

Proposed Rule Change by EDGX Exchange, Inc.  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action <input type="checkbox"/>	Date Expires <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document  Exhibit 3 Sent As Paper Document

**Description**  
 Provide a brief description of the proposed rule change (limit 250 characters).  
 EDGX Exchange, Inc. proposes to make changes to its corporate structure to provide that it will be a wholly-owned subsidiary of Direct Edge, Inc. instead of Direct Edge Holdings, LLC.

**Contact Information**  
 Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name: Eric Last Name: Hess  
 Title: General Counsel  
 E-mail: ehess@directedge.com  
 Telephone: (201) 942-8239 Fax:

**Signature**  
 Pursuant to the requirements of the Securities Exchange Act of 1934,  
 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date: 06/03/2010  
 By: Eric W. Hess (Name) General Counsel (Title)  
 Eric Hess, ehess@directedge.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) EDGX Exchange, Inc. (“Exchange” or “EDGX”) proposes to make changes to its corporate structure to provide that it will be a wholly-owned subsidiary of Direct Edge, Inc. (“DEI”) instead of Direct Edge Holdings, LLC (“DE Holdings”).

The proposed Certificate of Incorporation of DEI (“DEI Certificate”) is attached as Exhibit 5A, the proposed Bylaws of DEI (“DEI Bylaws”) are attached as Exhibit 5B, and the Amended and Restated Bylaws of EDGX (“EDGX Bylaws”) are attached as Exhibit 5C.

(b) Inapplicable.

(c) Inapplicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved this proposed rule change on April 27, 2010. This action constitutes the requisite approval under the EDGX Bylaws.

3. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

- (a) Purpose

Background

On March 12, 2010, the Securities and Exchange Commission (“SEC” or “Commission”) granted the Form 1 exchange registration applications of EDGX and its affiliate exchange, EDGA Exchange, Inc. (“EDGA”).<sup>1</sup>

As provided in the Form 1 application, EDGX and Direct Edge ECN, LLC d/b/a DE Route (“DE Route”), the Exchange’s routing broker/dealer, are wholly-owned subsidiaries of DE Holdings.<sup>2</sup> EDGX Bylaws identify this ownership structure.<sup>3</sup> Any changes to the EDGX Bylaws, including any change in the provision that identifies DE Holdings as the initial owner of EDGX, must be filed with and approved by the Commission pursuant to Section 19 of the Act.<sup>4</sup> As part of a

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<sup>1</sup> See Securities and Exchange Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (approving File Nos. 10-194 and 10-196) (the “Order”).

<sup>2</sup> DE Holdings is a limited liability company overseen by a board of managers. Ownership in DE Holdings is represented by limited liability membership interests. EDGA is also a wholly-owned subsidiary of DE Holdings.

<sup>3</sup> EDGX Bylaws, Article I., Section kk.

<sup>4</sup> See 15 U.S.C. 78s. See also Order at note 77 and accompanying text.

general corporate reorganization, EDGX is now proposing to create a new corporation, DEI, which will be owned by DE Holdings. DEI will, in turn, own the Exchange and be both an operating and holding company. All of the equity of EDGX is proposed to be transferred to DEI. In turn, DE Holdings will be the sole stockholder of DEI and thus, DEI will be a wholly-owned subsidiary of DE Holdings. The self-regulatory functions of EDGX will, however, continue to remain with EDGX. As stated above, DE Route will continue to be owned directly by DE Holdings.

In connection with this corporate reorganization, the Exchange is filing these documents with the Commission as part of Exhibit 5: (i) the proposed DEI Certificate is attached as Exhibit 5A; (ii) the proposed DEI Bylaws are attached as Exhibit 5B; and (iii) the EDGX Bylaws are attached as Exhibit 5C.

As the primary focus of this rule filing is to focus on those provisions that are directly related to the Exchange's ability to perform its regulatory responsibilities following the transaction described above, the Exchange's discussion will focus on the relevant provisions of the documents mentioned above.

#### Preservation of Self-Regulatory Function of EDGX

Section 7.7 of the DE Holdings' Fourth Amended and Restated Limited Liability Company Operating Agreement (the "DE Holdings LLC Agreement") identifies certain corporate actions that require the approval of DE Holdings' Board of Managers and the members of DE Holdings. The Sixth Article of the DEI Certificate provides that any action requiring the approval of the DE Holdings Board of Managers and/or members of DE Holdings pursuant to Section 7.7 of the DE Holdings LLC Agreement shall require the approval of the stockholders of DEI (DE Holdings is the sole stockholder of DEI). The Sixth Article of the DEI Certificate further provides that, notwithstanding such approval, nothing contained in Section 7.7 of the DE Holdings LLC Agreement shall be applicable where the application of such provision or provisions would interfere with the effectuation of any decisions by the Board of Directors of DEI ("Board") relating to regulatory functions of the Exchange (including disciplinary matters) or the structure of the market that the Exchange regulates, or would interfere with the ability of the Exchange to carry out its responsibilities under the Securities and Exchange Act of 1934 (the "Act") or to oversee the structure of the market that the Exchange regulates.<sup>5</sup> This Sixth Article of the DEI Certificate further provides that these responsibilities shall include the ability of the Exchange as an SRO:

- to prevent fraudulent and manipulative acts and practices;
- to promote just and equitable principles of trade;
- to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities;
- to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and

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<sup>5</sup> See DEI Certificate, Article VI., Section 2.

- to protect investors and the public interest.<sup>6</sup>

In addition, the DEI Bylaws provide that, for so long as DEI controls the Exchange, the Board, officers, employees and agents of DEI must give due regard to the preservation of independence of the self-regulatory function of the Exchange and must not interfere with its regulatory functions (including disciplinary matters) or the ability of the Exchange to carry out its responsibilities under the Act.<sup>7</sup>

These provisions, as well as the associated notice and rule filing requirements with respect to any person or entity that may acquire an interest in DEI (as described below), will serve to protect the integrity of the Exchange's self-regulatory responsibilities and the SEC's oversight responsibilities. These provisions will also ensure that, although DEI will not itself carry out any regulatory functions, its activities with respect to the Exchange will be consistent with, and not interfere with the self-regulatory obligations of the Exchange.

#### Ownership Limitations and Changes in Ownership

The DE Holdings LLC Agreement includes restrictions on the ability to own and vote shares of the capital stock of DE Holdings.<sup>8</sup> The DE Holdings LLC Agreement states that no person may own, directly or indirectly, of record or beneficially, units of interest in the ownership of DE Holdings ("Units") representing more than a 40% interest in DE Holdings.<sup>9</sup> In addition, the DE Holdings LLC Agreement prohibits members of EDGX or EDGA ("Exchange Members"), either alone or together with their related persons, from owning, directly or indirectly, of record or beneficially, Units representing a percentage interest in DE Holdings of more than 20%.<sup>10</sup> Furthermore, no person, other than International Securities Exchange Holdings, Inc., either alone or together with its related persons, may vote or cause the voting of Units representing more than a 20% interest in DE Holdings.<sup>11</sup> If any member of DE Holdings purports to transfer Units in violation of the ownership limits, or to vote or cause the voting of Units in violation of the voting limits, then DE Holdings has the right to redeem such Units for the lesser of the fair market value or the book value of the Units.<sup>12</sup> In addition, DE Holdings will not honor any vote that would violate the voting limitations, and any Units that would violate the voting limitation will not be entitled to vote to the extent of the violation.<sup>13</sup>

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<sup>6</sup> Id.

<sup>7</sup> See DEI Bylaws, Article VII, Section 7.1.

<sup>8</sup> See the Order at 13156.

<sup>9</sup> See DE Holdings LLC Agreement, Article XII., Section 12.1(a)(1).

<sup>10</sup> See DE Holdings LLC Agreement, Article XII., Section 12.1(a)(2).

<sup>11</sup> See DE Holdings LLC Agreement, Article XII., Section 12.1(a)(3).

<sup>12</sup> See DE Holdings LLC Agreement, Article XII., Section 12.3.

<sup>13</sup> See DE Holdings LLC Agreement, Article XII., Section 12.4.

These voting and ownership restrictions in the DE Holdings LLC Agreement are unaffected by the proposed change in corporate structure whereby DEI will become an operating and holding company for the Exchange. Further, such restrictions will effectively be carried over into the new corporate structure because the DEI Certificate provides that the sole stockholder of DEI will be DE Holdings<sup>14</sup> and as discussed below, the EDGX Bylaws indicate that DEI will be the sole owner of EDGX.<sup>15</sup> In addition, for so long as DEI indirectly or directly controls EDGX, any amendment to the ownership requirements in the DEI Certificate, including the provision identifying DE Holdings as the sole stockholder of DEI, shall be submitted to the Board of Directors of EDGX for a determination as to whether such amendment must be filed with, or filed with and approved by, the SEC before such amendment can become effective and in such event, such amendment shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.<sup>16</sup>

The Exchange proposes to amend its bylaws to require that the sole stockholder of the Exchange will be DEI.<sup>17</sup> Any changes to the EDGX Bylaws, including any change in the provision that identifies DEI as the sole owner of EDGX, must be filed with and approved by the Commission pursuant to Section 19 of the Act.<sup>18</sup> This ownership requirement, together with the DE Holdings' and DEI's voting and ownership restrictions described above, is designed to prevent any Exchange Member or other person from exercising undue control over the operation of the Exchange through DEI and further assures that the Exchange and the Commission will be able to carry out their respective regulatory obligations under the Act. The Exchange believes that these requirements should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchange to effectively carry out their respective regulatory oversight responsibilities under the Act.

#### Jurisdiction and Regulatory Oversight

The DEI Certificate and DEI Bylaws will contain several provisions designed to protect the independence of the self-regulatory function of the Exchange.

DEI's officers and directors are deemed to be the officers and directors of the Exchange.<sup>19</sup> Article VII of the DEI Bylaws further states that DEI's Board and its officers, employees, and agents shall give due regard to the preservation of independence of the self-regulatory function of the Exchange and shall not interfere with the effectuation of any decisions by the Exchange's Board of Directors relating to its regulatory functions (including disciplinary matters) or which would interfere with the ability of the Exchange to carry out its responsibilities

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<sup>14</sup> See DEI Certificate, Article VIII., Section 4.

<sup>15</sup> See EDGX Bylaws, Article I., Section kk.

<sup>16</sup> See DEI Certificate, Article VIII, Section 3.

<sup>17</sup> See EDGX Bylaws, Article I., Section kk.

<sup>18</sup> See 15 U.S.C. 78s. See also Order at note 77 and accompanying text.

<sup>19</sup> See DEI Bylaws, Article V., Section 5.8(b).

under the Act.<sup>20</sup> In addition, the DEI Bylaws further provide that DEI shall comply with the U.S. federal securities laws and rules and regulations thereunder and shall cooperate with the SEC and the Exchange.<sup>21</sup> The DEI Bylaws also provide that DEI's officers, directors, employees and agents shall be deemed to agree to (i) comply with the U.S. federal securities laws and the rules and regulations thereunder; and (ii) to cooperate with the SEC and the Exchange in respect of the SEC's oversight responsibilities regarding the Exchange and the self-regulatory functions and responsibilities of the Exchange. In addition, DEI shall take reasonable steps necessary to cause its officers, directors, employees and agents to so cooperate.<sup>22</sup>

Furthermore, DEI and its officers, directors, employees and agents will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the SEC, and the Exchange for purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws or the rules or regulations thereunder relating to or arising out of the activities of the Exchange.<sup>23</sup> In addition, those same parties shall be deemed to waive and agree not to assert by way of motion, as a defense or otherwise in any such suit, action, or proceeding any claims that they are not personally subject to the jurisdiction of the United States federal courts, the SEC, and the Exchange that the suit, action, or proceeding is an inconvenient forum or that the venue of the suit, action, or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency.<sup>24</sup>

These provisions ensure that, should an occasion arise that requires regulatory cooperation or jurisdictional submission from DEI, such cooperation will be forthcoming and uncontested.

#### Books and Records

The Bylaws of DEI contain a number of provisions designed to ensure that the Exchange has sufficient access to the books and records of DEI. According to the DEI Bylaws, the books and records of DEI are deemed to be the books and records of the Exchange to the extent they are related to the operation or administration of the Exchange.<sup>25</sup> In addition, for as long as DEI controls the Exchange, DEI's books and records shall be subject at all times to inspection and copying by the SEC and the Exchange, provided that such books and records are related to the operation or administration of the Exchange.<sup>26</sup>

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<sup>20</sup> See DEI Bylaws, Article VII., Section 7.1.

<sup>21</sup> See DEI Bylaws, Article VII., Section 7.2.

<sup>22</sup> Id.

<sup>23</sup> See DEI Bylaws, Article VII., Section 7.3

<sup>24</sup> Id.

<sup>25</sup> See DEI Bylaws, Article V., Section 5.8(b).

<sup>26</sup> Id.

The DEI Bylaws also provide that, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange that shall come into the possession of DEI shall:

- be retained in confidence by DEI, its stockholders, officers, directors, employees and agents; and
- not be used for any non-regulatory purposes.<sup>27</sup>

The foregoing, however, shall not limit or impede the rights of the SEC or the Exchange to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any DEI stockholders, officers, directors, employees or agents to disclose such confidential information to the SEC or the Exchange.<sup>28</sup> DEI's books and records shall be subject at all times to inspection and copying by (a) the SEC and (b) any Exchange, provided that such books and records are related to the operation or administration of the Exchange.<sup>29</sup> In addition, DEI's books and records shall be maintained within the United States.<sup>30</sup>

#### Voting the Equity of EDGX

Currently, the DE Holdings LLC Agreement provides that DE Holdings shall, in its capacity as the sole stockholder of EDGX, cause all outstanding equity of EDGX owned by DE Holdings and entitled to vote with respect to an election to be voted in accordance with the EDGX Bylaws.<sup>31</sup> Inasmuch as DE Holdings will no longer be a stockholder of EDGX upon the consummation of this transaction, such requirements will no longer be applicable to DE Holdings.

As DEI will now be the sole stockholder of EDGX, DEI shall cause all outstanding equity of EDGX owned by DEI and entitled to vote with respect to an election to be voted in accordance with the EDGX Bylaws.<sup>32</sup> Under Section 2.15(b) of the DEI Bylaws, with respect to any election of directors, other than "Owner Directors,"<sup>33</sup> or members of the Nominating Committee or Exchange Member Nominating Committee of the Exchange, DEI shall cause all

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<sup>27</sup> See DEI Bylaws, Article V., Section 5.8(a).

<sup>28</sup> Id.

<sup>29</sup> See DEI Bylaws, Article V., Section 5.8(b).

<sup>30</sup> See DEI Bylaws, Article VII., Section 7.5.

<sup>31</sup> See DE Holdings LLC Agreement, Article VII., Section 7.3(b).

<sup>32</sup> See DEI Bylaws, Article II., Section 2.15(b).

<sup>33</sup> "Owner Director" is defined in Article I., Section (z) of the EDGX Bylaws as a Director nominated by a member of DE Holdings that holds at least a 15% percentage interest in DE Holdings and that is elected by the stockholders of the Exchange.



outstanding equity of the Exchange owned by DEI and entitled to vote to elect: (i) only those nominees for the Nominating Committee and for the Exchange Member Nominating Committee that are nominated in accordance with the EDGX Bylaws; and (ii) only those directors nominated by the Nominating Committee of the Exchange. Under Section 2.15(c) of the DEI Bylaws, with respect to “Owner Directors,” DEI shall take all actions in its capacity as a stockholder of the Exchange to vote or consent with respect to matters concerning an Owner Director according to the written instructions of the relevant member of DE Holdings that is entitled to nominate such Owner Director.

(b) Basis –The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>34</sup> in general, and with Sections 6(b)(1) and (b)(5) of the Act,<sup>35</sup> in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and SRO rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

4. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members, participants or others.

6. Extension of Time Period for Commission Action

The Exchange does not consent to the extension of the time period specified in Section 19(b)(2) of the Exchange Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Inapplicable.

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<sup>34</sup> 15 U.S.C. 78f.

<sup>35</sup> 15 U.S.C. 78f(b)(3), (5).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

This proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the *Federal Register*.

Exhibit 5 – Text of the Proposed Rule Change

A. Text of Proposed DEI Certificate .

B. Text of Proposed DEI Bylaws

C. Text of EDGX Bylaws .

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-EDGX-2010-02)

[Date]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by EDGX Exchange, Inc. Relating to Direct Edge, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 3, 2010, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

EDGX proposes to make changes to its corporate structure to provide that it will be a wholly-owned subsidiary of Direct Edge, Inc. ("DEI") instead of Direct Edge Holdings, LLC ("DE Holdings").

The proposed Certificate of Incorporation of DEI ("DEI Certificate") is attached as Exhibit 5A, the proposed Bylaws of DEI ("DEI Bylaws") are attached as Exhibit 5B,

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

and the Amended and Restated Bylaws of EDGX (“EDGX Bylaws”) are attached as Exhibit 5C.

The text of the proposed rule change is available on the Exchange’s Web site [www.directedge.com](http://www.directedge.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On March 12, 2010, the Commission granted the Form 1 exchange registration applications of EDGX and its affiliate exchange, EDGA Exchange, Inc. (“EDGA”).<sup>3</sup>

As provided in the Form 1 application, EDGX and Direct Edge ECN, LLC d/b/a DE Route (“DE Route”), the Exchange’s routing broker/dealer, are wholly-owned subsidiaries

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<sup>3</sup> See Securities and Exchange Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (approving File Nos. 10-194 and 10-196) (the “Order”).

of DE Holdings.<sup>4</sup> EDGX Bylaws identify this ownership structure.<sup>5</sup> Any changes to the EDGX Bylaws, including any change in the provision that identifies DE Holdings as the initial owner of EDGX, must be filed with and approved by the Commission pursuant to Section 19 of the Act.<sup>6</sup> As part of a general corporate reorganization, EDGX is now proposing to create a new corporation, DEI, which will be owned by DE Holdings. DEI will, in turn, own the Exchange and be both an operating and holding company. All of the equity of EDGX is proposed to be transferred to DEI. In turn, DE Holdings will be the sole stockholder of DEI and thus, DEI will be a wholly-owned subsidiary of DE Holdings. The self-regulatory functions of EDGX will, however, continue to remain with EDGX. As stated above, DE Route will continue to be owned directly by DE Holdings.

In connection with this corporate reorganization, the Exchange is filing these documents with the Commission as part of Exhibit 5: (i) the proposed DEI Certificate is attached as Exhibit 5A; (ii) the proposed DEI Bylaws are attached as Exhibit 5B; and (iii) the EDGX Bylaws are attached as Exhibit 5C.

As the primary focus of this rule filing is to focus on those provisions that are directly related to the Exchange's ability to perform its regulatory responsibilities following the transaction described above, the Exchange's discussion will focus on the relevant provisions of the documents mentioned above.

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<sup>4</sup> DE Holdings is a limited liability company overseen by a board of managers. Ownership in DE Holdings is represented by limited liability membership interests. EDGA is also a wholly-owned subsidiary of DE Holdings.

<sup>5</sup> EDGX Bylaws, Article I., Section kk.

<sup>6</sup> See 15 U.S.C. 78s. See also Order at note 77 and accompanying text.

Preservation of Self-Regulatory Function of EDGX

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- to prevent fraudulent and manipulative acts and practices;
- to promote just and equitable principles of trade;
- to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities;
- to remove impediments to and perfect the mechanisms of a free and open

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<sup>7</sup> See DEI Certificate, Article VI., Section 2.

market and a national market system; and

- to protect investors and the public interest.<sup>8</sup>

In addition, the DEI Bylaws provide that, for so long as DEI controls the Exchange, the Board, officers, employees and agents of DEI must give due regard to the preservation of independence of the self-regulatory function of the Exchange and must not interfere with its regulatory functions (including disciplinary matters) or the ability of the Exchange to carry out its responsibilities under the Act.<sup>9</sup>

These provisions, as well as the associated notice and rule filing requirements with respect to any person or entity that may acquire an interest in DEI (as described below), will serve to protect the integrity of the Exchange's self-regulatory responsibilities and the SEC's oversight responsibilities. These provisions will also ensure that, although DEI will not itself carry out any regulatory functions, its activities with respect to the Exchange will be consistent with, and not interfere with the self-regulatory obligations of the Exchange.

#### Ownership Limitations and Changes in Ownership

The DE Holdings LLC Agreement includes restrictions on the ability to own and vote shares of the capital stock of DE Holdings.<sup>10</sup> The DE Holdings LLC Agreement states that no person may own, directly or indirectly, of record or beneficially, units of interest in the ownership of DE Holdings ("Units") representing more than a 40% interest in DE Holdings.<sup>11</sup> In addition, the DE Holdings LLC Agreement prohibits members of

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<sup>8</sup> Id.

<sup>9</sup> See DEI Bylaws, Article VII, Section 7.1.

<sup>10</sup> See the Order at 13156.

<sup>11</sup> See DE Holdings LLC Agreement, Article XII., Section 12.1(a)(1).

EDGX or EDGA (“Exchange Members”), either alone or together with their related persons, from owning, directly or indirectly, of record or beneficially, Units representing a percentage interest in DE Holdings of more than 20%.<sup>12</sup> Furthermore, no person, other than International Securities Exchange Holdings, Inc., either alone or together with its related persons, may vote or cause the voting of Units representing more than a 20% interest in DE Holdings.<sup>13</sup> If any member of DE Holdings purports to transfer Units in violation of the ownership limits, or to vote or cause the voting of Units in violation of the voting limits, then DE Holdings has the right to redeem such Units for the lesser of the fair market value or the book value of the Units.<sup>14</sup> In addition, DE Holdings will not honor any vote that would violate the voting limitations, and any Units that would violate the voting limitation will not be entitled to vote to the extent of the violation.<sup>15</sup>

These voting and ownership restrictions in the DE Holdings LLC Agreement are unaffected by the proposed change in corporate structure whereby DEI will become an operating and holding company for the Exchange. Further, such restrictions will effectively be carried over into the new corporate structure because the DEI Certificate provides that the sole stockholder of DEI will be DE Holdings<sup>16</sup> and as discussed below, the EDGX Bylaws indicate that DEI will be the sole owner of EDGX.<sup>17</sup> In addition, for

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<sup>12</sup> See DE Holdings LLC Agreement, Article XII., Section 12.1(a)(2).

<sup>13</sup> See DE Holdings LLC Agreement, Article XII., Section 12.1(a)(3).

<sup>14</sup> See DE Holdings LLC Agreement, Article XII., Section 12.3.

<sup>15</sup> See DE Holdings LLC Agreement, Article XII., Section 12.4.

<sup>16</sup> See DEI Certificate, Article VIII., Section 4.

<sup>17</sup> See EDGX Bylaws, Article I., Section kk.



so long as DEI indirectly or directly controls EDGX, any amendment to the ownership requirements in the DEI Certificate, including the provision identifying DE Holdings as the sole stockholder of DEI, shall be submitted to the Board of Directors of EDGX for a determination as to whether such amendment must be filed with, or filed with and approved by, the SEC before such amendment can become effective and in such event, such amendment shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.<sup>18</sup>

The Exchange proposes to amend its bylaws to require that the sole stockholder of the Exchange will be DEI.<sup>19</sup> Any changes to the EDGX Bylaws, including any change in the provision that identifies DEI as the sole owner of EDGX, must be filed with and approved by the Commission pursuant to Section 19 of the Act.<sup>20</sup> This ownership requirement, together with the DE Holdings' and DEI's voting and ownership restrictions described above, is designed to prevent any Exchange Member or other person from exercising undue control over the operation of the Exchange through DEI and further assures that the Exchange and the Commission will be able to carry out their respective regulatory obligations under the Act. The Exchange believes that these requirements should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchange to effectively carry out their respective regulatory oversight responsibilities under the Act.

#### Jurisdiction and Regulatory Oversight

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<sup>18</sup> See DEI Certificate, Article VIII, Section 3.

<sup>19</sup> See EDGX Bylaws, Article I., Section kk.

<sup>20</sup> See 15 U.S.C. 78s. See also Order at note 77 and accompanying text.

The DEI Certificate and DEI Bylaws will contain several provisions designed to protect the independence of the self-regulatory function of the Exchange.

DEI's officers and directors are deemed to be the officers and directors of the Exchange.<sup>21</sup> Article VII of the DEI Bylaws further states that DEI's Board and its officers, employees, and agents shall give due regard to the preservation of independence of the self-regulatory function of the Exchange and shall not interfere with the effectuation of any decisions by the Exchange's Board of Directors relating to its regulatory functions (including disciplinary matters) or which would interfere with the ability of the Exchange to carry out its responsibilities under the Act.<sup>22</sup> In addition, the DEI Bylaws further provide that DEI shall comply with the U.S. federal securities laws and rules and regulations thereunder and shall cooperate with the SEC and the Exchange.<sup>23</sup> The DEI Bylaws also provide that DEI's officers, directors, employees and agents shall be deemed to agree to (i) comply with the U.S. federal securities laws and the rules and regulations thereunder; and (ii) to cooperate with the SEC and the Exchange in respect of the SEC's oversight responsibilities regarding the Exchange and the self-regulatory functions and responsibilities of the Exchange. In addition, DEI shall take reasonable steps necessary to cause its officers, directors, employees and agents to so cooperate.<sup>24</sup>

Furthermore, DEI and its officers, directors, employees and agents will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the SEC, and the Exchange for purposes of any suit, action, or proceeding pursuant to the U.S. federal

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<sup>21</sup> See DEI Bylaws, Article V., Section 5.8(b).

<sup>22</sup> See DEI Bylaws, Article VII., Section 7.1.

<sup>23</sup> See DEI Bylaws, Article VII., Section 7.2.

<sup>24</sup> Id.

securities laws or the rules or regulations thereunder relating to or arising out of the activities of the Exchange.<sup>25</sup> In addition, those same parties shall be deemed to waive and agree not to assert by way of motion, as a defense or otherwise in any such suit, action, or proceeding any claims that they are not personally subject to the jurisdiction of the United States federal courts, the SEC, and the Exchange that the suit, action, or proceeding is an inconvenient forum or that the venue of the suit, action, or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency.<sup>26</sup>

These provisions ensure that, should an occasion arise that requires regulatory cooperation or jurisdictional submission from DEI, such cooperation will be forthcoming and uncontested.

#### Books and Records

The Bylaws of DEI contain a number of provisions designed to ensure that the Exchange has sufficient access to the books and records of DEI. According to the DEI Bylaws, the books and records of DEI are deemed to be the books and records of the Exchange to the extent they are related to the operation or administration of the Exchange.<sup>27</sup> In addition, for as long as DEI controls the Exchange, DEI's books and records shall be subject at all times to inspection and copying by the SEC and the Exchange, provided that such books and records are related to the operation or administration of the Exchange.<sup>28</sup>

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<sup>25</sup> See DEI Bylaws, Article VII., Section 7.3.

<sup>26</sup> Id.

<sup>27</sup> See DEI Bylaws, Article V., Section 5.8(b).

<sup>28</sup> Id.

The DEI Bylaws also provide that, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange that shall come into the possession of DEI shall:

- be retained in confidence by DEI, its stockholders, officers, directors, employees and agents; and
- not be used for any non-regulatory purposes.<sup>29</sup>

The foregoing, however, shall not limit or impede the rights of the SEC or the Exchange to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any DEI stockholders, officers, directors, employees or agents to disclose such confidential information to the SEC or the Exchange.<sup>30</sup> DEI's books and records shall be subject at all times to inspection and copying by (a) the SEC and (b) any Exchange, provided that such books and records are related to the operation or administration of the Exchange.<sup>31</sup> In addition, DEI's books and records shall be maintained within the United States.<sup>32</sup>

#### Voting the Equity of EDGX

Currently, the DE Holdings LLC Agreement provides that DE Holdings shall, in its capacity as the sole stockholder of EDGX, cause all outstanding equity of EDGX

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<sup>29</sup> See DEI Bylaws, Article V., Section 5.8(a).

<sup>30</sup> Id.

<sup>31</sup> See DEI Bylaws, Article V., Section 5.8(b).

<sup>32</sup> See DEI Bylaws, Article VII., Section 7.5.

owned by DE Holdings and entitled to vote with respect to an election to be voted in accordance with the EDGX Bylaws.<sup>33</sup> Inasmuch as DE Holdings will no longer be a stockholder of EDGX upon the consummation of this transaction, such requirements will no longer be applicable to DE Holdings.

As DEI will now be the sole stockholder of EDGX, DEI shall cause all outstanding equity of EDGX owned by DEI and entitled to vote with respect to an election to be voted in accordance with the EDGX Bylaws.<sup>34</sup> Under Section 2.15(b) of the DEI Bylaws, with respect to any election of directors, other than “Owner Directors,”<sup>35</sup> or members of the Nominating Committee or Exchange Member Nominating Committee of the Exchange, DEI shall cause all outstanding equity of the Exchange owned by DEI and entitled to vote to elect: (i) only those nominees for the Nominating Committee and for the Exchange Member Nominating Committee that are nominated in accordance with the EDGX Bylaws; and (ii) only those directors nominated by the Nominating Committee of the Exchange. Under Section 2.15(c) of the DEI Bylaws, with respect to “Owner Directors,” DEI shall take all actions in its capacity as a stockholder of the Exchange to vote or consent with respect to matters concerning an Owner Director according to the written instructions of the relevant member of DE Holdings that is entitled to nominate such Owner Director.

## 2. Statutory Basis

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<sup>33</sup> See DE Holdings LLC Agreement, Article VII., Section 7.3(b).

<sup>34</sup> See DEI Bylaws, Article II., Section 2.15(b).

<sup>35</sup> “Owner Director” is defined in Article I., Section (z) of the EDGX Bylaws as a Director nominated by a member of DE Holdings that holds at least a 15% percentage interest in DE Holdings and that is elected by the stockholders of the Exchange.

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>36</sup> in general, and with Sections 6(b)(1) and (b)(5) of the Act,<sup>37</sup> in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and SRO rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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<sup>36</sup> 15 U.S.C. 78f.

<sup>37</sup> 15 U.S.C. 78f(b)(3), (5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) by order approve such proposed rule change; or
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-EDGX-2010-02 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-EDGX-2010-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site

<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EDGX-2010-02 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

Secretary

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<sup>38</sup> 17 CFR 200.30-3(a)(12).



**Exhibit 5A**

**CERTIFICATE OF INCORPORATION**  
**OF**  
**DIRECT EDGE, INC.**

**FIRST:** The name of the Corporation is: Direct Edge, Inc.

**SECOND:** The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

**THIRD:** The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

**FOURTH:** The total number of shares of stock which the Corporation shall have authority to issue is One Thousand (1,000) shares of Common Stock, \$0.01 par value per share.

**FIFTH:** The name and mailing address of the sole incorporator are as follows:

<b><u>NAME</u></b>	<b><u>MAILING ADDRESS</u></b>
Eric Hess	545 Washington Boulevard Jersey City, NJ 07310

**SIXTH:** In furtherance of and not in limitation of powers conferred by statute, it is further provided:

1. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors of the Corporation (the "Board"); *provided*, that any action that specifically requires the approval of the Board of Managers and/or members of Direct Edge Holdings LLC ("DE Holdings") pursuant to Section 7.7 of the Fourth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC (the "DE Holdings LLC Agreement"), dated as of April 13, 2009, by and among the members of DE Holdings, as such Agreement may be amended from time to time, shall require the approval of the stockholders of the Corporation.

2. Notwithstanding the foregoing Article Sixth, paragraph 1, nothing contained in Section 7.7 of the DE Holdings LLC Agreement shall be applicable where the application of such provision or provisions would interfere with the effectuation of any decisions by the Board relating to regulatory functions of each Exchange Subsidiary (including disciplinary matters) or the structure of the market that each Exchange Subsidiary regulates, or would interfere with the ability of each Exchange Subsidiary to carry out its responsibilities under the Securities Exchange Act of 1934 or to oversee the structure of the market that each

Exchange Subsidiary regulates, in each case as determined by the Board, which functions or responsibilities shall include the ability of the Exchange Subsidiary as a self-regulatory organization to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest. For purposes of this Certificate of Incorporation, “Exchange Subsidiary” shall mean any subsidiary of the Corporation that is registered with the Securities and Exchange Commission as a national securities exchange, as provided in Section 6 of the Securities Exchange Act of 1934 (the “Exchange Act”).

3. Election of directors need not be by written ballot.

4. The Board is expressly authorized to adopt, amend, alter or repeal the Bylaws of the Corporation.

5. The Bylaws may also be amended, altered or repealed, or new bylaws may be adopted, by action taken by the stockholders of the Corporation.

6. Any member of the Board may be removed with or without cause by a majority vote of the stockholders.

**SEVENTH:**

1. Except to the extent that the General Corporation Law of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability; provided, however, that any indemnity under this Article Seventh, other than as specifically set forth herein, shall be provided out of and to the extent of the Corporation’s assets only and excluding any Regulatory Funds. For purposes of this Certificate of Incorporation, “Regulatory Funds” shall mean any fees, fines or penalties derived from the regulatory operations of an Exchange Subsidiary; provided that Regulatory Funds shall not include revenues derived from listing fees, market data revenues, transaction revenues or any other aspect of the commercial operations of such Exchange Subsidiary, even if a portion of such revenues are used to pay costs associated with the regulatory operations of such Exchange Subsidiary).

2. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

**EIGHTH:**

1. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter

prescribed by statute and this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

2. The approval contemplated by this Article Eighth shall not be required to the extent that: (a) such approval requirements would cause the Corporation not to be in compliance with U.S. federal securities laws and the rules and regulations thereunder; or (b) would adversely impact the regulatory authority of an Exchange Subsidiary.

3. For so long as the Corporation shall control, directly or indirectly, an Exchange Subsidiary, before any amendment to any provision of this Certificate of Incorporation shall be effective, such amendment shall be submitted to the board of directors of each Exchange Subsidiary and if any such board shall determine that such amendment must be filed with, or filed with and approved by, the Securities and Exchange Commission (the "SEC") before the amendment may be effective under Section 19 of the Exchange Act and the rules promulgated under the Exchange Act or otherwise, then the proposed amendment to this Certificate of Incorporation shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

4. The sole stockholder of the Corporation shall be DE Holdings.

*[Signature Page Follows]*

**I, THE UNDERSIGNED**, being the incorporator named above, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this Certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this \_\_\_\_ day of June of 2010.

**SOLE INCORPORATOR:**

\_\_\_\_\_  
Eric Hess

**EXHIBIT 5B**

**BYLAWS**

**OF**

**DIRECT EDGE, INC.**

**Dated as of May 2010**

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## ARTICLE I

### STOCKHOLDERS

1.1 Place of Meetings. All meetings of stockholders shall be held at such place as may be designated from time to time by the board of directors of Direct Edge, Inc. (the “**Board of Directors**”), the chairman of the Board of Directors (the “**Chairman**”), the chief executive officer (the “**Chief Executive Officer**”) or the president (the “**President**”) or, if not so designated, at the principal office of the Direct Edge, Inc. (the “**Corporation**”).

1.2 Annual Meeting. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held on a date and at a time designated by the Board of Directors, the Chairman, the Chief Executive Officer or the President (which date shall not be a legal holiday in the place where the meeting is to be held).

1.3 Special Meetings. Special meetings of stockholders for any purpose or purposes may be called at any time by only the Board of Directors, the Chairman, the Chief Executive Officer or the President, and may not be called by any other person or persons. The Board of Directors may postpone or reschedule any previously scheduled special meeting of stockholders. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

1.4 Notice of Meetings. Except as otherwise provided by law, notice of each meeting of stockholders, whether annual or special, shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. Without limiting the manner by which notice otherwise may be given to stockholders, any notice shall be effective if given by a form of electronic transmission consented to (in a manner consistent with the General Corporation Law of the State of Delaware) by the stockholder to whom the notice is given. The notices of all meetings shall state the place, if any, date and time of the meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called. If notice is given by mail, such notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder’s address as it appears on the records of the corporation. If notice is given by electronic transmission, such notice shall be deemed given at the time specified in Section 232 of the General Corporation Law of the State of Delaware.

1.5 Voting List. The secretary of Direct Edge, Inc. (the “**Secretary**”) shall prepare, at least 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, for a period of at least 10 days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a physical location (and not solely by means of remote communication), then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. The list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

1.6 Quorum. Except as otherwise provided by law, the certificate of incorporation of the Corporation (the “**Certificate of Incorporation**”) or these bylaws (these “**Bylaws**”), the holders of a majority in voting power of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote at the meeting, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum for the transaction of business; provided, however, that where a separate vote by a class or classes or series of capital stock is required by law or the Certificate of Incorporation, the holders of a majority in voting power of the shares of such class or classes or series of the capital stock of the Corporation issued and outstanding and entitled to vote on such matter, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on such matter. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

1.7 Adjournments. Any meeting of stockholders may be adjourned from time to time to any other time and to any other place at which a meeting of stockholders may be held under these Bylaws by the chairman of the meeting or by the stockholders present or represented at the meeting and entitled to vote, although less than a quorum. It shall not be necessary to notify any stockholder of any adjournment of less than 30 days if the time and place, if any, of the adjourned meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which adjournment is taken, unless after the adjournment a new record date is fixed for the adjourned meeting. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting.

1.8 Voting and Proxies. Each stockholder shall have one vote for each share of stock entitled to vote held of record by such stockholder and a proportionate vote for each fractional share so held, unless otherwise provided by law or the Certificate of Incorporation. Each stockholder of record entitled to vote at a meeting of stockholders, or to express consent or dissent to corporate action without a meeting, may vote or

express such consent or dissent in person (including by means of remote communications, if any, by which stockholders may be deemed to be present in person and vote at such meeting) or may authorize another person or persons to vote or act for such stockholder by a proxy executed or transmitted in a manner permitted by the General Corporation Law of the State of Delaware by the stockholder or such stockholder's authorized agent and delivered (including by electronic transmission) to the Secretary . No such proxy shall be voted or acted upon after three years from the date of its execution, unless the proxy expressly provides for a longer period.

1.9 Action at Meeting. When a quorum is present at any meeting, any matter other than the election of directors to be voted upon by the stockholders at such meeting shall be decided by the vote of the holders of shares of stock having a majority in voting power of the votes cast by the holders of all of the shares of stock present or represented at the meeting and voting affirmatively or negatively on such matter (or if there are two or more classes or series of stock entitled to vote as separate classes, then in the case of each such class or series, the holders of a majority in voting power of the shares of stock of that class or series present or represented at the meeting and voting affirmatively or negatively on such matter), except when a different vote is required by law, the Certificate of Incorporation or these Bylaws. When a quorum is present at any meeting, any election by stockholders of directors shall be determined by a plurality of the votes cast by the stockholders entitled to vote on the election.

1.10 Conduct of Meetings.

(a) Chairman of Meeting. Meetings of stockholders shall be presided over by the Chairman , if any, or in the Chairman's absence by the vice chairman of the Board of Directors (the "**Vice Chairman**"), if any, or in the Vice Chairman's absence by the Chief Executive Officer, or in the Chief Executive Officer's absence, by the President, or in the President's absence by a vice president of Direct Edge, Inc. (a "**Vice President**"), or in the absence of all of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman chosen by vote of the stockholders at the meeting. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

(b) Rules, Regulations and Procedures. The Board of Directors may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of stockholders of the Corporation as it shall deem appropriate including, without limitation, such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an

agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

#### 1.11 Action without Meeting.

(a) Taking of Action by Consent. Any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding 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 on such action were present and voted. Except as otherwise provided by the Certificate of Incorporation, stockholders may act by written consent to elect directors; provided, however, that, if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

(b) Electronic Transmission of Consents. A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this Section 1.11, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the Corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise

delivered to the principal place of business of the Corporation or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the Board of Directors. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

(c) Notice of Taking of Corporate Action. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation.

## ARTICLE II

### DIRECTORS

2.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the corporation except as otherwise provided by law or the Certificate of Incorporation.

2.2 Number, Election and Qualification. The number of directors of the corporation shall be established from time to time by the stockholders or the Board of Directors. The directors shall be elected at the annual meeting of stockholders by such stockholders as have the right to vote on such election. Election of directors need not be by written ballot. Directors need not be stockholders of the Corporation.

2.3 Chairman; Vice Chairman. The Board of Directors may appoint from its members a Chairman and a Vice Chairman, neither of whom need be an employee or officer of the Corporation. If the Board of Directors appoints a Chairman, such Chairman shall perform such duties and possess such powers as are assigned by the Board of Directors and, if the Chairman is also designated as the corporation's Chief Executive Officer, shall have the powers and duties of the Chief Executive Officer prescribed in Section 3.7 of these Bylaws. If the Board of Directors appoints a Vice Chairman, such Vice Chairman shall perform such duties and possess such powers as are assigned by the Board of Directors. Unless otherwise provided by the Board of Directors, the Chairman or, in the Chairman's absence, the Vice Chairman, if any, shall preside at all meetings of the Board of Directors.

2.4 Tenure. Each director shall hold office until the next annual meeting of stockholders and until a successor is elected and qualified, or until such director's earlier death, resignation or removal.

2.5 Quorum. The greater of (a) a majority of the directors at any time in office and (b) one-third of the number of directors fixed pursuant to Section 2.2 of these Bylaws shall constitute a quorum of the Board of Directors. If at any meeting of the Board of Directors there shall be less than such a quorum, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

2.6 Action at Meeting. Every act or decision done or made by a majority of the directors present at a meeting of the Board of Directors duly held at which a quorum is present shall be regarded as the act of the Board of Directors, unless a greater number is required by law or by the Certificate of Incorporation.

2.7 Removal. Except as otherwise provided by the General Corporation Law of the State of Delaware, any one or more or all of the directors of the Corporation may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except that the directors elected by the holders of a

particular class or series of stock may be removed without cause only by vote of the holders of a majority of the outstanding shares of such class or series.

2.8 Vacancies. Unless and until filled by the stockholders, any vacancy or newly-created directorship on the Board of Directors, however occurring, may be filled by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director. A director elected to fill a vacancy shall be elected for the unexpired term of such director's predecessor in office, and a director chosen to fill a position resulting from a newly-created directorship shall hold office until the next annual meeting of stockholders and until a successor is elected and qualified, or until such director's earlier death, resignation or removal.

2.9 Resignation. Any director may resign by delivering a resignation in writing or by electronic transmission to the Corporation at its principal office or to the Chairman, the Chief Executive Officer, the President or the Secretary. Such resignation shall be effective upon delivery unless it is specified to be effective at some later time or upon the happening of some later event.

2.10 Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and place as shall be determined from time to time by the Board of Directors; provided that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.11 Special Meetings. Special meetings of the Board of Directors may be held at any time and place designated in a call by the Chairman, the Chief Executive Officer, the President, two or more directors, or by one director in the event that there is only a single director in office.

2.12 Notice of Special Meetings. Notice of the date, place, if any, and time of any special meeting of directors shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting. Notice shall be duly given to each director (a) in person or by telephone at least 24 hours in advance of the meeting, (b) by sending written notice by reputable overnight courier, telecopy, facsimile or electronic transmission, or delivering written notice by hand, to such director's last known business, home or electronic transmission address at least 48 hours in advance of the meeting, or (c) by sending written notice by first-class mail to such director's last known business or home address at least 72 hours in advance of the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

2.13 Meetings by Conference Communications Equipment. Directors may participate in meetings of the Board of Directors or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

2.14 Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent to the action in writing or by electronic transmission, and the written consents or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

2.15 Provisions Regarding the Election of Directors of Subsidiaries.

(a) Subject to this Section 2.15: (i) the Board of Directors may constitute any officer of the Corporation as the Corporation's proxy, with power of substitution, to vote the equity of any subsidiary of the Corporation and to exercise, on behalf of the Corporation, any and all rights and powers incident to the ownership of that equity, including the authority to execute and deliver proxies, waivers and consents; (ii) in the absence of specific action by the Board of Directors, the Chief Executive Officer shall have authority to represent the Corporation and to vote, on behalf of the Corporation, the equity of other entities, both domestic and foreign, held by the Corporation; and (iii) the Chief Executive Officer shall also have the authority to exercise any and all rights incident to the ownership of that equity, including the authority to execute and deliver proxies, waivers and consents.

(b) At any meeting of the equity holders of EDGA Exchange, Inc. ("**EDGA**"), EDGX Exchange, Inc. ("**EDGX**"), or any other subsidiary of the Corporation that is registered with the Securities and Exchange Commission (the "**SEC**") as a national securities exchange, as provided in Section 6 of the Securities Exchange Act of 1934 (each of EDGA, EDGX and such other subsidiary, an "**Exchange Subsidiary**") held for the purpose of electing directors (other than the chief executive officer of EDGA or EDGX, as applicable and other than "Owner Directors" as defined in the governance documents of EDGA and EDGX, as applicable) or members of the Nominating Committee or Exchange Member Nominating Committee of such Exchange Subsidiary, as applicable, or in the event written consents are solicited or otherwise sought from the equity holders of an Exchange Subsidiary with respect thereto, the Corporation shall cause all outstanding equity of such Exchange Subsidiary owned by the Corporation and entitled to vote with respect to such election to be voted in favor of the election of only those directors nominated by the Nominating Committee of such Exchange Subsidiary and those nominees for the Nominating Committee and those nominees for the Exchange Member Nominating Committee nominated in accordance with the governance documents of such Exchange Subsidiary, and, with respect to any such written consents, shall cause to be validly executed only such written consents electing only such directors nominated by the Nominating Committee of such Exchange Subsidiary, such members of the Nominating Committee of such Exchange Subsidiary and such members of the Exchange Member Nominating Committee of such Exchange Subsidiary.

(c) With respect to “Owner Directors” (as defined in the governance documents of EDGA and EDGX, as applicable), the Corporation shall take all actions in its capacity as a stockholder of EDGA and EDGX, as applicable, to vote or consent with respect to matters concerning an Owner Director according to the written instructions of the relevant member of Direct Edge Holdings LLC (a “**DE Holdings Member**”) that is entitled to nominate such Owner Director. Without limiting the generality of the foregoing, at any meeting of the stockholders of EDGA or EDGX held for the purpose of electing or removing and/or replacing Owner Directors of such Exchange Subsidiary, or in the event written consents are solicited or otherwise sought from the stockholders of EDGA or EDGX with respect thereto, the Corporation shall cause all outstanding shares of such Exchange Subsidiary owned by the Corporation and entitled to vote to be voted, or, in the event written consents are solicited or otherwise sought from the equity holders of an Exchange Subsidiary, shall cause to be validly executed only such written consents, (i) electing each Owner Director nominated by the “Designating Owner” (as defined in the governance documents of EDGA and EDGX, as applicable) or (ii) removing and/or replacing each Owner Director who had been nominated by the Designating Owner in accordance with the governance documents of such Exchange Subsidiary. The Corporation shall not vote or execute a consent to effectuate the matters in clauses (i) or (ii) unless and until the Designating Owner has provided written notice to the Corporation of such Designating Owner’s designation of an individual to serve as an Owner Director, to be removed as an Owner Director or to replace another individual as an Owner Director, as applicable.

(d) With respect to the chief executive officer of each of EDGA and EDGX, the Corporation shall take all actions in its capacity as a stockholder of EDGA and EDGX, as applicable, to vote or consent with respect to the election of such chief executive officer as a member of the board of directors of EDGA and EDGX, as applicable. With respect to an “Exchange Member Director” (as defined in the governance documents for EDGA and EDGX, as applicable), the Corporation shall take all actions in its capacity as a stockholder of EDGA and EDGX, as applicable, to remove an Exchange Member Director from the board of directors of EDGA or EDGX, as applicable, only for cause. With respect to a director of EDGA or EDGX that the board of directors of EDGA or EDGX, as applicable, determines that (i) such director no longer satisfies the classification for which the director was elected, (ii) the director’s continued service as such would violate the compositional requirements of the board of directors of EDGA or EDGX as set forth in its governance documents, or (iii) the director becomes subject to statutory disqualification, the Corporation shall take all actions in its capacity as a stockholder of EDGA and EDGX, as applicable, to remove such director from the board of directors of EDGA or EDGX, as applicable.

(e) At any meeting of the equity holders of a subsidiary, other than an Exchange Subsidiary, held for the purpose of electing or removing and/or replacing any director designated by any DE Holdings Member who is entitled to



designate or remove one or more directors of such subsidiary in accordance with the governance documents of such subsidiary, or, in the event written consents are solicited or otherwise sought from the equity holders of such subsidiary, the Corporation shall cause all outstanding equity of such subsidiary owned by the Corporation and entitled to vote to be voted, or in the event written consents are solicited or otherwise sought from the equity holders of such subsidiary, shall cause to be validly executed only such written consents, (i) electing each director nominated by such DE Holdings Member or (ii) removing and/or replacing such director who had been nominated by such DE Holdings Member in accordance with the governance documents of such subsidiary.

### **ARTICLE III**

#### **OFFICERS**

3.1 **Titles.** The officers of the Corporation shall consist of a Chief Executive Officer, a President, a Secretary, a Treasurer and such other officers with such other titles as the Board of Directors shall determine, including one or more Vice Presidents. The Board of Directors may appoint such other officers as it may deem appropriate.

3.2 **Election.** The Chief Executive Officer, President, Treasurer and Secretary shall be elected annually by the Board of Directors at its first meeting following the annual meeting of stockholders. Other officers may be appointed by the Board of Directors at such meeting or at any other meeting.

3.3 **Qualification.** No officer need be a stockholder. Any two or more offices may be held by the same person.

3.4 **Tenure.** Except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws, each officer shall hold office until such officer's successor is elected and qualified, unless a different term is specified in the resolution electing or appointing such officer, or until such officer's earlier death, resignation or removal.

3.5 **Resignation and Removal.** Any officer may resign by delivering a written resignation to the Corporation at its principal office or to the Chief Executive Officer, the President or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time or upon the happening of some later event. Any officer may be removed at any time, with or without cause, by vote of a majority of the directors then in office. Except as the Board of Directors may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following such officer's resignation or removal, or any right to damages on account of such removal, whether such officer's compensation be by the month or by the year or otherwise, unless such compensation is expressly provided for in a duly authorized written agreement with the Corporation.

3.6 **Vacancies.** The Board of Directors may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may

determine any offices other than those of Chief Executive Officer, President, Treasurer and Secretary. Each such successor shall hold office for the unexpired term of such officer's predecessor and until a successor is elected and qualified, or until such officer's earlier death, resignation or removal.

3.7 President; Chief Executive Officer. Unless the Board of Directors has designated another person as the Corporation's Chief Executive Officer, the President shall be the Chief Executive Officer. The Chief Executive Officer shall have general charge and supervision of the business of the Corporation subject to the direction of the Board of Directors, and shall perform all duties and have all powers that are commonly incident to the office of chief executive or that are delegated to such officer by the Board of Directors. The President shall perform such other duties and shall have such other powers as the Board of Directors or the Chief Executive Officer (if the President is not the Chief Executive Officer) may from time to time prescribe. In the event of the absence, inability or refusal to act of the Chief Executive Officer or the President (if the President is not the Chief Executive Officer), the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors) shall perform the duties of the Chief Executive Officer and when so performing such duties shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer.

3.8 Vice Presidents. Each Vice President shall perform such duties and possess such powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board of Directors.

3.9 Secretary. The Secretary shall perform such duties and shall have such powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the secretary, including without limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board of Directors, to attend all meetings of stockholders and the Board of Directors and keep a record of the proceedings, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents. In the absence of the Secretary at any meeting of stockholders or directors, the chairman of the meeting shall designate a temporary secretary to keep a record of the meeting.

3.10 Treasurer. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned by the Board of Directors or the Chief Executive Officer. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the Corporation, to deposit funds of the Corporation in depositories selected in accordance with these Bylaws, to disburse such funds as ordered by the Board of Directors, to make proper accounts of such funds, and to

render as required by the Board of Directors statements of all such transactions and of the financial condition of the Corporation.

3.11 Salaries. Officers of the Corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors.

3.12 Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

## **ARTICLE IV**

### **CAPITAL STOCK**

4.1 Issuance of Stock. Subject to the provisions of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the Corporation or the whole or any part of any shares of the authorized capital stock of the Corporation held in the Corporation's treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in such manner, for such lawful consideration and on such terms as the Board of Directors may determine.

4.2 Stock Certificates; Uncertificated Shares.

(a) The shares of the Corporation may be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Every holder of stock of the Corporation represented by certificates shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, representing the number of shares held by such holder registered in certificate form. Each such certificate shall be signed in a manner that complies with Section 158 of the General Corporation Law of the State of Delaware.

(b) Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, these Bylaws, applicable securities laws or any agreement among any number of stockholders or among such holders and the Corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

(c) If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of each certificate representing shares of such class or series of stock, provided that in lieu of the foregoing requirements there may be set forth on the face or back of each

certificate representing shares of such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests a copy of the full text of the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

(d) Within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to Sections 151, 202(a) or 218(a) of the General Corporation Law of the State of Delaware or, with respect to Section 151 of General Corporation Law of the State of Delaware, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

4.3 Transfers. Shares of stock of the Corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation or by transfer agents designated to transfer shares of stock of the Corporation. Subject to applicable law, shares of stock represented by certificates shall be transferred only on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the Corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by these Bylaws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the Corporation in accordance with the requirements of these Bylaws.

4.4 Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate of stock in place of any previously issued certificate alleged to have been lost, stolen or destroyed, upon such terms and conditions as the Board of Directors may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity and posting of such bond as the Board of Directors may require for the protection of the Corporation or any transfer agent or registrar.

4.5 Record Date. The Board of Directors may fix in advance a date as a record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders or to express consent (or dissent) to corporate action without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, conversion or exchange of stock, or for the purpose of

any other lawful action. Such record date shall not precede the date on which the resolution fixing the record date is adopted, and such record date shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 10 days after the date of adoption of a record date for a consent without a meeting, nor more than 60 days prior to any other action to which such record date relates. If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. If no record date is fixed, the record date for determining stockholders entitled to express consent to corporate action without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first consent is properly delivered to the Corporation. If no record date is fixed, the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

#### 4.6 Regulations; Limitations on Dividends.

- (a) The issue, transfer, conversion and registration of shares of stock of the Corporation shall be governed by such other regulations as the Board of Directors may establish.
- (b) The Corporation shall not make a dividend payment to any stockholder of the Corporation if, and to the extent, such dividend payment would violate the General Corporation Law of the State of Delaware or other applicable law, or would come from any Regulatory Funds. For purposes of these Bylaws, “Regulatory Funds” shall mean any fees, fines or penalties derived from the regulatory operations of an Exchange Subsidiary (as defined herein), provided that Regulatory Funds shall not include revenues derived from listing fees, market data revenues, transaction revenues or any other aspect of the commercial operations of such Exchange Subsidiary, even if a portion of such revenues are used to pay costs associated with the regulatory operations of such Exchange Subsidiary.

## ARTICLE V

### GENERAL PROVISIONS

5.1 Fiscal Year. Except as from time to time otherwise designated by the Board of Directors, the fiscal year of the Corporation shall begin on the first day of January of each year and end on the last day of December in each year.

5.2 Corporate Seal. The corporate seal shall be in such form as shall be approved by the Board of Directors.

5.3 Waiver of Notice. Whenever notice is required to be given by law, by the Certificate of Incorporation or by these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before, at or after the time of the event for which notice is to be given, shall be deemed equivalent to notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in any such waiver. 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.

5.4 Voting of Securities. Except as the Board of Directors may otherwise designate, the Chief Executive Officer, the President or the Treasurer may waive notice of, vote, or appoint any person or persons to vote, on behalf of the Corporation at, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for this Corporation (with or without power of substitution) at, any meeting of stockholders or securityholders of any other entity, the securities of which may be held by this Corporation.

5.5 Evidence of Authority. A certificate by the Secretary or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the Corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

5.6 Severability. Any determination that any provision of these Bylaws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these Bylaws.

5.7 Pronouns. All pronouns used in these Bylaws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

5.8 Books and Records.

(a) To the fullest extent permitted by law, all books and records of an Exchange Subsidiary reflecting confidential information pertaining to the self-regulatory function of such Exchange Subsidiary (including disciplinary matters, trading data, trading practices and audit information) that shall come into the possession of the Corporation, and the information contained in those books and

records, shall be retained in confidence by the Corporation, the stockholders of the Corporation, the Board of Directors, officers, employees and agents of the Corporation and shall not be used for any non-regulatory purposes. Notwithstanding the foregoing sentence, nothing herein shall be interpreted so as to limit or impede the rights of the Securities and Exchange Commission (“SEC”) or any Exchange Subsidiary to access and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, agents, employees or stockholders of the Corporation to disclose such information to the SEC or an Exchange Subsidiary.

(b) To the extent they are related to the operation or administration of an Exchange Subsidiary, the books, records, premises, officers, directors, agents, and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors, agents and employees of such Exchange Subsidiary for the purpose of, and subject to oversight pursuant to, the Securities Exchange Act of 1934 (the “**Exchange Act**”). For so long as the Corporation shall control, directly or indirectly, an Exchange Subsidiary, the Corporation’s books and records shall be subject at all times to inspection and copying by the SEC and the applicable Exchange Subsidiary, provided that such books and records are related to the operation or administration of an Exchange Subsidiary.

## **ARTICLE VI**

### **AMENDMENTS**

6.1 By the Board of Directors. These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted by the Board of Directors.

6.2 By the Stockholders. These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted, by the affirmative vote of the holders of a majority of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote at any annual meeting of stockholders, or at any special meeting of stockholders, provided notice of such alteration, amendment, repeal or adoption of new Bylaws shall have been stated in the notice of such special meeting.

6.3 Exceptions and Limitations. The approval contemplated by this Article VI shall not be required to the extent that: (a) such approval requirements would cause the Corporation not to be in compliance with U.S. federal securities laws and the rules and regulations thereunder; or (b) would adversely impact the regulatory authority of an Exchange Subsidiary.

6.4 For so long as the Corporation shall control, directly or indirectly, an Exchange Subsidiary, before any amendment to any provision of these Bylaws shall be effective, such amendment shall be submitted to the board of directors of each Exchange Subsidiary and if any such board shall determine that such amendment must be filed with, or filed with and approved by, the SEC before the amendment may be effective

under Section 19 of the Exchange Act and the rules promulgated under the Exchange Act or otherwise, then the proposed amendment to these Bylaws shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

## **ARTICLE VII**

### **SRO FUNCTION**

7.1 **Preservation of Independence.** For so long as the Corporation shall, directly or indirectly, control an Exchange Subsidiary, the Board of Directors, officers, employees and agents of the Corporation shall give due regard to the preservation of the independence of the self-regulatory function of such Exchange Subsidiary, as well as to its obligations to investors and the general public and shall not take any actions that would interfere with the effectuation of any decisions by a board of directors of an Exchange Subsidiary relating to its regulatory functions (including disciplinary matters) or which would interfere with the ability of such Exchange Subsidiary to carry out its responsibilities under the Exchange Act. To the fullest extent permitted by law, no present or past director, employee, beneficiary, agent, customer, creditor, regulatory authority (or member thereof) or other person shall have any rights against the Corporation or any director, officer, employee or agent of the Corporation under this **Section 7.1.**

7.2 **Compliance with Securities Laws; Cooperation with the SEC.** The Corporation shall comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the SEC and each Exchange Subsidiary, as applicable, pursuant to and to the extent of their respective regulatory authority. The officers, directors, employees and agents of the Corporation, by virtue of their acceptance of such position, shall be deemed to agree (i) to comply with the U.S. federal securities laws and the rules and regulations thereunder and (ii) to cooperate with the SEC and each Exchange Subsidiary in respect of the SEC's oversight responsibilities regarding the Exchange Subsidiaries and the self-regulatory functions and responsibilities of the Exchange Subsidiaries. The Corporation shall take reasonable steps necessary to cause its officers, directors, employees and agents to so cooperate. To the fullest extent permitted by law, no present or past director, employee, beneficiary, agent, customer, creditor, regulatory authority (or member thereof) or other person shall have any rights against the Corporation or any director, officer, employee or agent of the Corporation under this **Section 7.2.**

7.3 **Consent to Jurisdiction.** To the fullest extent permitted by law, the Corporation and its officers, directors, employees and agents, by virtue of their acceptance of such position, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the SEC, each Exchange Subsidiary, as applicable, for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws and the rules and regulations thereunder arising out of, or relating to, the activities of an Exchange Subsidiary, and by virtue of their acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the



jurisdiction of the United States federal courts, the SEC and the Exchange Subsidiaries that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency. The Corporation and its officers, directors, employees and agents also agree that they will maintain an agent, in the United States, for the service of process of a claim arising out of, or relating to, the activities of an Exchange Subsidiary.

7.4 Consent to Applicability. The Corporation shall take reasonable steps necessary to cause its current officers, directors, employees and agents and prospective officers, directors, employees and agents prior to such person's employment, appointment or otherwise, to consent in writing to the applicability of Section 5.8 of these Bylaws and this Article VII with respect to activities related to an Exchange Subsidiary.

7.5 Restriction on Foreign Operations. None of (i) the Corporation, (ii) any "disregarded entity" owned by the Corporation, or (iii) any other entity treated for U.S. federal income tax purposes as a division of the Corporation shall ever have a permanent establishment or branch outside the United States or conduct business outside the United States in such a way that it is deemed to have a permanent establishment or a foreign branch, as that term is defined in Temporary Treasury Regulation § 1.367(a)-6T(g)(1). Accordingly, any entity described in (i) through (iii) above (each, a "Restricted Entity") shall not:

- (a) maintain or conduct business through a fixed place of business outside the United States, including a place of management, a branch, or an office;
- (b) maintain a separate set of books and records outside of the United States;
- (c) hold a meeting (whether formal or informal) of the board or of any committee of the board (1) outside of the United States or (2) at which fewer than two members of the board or such committee, as the case may be, are not physically present at the place designated as the location for the board meeting;
- (d) send an employee to work at a fixed location outside the United States for a period of time sufficient to constitute a branch or permanent establishment;
- (e) conduct business (including the solicitation of customers, the negotiation of prices and other material terms and conditions, and the performance of other activities incidental to the origination or continuance of a transaction) outside the United States through a dependent agent or employee;
- (f) enter into binding contracts outside the United States, or give an agent or employee the authority to enter into such contracts outside the United States; or
- (g) own any real estate outside the United States, or own tangible personal property outside the United States.

For the purposes of clarity, the books and records of the Corporation shall, at all times, be maintained within the United States. Nothing in this Section 7.5 or elsewhere in these Bylaws shall be deemed to prohibit or restrict in any way any Restricted Entity from conducting business outside the United States through any direct or indirect subsidiary that is treated as a corporation for United States federal income tax purposes (an “Eligible Subsidiary”). If any Restricted Entity wishes to change the classification of an Eligible Subsidiary for U.S. federal tax purposes pursuant to Treas. Reg. § 301.7701-3, then it must first obtain the consent of the sole stockholder. The Company shall ensure that Restricted Entities subject to this Section 7.5 shall comply with the requirements of this Section 7.5.

\* \* \* \*

**Exhibit 5C**

**Additions double underscored; deletions [bracketed]**

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

**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.
- (c) “Board” means the Board of Directors of the Company.
- (d) “broker” shall have the meaning set forth in Section 3(a)(4) of the Act.
- (e) “Business Day” shall mean a day other than a Saturday or a Sunday on which commercial banks in New York are not required or permitted under applicable laws or regulations to close.
- (f) “Chairman” shall have the meaning set forth in Article III, Section 5.
- (g) “Commission” means the United States Securities and Exchange Commission.
- (h) “Company” means EDGX Exchange, Inc., a Delaware corporation.
- (i) “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.
- (j) “dealer” shall have the meaning set forth in Section 3(a)(5) of the Act.

(k) “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.

(l) “DGCL” means the General Corporation Law of the State of Delaware.

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

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

(o) [(n)]“Director” means the persons elected to the Board from time to time in accordance with these Bylaws.

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

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

(r) [(q)]“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.

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

(t) [(s)]“Exchange Member 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 Representative or appoint a substitute for its Exchange Member Representative upon giving notice thereof to the Secretary of the Company. An Exchange Member Representative of an Exchange Member or a substitute shall be a member of senior management and registered principal of the Exchange Member.

(u) [(t)]“Holdings Operating Agreement” means the Fourth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC, dated as of April 13, by and among the members of Direct Edge Holdings, as such Agreement may be amended from time to time.

(v) [(u)]“Independent Director” means a Director who has no material relationship with (i) the Company or any Affiliate of the Company, or (ii) any Exchange Member or any Affiliate of any 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.

(w) [(v)]“List of Candidates” shall have the meaning set forth in Article III, Section 4(e).

(x) [(w)]“Nominating Committee” means the Nominating Committee elected pursuant to these Bylaws.

(y) [(x)]“Operational Date” shall have the meaning set forth in Article XI, Section 1.

(z) [(y)]“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.

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

(bb) [(aa)]“Person” means any individual, partnership, joint stock company, corporation, entity, association, trust, limited liability company, joint venture, unincorporated organization, and any government, governmental department or agency or political subdivision of any government.

(cc) [(bb)]“person associated with an Exchange Member” or “associated person of an Exchange Member” means any partner, officer, director, or branch manager of an Exchange 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 or any employee of such Exchange Member, except that any person associated with a Exchange Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Bylaws.

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

(ee) [(dd)]“Petition Date” means a date at least thirty-five (35) days before the date announced as the date for the annual meeting of stockholders.

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

(gg) [(ff)]“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.

(hh) [(gg)]“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.

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

(jj) [(ii)]“statutory disqualification” shall have the meaning set forth in Section 3(a)(39) of the Act.

(kk) [(jj)]“stockholder” means any Person who maintains a direct ownership interest in the Company. The [initial] sole stockholder of the Company shall be Direct Edge [Holdings].

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, Jersey City, New Jersey 07310, or such other location as may hereafter be determined by the Board. The Company may have such other office or offices as the Board 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 business and affairs of the Company shall be managed by the 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 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 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 Exchange Members, and Persons associated with Exchange Members, with the provisions of the Act, the rules and regulations under the Act and the Rules.

(e) In light of the unique nature of the Company, its operations, its status as a SRO, 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, to the extent deemed relevant: (i) the potential impact of such proposal on the integrity, continuity and stability of the Exchange 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 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) 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)).

The initial Board as of the date hereof is as set forth on Exhibit A and 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 Independent Director or Exchange Member Director, and the Secretary shall certify to the Nominating 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.

(b) The Board of 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 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 annual election of the Board following adoption of these Bylaws, Directors in Class II shall initially hold office until the second annual election of the Board following adoption of these Bylaws, and Directors in Class III shall initially hold office until the third annual election of the Board following adoption of these Bylaws. Commencing with the first annual election of the Board 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 the case of the addition of any new Director position, the Director filling such position shall be added to a class, as determined by the Board at the time of such Director's initial election, 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, Election and Appointment**

(a) The Nominating 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. For positions requiring persons who qualify as Exchange Member Directors, the Nominating 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 Committee and the Chairman, 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 Director.

(c) Not later than sixty (60) days prior to the date announced as the date for the annual meeting of stockholders, the Exchange Member Nominating Committee shall report to the Nominating Committee and the Secretary the initial nominees for Exchange Member 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 the Exchange Member Director positions by delivering to the Secretary, at least

thirty-five (35) days before the date announced as the date for the annual meeting of stockholders (the "Petition Deadline"), a written petition, which shall designate the candidate by name and office and shall be signed by Exchange Member Representatives representing ten percent (10%) or more of the Exchange Members. An Exchange Member may endorse as many candidates as there are Exchange Member Director positions to be filled. No Exchange Member, together with its 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, 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 Director candidates and must be filed with the Company. 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, the initial nominees approved and submitted by the Exchange Member Nominating Committee shall be nominated as Exchange Member Directors by the Nominating Committee. If one or more valid petitions from Exchange Members are received by the Petition Deadline, 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 to confirm the nominees for Exchange Member 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 stockholders meeting to confirm the Exchange Members' selections of nominees for Exchange Member Directors.

(f) With respect to the election held to determine the final nomination of Exchange Member Directors, each Exchange Member shall have the right to cast one (1) vote for each available Exchange Member Director nomination; *provided*, however, that (i) any such vote must be cast for a person on the List of Candidates, and (ii) no Exchange Member, together with its 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, in excess of such twenty percent (20%) limitation shall be disregarded. The votes shall be cast by written ballot 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 an Exchange Member Director. The persons on the List of Candidates who receive the most votes shall be selected as the nominees for the Exchange Member 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 Chief Executive Officer shall be the Chairman of the Board (the “Chairman”). The Chairman shall preside at all meetings of the Board at which the Chairman is present; *provided*, however, that 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 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 an Owner Director or Exchange Member 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 an Owner Director or Exchange Member Director position, becomes available because of an increase in the number of Directors, the 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 (Independent or At-Large Director) 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 Director position becomes vacant prior to the election of a successor at the end of such Exchange Member Director’s term, whether because of death, disability, disqualification, removal or resignation, and whenever any newly-created Exchange Member Director position becomes available because of an increase in the number of Directors, the Exchange 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 to fill such vacancy 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 an Exchange Member 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 Director may be removed with or without cause by a majority vote of the stockholders; *provided*, however, that any Exchange Member Director may be removed only by a majority vote of the stockholders for cause, which shall include such Exchange Member Director's 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) Any Director may resign at any time either upon notice of resignation to the Chairman, the 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 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 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.

**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. 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 or electronic transmission is filed with the minutes of proceedings of the Board or the committee.

**Section 14. 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 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. 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 16. Conflicts of Interest; Contracts and Transactions Involving Directors**

(a) To the fullest extent permitted by law, 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 or other Person if such Director or committee member has a material interest in, or a professional, business or personal relationship with, that Exchange Member or Person, 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.

(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; (ii) the material facts as to the Director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and 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.

**ARTICLE IV**

**STOCKHOLDERS**

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

(a) The annual meeting of 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 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 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 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, at the principal place of business of the Company. 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, 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 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 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.

**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 Chairman, may designate, consistent with these Bylaws, the members of all committees of the Board, and the Board may, at any time, with or without cause, remove any member of a committee so appointed, after consultation with the Chairman. Each committee shall be comprised of at least three (3) members of the Board; *provided*, however, that except as set forth herein, every committee shall have at least a majority of Independent Directors. In designating members to committees of the Board, the Board is responsible for determining that any such committee meets the composition requirements set forth in this Article V. 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) A committee member shall be removed 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) 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) Except as otherwise provided by these Bylaws or by the Board, members of a committee shall hold office for a one-year period.

### **Section 3. 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. 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 or these Bylaws.

### **Section 5. Specified Committees**

(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. 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 Chairman, shall designate the members of an Audit Committee, which shall consist solely of Directors, including a majority of Independent Directors. An Independent 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: (A) provide oversight over the Company's financial reporting process and the financial information that is provided to stockholders and others; (B) provide oversight over the systems of internal controls established by management and the Board and the Company's legal and compliance process; (C) select, evaluate and, where appropriate, replace the Company's independent auditors (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 management's responsiveness to internal audit recommendations. The Audit Committee shall have 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.

(c) The Board, after consultation with the Chairman, shall designate the members of a Regulatory Oversight Committee, which shall consist solely of Independent Directors. The Regulatory Oversight Committee shall oversee the adequacy and effectiveness of the Exchange's regulatory and SRO responsibilities, assess the Exchange's regulatory performance and assist the Board and committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Exchange's regulatory functions.

(d) The Board, after consultation with the Chairman, 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.

(e) The Board, after consultation with the Chairman, 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. 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.

## **ARTICLE VI**

### **Nominating Committees**

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

The Nominating Committee and the Exchange Member Nominating Committee shall each be elected on an annual basis by a vote of the stockholders. The initial Nominating Committee and Exchange Member Nominating Committee as of the date hereof are as set forth

on Exhibit B and shall serve until the first annual meeting of stockholders following the adoption of these Bylaws. In each subsequent year, each of the Nominating 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 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 Committee

The Nominating Committee shall 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). The Nominating Committee, in making such nominations, is responsible for ensuring that candidates meet the compositional requirements of Article III, Section 2(b). The Nominating Committee shall consist solely of three Independent Directors, one of whom shall be in each class.

**Section 3.**     Exchange Member Nominating Committee

The Exchange Member Nominating Committee shall nominate candidates for each Exchange Member Director position on the Board that is to be elected by Exchange Members or stockholders under the terms of these Bylaws. Each member of the Exchange Member Nominating Committee shall 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, a President, a Chief Regulatory Officer, a Secretary, a Treasurer and such other officers 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 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 President or the Secretary. 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.

**Section 4. Compensation**

The Compensation of the Chief Executive Officer shall be fixed by the Compensation Committee. 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 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 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 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 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, 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 Other Agents.**

(a) *Right to Indemnification.* The Company shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative, arbitrative 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 director or 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 director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and 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.

(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.

(d) *Nonexclusivity of Rights.* To the fullest extent permitted by the Company's Certificate of Incorporation and the DGCL, the rights conferred on any Covered Person by this Article VIII shall not be exclusive of any other rights that such Covered Person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of stockholders or disinterested directors or otherwise. The Company is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents with respect to indemnification and advances, to the fullest extent permitted by the DGCL 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) *Survival of Rights.* The rights conferred on any Covered Person shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) *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.

(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) *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 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) *Certain Definitions.* For purposes of this Article VIII, the following definitions shall apply:

- (i) The term “expenses” shall be broadly construed and shall include 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) The term the “Company” shall include, in addition to the resulting entity, any constituent entity (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, or is or was serving at the request of such constituent entity 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 as he would have with respect to such constituent entity if its separate existence had continued.

**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 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 shall, notwithstanding any different provision of applicable law, the Certificate of Incorporation or these Bylaws, be operative during any emergency resulting from any 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 or 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 or any or all 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 or 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 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.

(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 associated with Exchange Members, including censure, fine, suspension or barring a Person associated with an Exchange Member from being associated with all Exchange Members, limitation of activities, functions and operations of a Person associated with an Exchange Member or any other fitting sanction, for:

- (i) a breach by an Exchange Member or a Person associated with an Exchange Member of any covenant with the Company or its stockholders;
- (ii) violation by an Exchange Member or a 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) or the federal securities laws, including the rules and regulations adopted thereunder;
- (iii) failure by an Exchange Member or 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 possession or control as directed pursuant to the rules (as defined in Section 3(a)(27) of the Act); (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 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 to which the Board has delegated its powers.

## **Section 3. Exchange Member Qualifications**

(a) The Board shall have authority to adopt rules and regulations applicable to Exchange Members, applicants seeking to become Exchange Members and 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 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 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 not be used for non-regulatory purposes or distributed to the stockholders, 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. Operational Date of Exchange**

The Company has been formed in anticipation of its registration by the Commission as a national securities exchange. During the period between incorporation and the first date on which the Company commences operating a national securities exchange (the "Operational Date"):

(a) references in these Bylaws to "the national securities exchange operated by the Company" or the "Exchange" shall be construed as references to "the national securities exchange to be operated by the Company"; and

(b) the Board may appoint members of the committees to be established under these Bylaws, but shall not be required to appoint all such committee members until the date immediately prior to the Operational Date.

##### **Section 2. Fiscal Year**

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

**Section 3.**     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 other than Directors and officers, employees, agents or 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 Direct Edge Holdings 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 or advisors of Direct Edge or Direct Edge Holdings who are not also officers, employees, agents 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 4.**     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 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 not be used by the Company for any non-regulatory purposes and shall not be made available to any Person (including any Exchange Member) other than to personnel of the Commission, and those Directors, officers, employees, hearing officers, other agents and advisors of the Company, to the extent necessary or appropriate to discharge properly the self-regulatory responsibilities of the Company.

**Section 5.**     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 6.**     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 7.**     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. 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 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 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 8. 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 9. 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 transmission confirmed by one of the other methods for providing notice set forth herein, 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 10. Severability**

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

**EXHIBIT A****Initial Directors**

Name	Type of Director	Class
William O'Brien	Chief Executive Officer	NA
Leonard Amoruso	Owner Director	I
Michael Simon	Owner Director	I
Martin Mannion	Owner Director	II
Greg Tusar	Owner Director	III
James Angel	Independent Director	I
Steven Brodsky	Independent Director	I
William Dailey	Independent Director	I
Scott Ganeles	Independent Director	II
Patrick Healy	Independent Director	II
Samuel Miller	Independent Director	II
Mark Minister	Independent Director	III
George Munoz	Independent Director	III
Richard Schenkman	Independent Director	III
Larry Bergmann	Independent Director	III
Noel Dalzell	Exchange Member Director	I
Brian Fagen	Exchange Member Director	II
Suhas Daftuar	Exchange Member Director	III
Richard Gorelick	Exchange Member Director	II

**EXHIBIT B**

**Initial Nominating Committee**

Name
Richard Schenkman
Samuel Miller
William Dailey

**Initial Exchange Member Nominating Committee**

Name
Noel Dalzell
Richard Gorelick
Suhas Daftuar