provisions of the [rules (as defined in Section 3(a)(27) of the Act)] Bylaws, the Rules, or the federal securities laws, including the rules and regulations adopted thereunder;
- (iii) failure by an Exchange Member or [Person] person associated with an Exchange Member to: (A) submit a dispute for arbitration as may be required by the Rules; (B) appear or produce any document in the Exchange Member's or [Person's] person's possession or control as directed pursuant to the [rules (as defined in Section 3(a)(27) of the Act)] Rules; (C) comply with an award of arbitrators properly rendered, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied; or (D) comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition; or
- (iv) failure by an Exchange Member or [Person] person associated with an Exchange Member to adhere to any ruling, order, direction, or decision of, or to pay any sanction, fine, or costs imposed by[,] the Board or any [Person] entity to which the Board has delegated its powers.

### **Section 3.** [Exchange Member] Membership Qualifications

(a) The Board shall have authority to adopt rules and regulations applicable to Exchange Members, applicants seeking to become Exchange Members, and [Persons] persons associated with applicants or Exchange Members, establishing specified and appropriate standards with respect to the training, experience, competence, financial responsibility, operational capability, and such other qualifications as the Board finds necessary or desirable.

(b) The Board may from time to time make such changes in such rules, regulations, and standards as it deems necessary or appropriate.

(c) Uniform standards for regulatory and other access issues, such as admission to membership and conditions to becoming an Exchange market maker, shall be promulgated and applied on a consistent basis, and the Company shall institute safeguards to ensure fair and evenhanded access to all of its services and facilities.

#### **Section 4. Fees, Dues, Assessments, and Other Charges**

The Board shall have authority to fix and levy the amount of fees, dues, assessments, and other charges to be paid by Exchange Members and issuers and any other [Persons] persons using any facility or system that the Company operates or controls; *provided*, however, that such fees, dues, assessments, and other charges shall be equitably allocated among Exchange Members and issuers and any other [Persons] persons using any facility or system that the Company operates or controls. Any revenues received by the Company from fees derived from its regulatory function or regulatory penalties [shall] will not be used for non-regulatory purposes or distributed to the stockholder[s], but rather, shall be applied to fund the legal and regulatory operations of the Company (including surveillance and enforcement activities), or, as the case may be, shall be used to pay restitution and disgorgement of funds intended for customers.

### **ARTICLE XI**

#### **Miscellaneous Provisions**

##### **Section 1. Fiscal Year**

The fiscal year of the Company shall be as determined from time to time by the Board.

##### **Section 2. Participation in Board and Committee Meetings**

All meetings of the Board (and any committees of the Board) pertaining to the self-regulatory function of the Company (including disciplinary matters) shall be closed to all [Persons] persons other than [Directors] members of the Board and officers, [employees, agents or] 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 [Managers of] Directors of Direct Edge, Inc., Direct Edge Holdings LLC or BATS Global Markets, Inc. who are not also members of the Board, [Directors of Direct Edge who are not also members of the Board,] or any officers, [employees, agents] staff, counsel or advisors of Direct Edge, Inc., [or] Direct Edge Holdings LLC or BATS Global Markets, Inc. who are not also officers, [employees, agents] staff, counsel or advisors of the Company (or any committees of the Board), be allowed to participate in any meetings of the Board (or any committee of the Board) pertaining to the self-regulatory function of the Company (including disciplinary matters).

##### **Section 3. Books and Records; Confidentiality of Information and Records Relating**

to SRO Function

The books and records of the Company shall be maintained at a location within the United States. All books and records of the Company reflecting confidential information pertaining to the self-regulatory function of the Company (including but not limited to disciplinary matters, trading data, trading practices, and audit information) [and the information contained in those books and records] shall be retained in confidence by the Company and [the Directors, officers, employees, hearing officers, other agents and advisors of the Company, shall] its personnel and will not be used by the Company for any non-regulatory purposes and shall not be made available to any [Person] person (including, without limitation, any Exchange Member) other than to personnel of the Commission, and those [Directors, officers, employees, hearing officers, other agents and advisors] personnel of the Company, members of committees of the Board, members of the Board, hearing officers and other agents of the Company to the extent necessary or appropriate to [discharge] properly discharge the self-regulatory responsibilities of the Company.

**Section 4.**     Dividends

Subject to any provisions of any applicable statute, other provisions of these Bylaws or the Certificate of Incorporation, dividends may be declared upon the capital stock of the Company 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 Company, 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 5.**     Reserves

Before payment of any dividends, there may be set aside out of any funds of the Company 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 Company, or for such other purpose as the Board shall determine to be conducive to the interests of the Company, and the Board may modify or abolish any such reserve in the manner in which it was created.

**Section 6.**     Execution of Instruments, Contracts, etc.

(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 Company by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate[, or by the Chief Executive Officer, the Chief Regulatory Officer, the Secretary or such other officer or officers or person or persons as the Chief Executive Officer, the Chief Regulatory Officer or the Secretary may from time to time designate (collectively, the “Authorized Officers”)]. Except as otherwise provided by applicable 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 [Authorized Officer] officer, employee, or agent, in the name of and on behalf of the Company, 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 Company by any [Authorized Officer] officer of the Company, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of the Company. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

**Section 7. Power to Vote Stock**

Unless otherwise instructed by the Board, the Chief Executive Officer of the Company shall have the power and authority on behalf of the Company 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 Company may hold stock, partnership or other equity interests, as the case may be, and may exercise on behalf of the Company 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 Company in connection with the exercise by the Company 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 8. Notices**

Unless otherwise provided in these Bylaws or the DGCL, any and all notices contemplated by these Bylaws shall be deemed adequately given if in writing and delivered in hand, or upon receipt when sent by telecopy or electronic “PDF” or similar transmission (receipt confirmed), or one (1) Business Day after being sent, postage prepaid, by nationally recognized overnight courier (*e.g.*, Federal Express), or five (5) Business Days after being sent by certified or registered mail, return receipt requested, postage prepaid, to the party or parties for whom such notices are intended. Notices of special meetings of Directors shall be given to each Director at his or her business address or such other address as he or she may have advised the Secretary to use for such purpose.]

**Section [9] 8. Severability**

If any provision of these Bylaws, or the application of any provision of these Bylaws to any [Person] person or circumstances, is held invalid, the remainder of these Bylaws and the application of such provision to other [Persons] persons or circumstances shall not be affected.

**[Section 10. Stock Certificates; Uncertificated Shares**

The shares of the Company may be represented by certificates, provided that the Board may provide by resolution that some or all of any or all classes or series of the Company’s stock

shall be uncertificated shares. Every holder of stock of the Company represented by certificates shall otherwise be entitled to have a certificate, in such form as may be prescribed by law and by the Board, representing the number of shares held by such holder registered in certificate form. Each such certificate (if any) shall be signed in a manner that complies with Section 158 of the DGCL.]