

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 59      SECURITIES AND EXCHANGE COMMISSION      File No.\* SR - 2011 - \* 035  
WASHINGTON, D.C. 20549      Form 19b-4      Amendment No. (req. for Amendments \*)

Proposed Rule Change by BATS Exchange  
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"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<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, required when Initial is checked \*).  
Proposal to amend the Bylaws of BATS Global Markets, Inc.

**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 \* Anders      Last Name \* Franzon  
Title \* VP, Associate General Counsel  
E-mail \* afranzone@batstrading.com  
Telephone \* (913) 815-7154      Fax (913) 815-7119

**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 09/07/2011  
By Anders Franzon (Name \*)      VP, Associate General Counsel (Title \*)

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.  
Anders Franzon,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information (required)**

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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 (required)**

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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**

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Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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 4 - Marked Copies**

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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**

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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**

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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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend the bylaws of the Exchange’s sole stockholder, BATS Global Markets, Inc.

(a) The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

## 2. Procedures of Self-Regulatory Organization

The Board of Directors of the Exchange approved this proposed rule filing on September 6, 2011. The board of directors of BATS Global Markets, Inc. approved the amendment to its bylaws on August 17, 2011. No other action is necessary for the filing of the rule proposal.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (913) 815-7000.

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

(a) Purpose

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

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

On May 13, 2011, BATS Global Markets, Inc., the sole stockholder of the Exchange, filed a registration statement on Form S-1 with the Commission seeking to register shares of Class A common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the "IPO"). In connection with its IPO, BATS Global Markets, Inc. intends to amend and restate its Amended and Restated Bylaws (the "Current Bylaws") and adopt these changes as its Second Amended and Restated Bylaws (the "New Bylaws").

The amendments to the Current Bylaws include, among other things, (i) revising the procedures for stockholder proposals and nomination of directors, (ii) revising the authority to call special meetings of the stockholders, (iii) revising the process for action by written consent of stockholders, (iv) revising the requirements for removal of directors, (v) removal of provisions relating to indemnification of officers and directors, (vi) eliminating the authority to make loans to corporate officers, and (vii) revising certain requirements for approval of future amendments to the New Bylaws.

The purpose of this rule filing is to submit for Commission approval the New Bylaws adopted by BATS Global Markets, Inc., the sole stockholder of the Exchange. The changes described herein relate to the bylaws of BATS Global Markets, Inc. only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and by-laws. The stock in, and voting power of, the Exchange will continue to be directly and solely held by BATS Global Markets, Inc.

The Exchange has separately filed with the Commission a proposed amendment to the certificate of incorporation of BATS Global Markets, Inc. (the "New Certificate of Incorporation"). It is anticipated that the New Bylaws and the New Certificate of

Incorporation will become effective (the “Effective Date”) the moment before the closing of the IPO. The amendments to the bylaws primarily reflect (i) changes to conform the Current Bylaws to provisions more customary for publicly-owned companies, (ii) amendments to conform the Current Bylaws to the New Certificate of Incorporation, and (iii) stylistic and other non-substantive changes.

#### Registered Office

Article I of the Current Bylaws designates the initial registered office of BATS Global Markets, Inc. in the State of Delaware as 1209 Orange Street in the City of Wilmington, County of New Castle, Delaware. Section 1.01 of the New Bylaws would amend Article I to state the registered office will continue to be located at the same location and to further provide the board of directors with the authority to designate another location from time to time. This will provide the board with the flexibility to change the registered office in the future if it believes such a change is necessary.

#### Annual Meeting of Stockholders

Section 2.02(a) of the Current Bylaws require that an annual meeting of stockholders for the purpose of election of directors and such other business that comes before the meeting occur on the third Tuesday of January, or such other time as the board of directors may designate. The Amended Bylaws remove the reference to the third Tuesday of January from Section 2.02(a) and authorize the board of directors to determine the date and time of the annual meeting.

Section 2.02(b) of the Current Bylaws specifies the procedures for stockholders to properly bring matters before the annual meeting, including specifying that stockholders provide timely notice to BATS Global Markets, Inc. of the business desired to be brought

before the meeting. In addition to the requirements contained in the Current Bylaws, Section 2.02(b) of the New Bylaws would require that the stockholder's notice (i) disclose the text of the proposal, (ii) disclose the beneficial owner on whose behalf the proposal is being made, (iii) disclose all agreements, arrangements or understandings between the stockholder and any other person pursuant to which the proposal is being made, (iv) disclose all arrangements or understandings (including derivative positions) to create or mitigate loss or manage the risk or benefit of share price changes, or increase or decrease the voting power of the stockholder or any beneficial owner with respect to the securities of BATS Global Markets, Inc., and (v) provide a representation as to whether the stockholder or any beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of BATS Global Markets, Inc. needed to approve or adopt the proposal, or otherwise solicit proxies from stockholders in support of the proposal.

Section 2.02(c) of the Current Bylaws specifies the procedures for stockholders to properly nominate persons for the board of directors, including that the stockholder provide timely notice to BATS Global Markets, Inc. In addition to the requirements contained in the Current Bylaws, Section 2.02(c) of the New Bylaws would require that the stockholder's notice (i) disclose all agreements, arrangements or understandings (including derivative positions) to create or mitigate loss or manage the risk or benefit of share price changes, or increase or decrease the voting power of the stockholder, beneficial owner or any such nominee with respect to the securities of BATS Global Markets, Inc., (ii) provide a representation that such stockholder is a stockholder entitled to vote at such meeting and intends to appear in person or by proxy at the meeting and to

bring such nomination or other business before the meeting, and (iii) provide a representation as to whether the stockholder or any beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of BATS Global Markets, Inc. needed to elect each such nominee, or otherwise solicit proxies from stockholders in support of the nomination.

The additional disclosure requirements being added to Sections 2.02(b) and 2.02(c) are intended to assure that stockholders asked to vote on a stockholder proposal or stockholder nominee are more fully informed in their voting and are able to consider any proposals or nominations along with the interests of those stockholders or the beneficial owners on whose behalf such proposal or nomination is being made.

The New Bylaws would further include a new Section 2.02(d) which would require that a stockholder proposal or a stockholder nomination be disregarded if the stockholder (or a qualified representative) does not appear at the annual or special meeting to present the proposal or nomination, notwithstanding that proxies may have been received and counted for purposes of determining a quorum. A “qualified representative” would include a duly authorized officer, manager or partner of the stockholder, or such other person authorized in writing to act as such stockholder’s proxy. The purpose of this requirement is to assure that the stockholders’ time at meetings is used efficiently and only serious stockholder proposals and nominations are considered.

The New Bylaws would also add Section 2.02(e), which would require that a stockholder, in addition to (and in no way limiting) all requirements set forth in Section

2.02 with respect to proposals or nominations, must also comply with all applicable requirements of the Act and the rules and regulations promulgated thereunder.

New Section 2.02(f) of the New Bylaws would note that, notwithstanding anything to the contrary in the New Bylaws, the notice requirements with respect to business proposals or nominations would be deemed satisfied if the stockholder submitted a proposal in compliance with Rule 14a-8 of the Act<sup>3</sup> and the proposal has been included in a proxy statement prepared by BATS Global Markets, Inc. to solicit proxies of the meeting of stockholders. This provision would assure that, in addition to proposals that meet the requirements of Section 2.02(b) of the New Bylaws, BATS Global Markets, Inc. would comply with the provisions of the Act and the rules promulgated thereunder with respect to the inclusion of stockholder proposals in its proxy statement.

#### Special Meetings of Stockholders

Section 2.03 of the Current Bylaws permits a special meeting of the stockholders to be called by any of (i) the chairman of the board of directors, (ii) the chief executive officer, (iii) the board of directors pursuant to a resolution passed by a majority of the board, or (iv) by the stockholders entitled to vote at least ten percent of the votes at the meeting. The New Bylaws would amend Section 2.03 to only permit a special meeting of the stockholders to be called by the board of directors pursuant to a resolution adopted by the majority of the board. Additionally, whenever any holders of preferred stock have the right to elect directors pursuant to the New Certificate of Incorporation, such holders

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<sup>3</sup> 17 CFR 240.14a-8.



may call, pursuant to the terms of a resolution adopted by the board, a special meeting of the holders of such preferred stock. These amendments are designed to prevent any stockholder from exercising undue control over the operation of the Exchange by circumventing the board of directors of BATS Global Markets, Inc. through a special meeting of the stockholders.

#### Voting Rights

Section 2.07 of the Current Bylaws describes the rights of stockholders of BATS Global Markets, Inc. to vote their shares at a meeting of stockholders. The New Bylaws would amend Section 2.07 to further clarify that any share of stock of BATS Global Markets, Inc. held by BATS Global Markets, Inc. shall have no voting rights, except when such shares are held in a fiduciary capacity.

#### Action without a Meeting

Section 2.10 of the Current Bylaws permits certain actions to be taken by written consent of stockholders if signed by the holders of outstanding stock representing not less than the number of votes necessary to authorize or take such action at a meeting where all shares entitled to vote were present and voted. Section 2.10(c) of the Current Bylaws also require that prompt notice of such actions by less than unanimous consent be given to those stockholders that did not consent in writing. The New Bylaws would amend Section 2.10(c) to clarify that such notice need only be provided to those stockholders who would have been entitled to notice of the meeting if the record date for such notice had been the date the written consent was delivered to BATS Global Markets, Inc.

Section 2.10(c) of the Current Bylaws further provides that no action by written consent may be taken following an initial public offering of the common stock of BATS

Global Markets, Inc. The New Bylaws would amend Section 2.10(c) to instead provide that no action by written consent may be taken following a Change in Ownership, as defined in the New Certificate of Incorporation.<sup>4</sup> This change is consistent with amendments contained in the New Certificate of Incorporation and is designed to prevent any stockholder from exercising undue control over the operation of the Exchange by circumventing the board of directors of BATS Global Markets, Inc. through action by written consent.

#### Removal of Directors

Section 3.05 of the Current Bylaws provides that the board of directors or any director may be removed, with or without cause, by the affirmative vote of at least sixty-six and two-thirds percent of the voting power of all then-outstanding shares of voting stock of BATS Global Markets, Inc. The New Bylaws would amend Section 3.05 to reduce the percentage of the voting power required to remove a director, with or without cause, from sixty-six and two-thirds percent to a simple majority.

The purpose of this amendment is to align BATS Global Markets, Inc.'s requirements for removal of directors with Section 141(k) of the Delaware General Corporation Law, which generally permits a simple majority of stockholders to remove any director or a the board of directors with or without cause.

#### Committees of Directors

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<sup>4</sup> Under the New Certificate of Incorporation, a “Change in Ownership” is deemed to occur at such time as the beneficial owners of the Class B Common Stock and Non-Voting Class B Common Stock own, in the aggregate, less than a majority of the total voting power of BATS Global Markets, Inc.

Section 3.10(a) of the Current Bylaws permit the board of directors to appoint an executive committee with certain enumerated powers of the board, as well as other committees permitted by law. The New Bylaws would amend Section 3.10(a) to eliminate specific reference to an executive committee and authorize the board to designate one or more committees that may exercise the power of the board to the extent permitted in the resolution designating the committee. This amendment would enhance the board's flexibility to create those committees it deems necessary and most efficient for the functioning of the board. Section 3.10(a) would be further amended to provide that no committee would have the power to (i) approve, adopt or recommend to the stockholders any matter required by Delaware law to be submitted to stockholder approval, or (ii) adopt, amend or repeal any bylaw. These amendments are being made to assure that the full board of directors considers and passes upon these significant corporate decisions.

#### Preferred Stock Directors

The New Bylaws would add new Section 3.12 to clarify that whenever the holders of one or more classes or series of preferred stock have the right to elect a preferred stock director, pursuant to the New Certificate of Incorporation, the provisions of Article 3 of the New Bylaws relating to the election, term of office, filling of vacancies, removal, and other features of directorships would not apply to preferred stock directors. Rather, such features would be governed by the applicable provisions of the New Certificate of Incorporation. This amendment is consistent with the New Certificate of Incorporation with respect to the rights of preferred stockholders, should any class or series of preferred stock be issued with director voting rights in the future.

### Form of Stock Certificates

The New Bylaws would amend Section 6.01 of the Current Bylaws to state that the shares of BATS Global Markets, Inc. shall be represented by certificates, unless the board provides by resolution that some or all of any class or series of stock be uncertificated. Except as otherwise provided by law, holders of certificated and uncertificated shares of the same class and series would have identical rights and obligations. The board will also have the power to make rules for issuance, transfer and registration of certificated or uncertificated shares, and the issuance of new certificates in lieu of those lost or destroyed. The New Bylaws further amend Section 6.01 to provide that BATS Global Markets, Inc. will not have the power to issue a certificate in bearer form. These amendments are intended to align the bylaws of BATS Global Markets, Inc. with standard provisions for Delaware public companies.

### Indemnification

Article X of the Current Bylaws contains certain provisions for the indemnification of directors, officers, employees and certain other agents of BATS Global Markets, Inc. The New Bylaws will eliminate such provisions in their entirety. These provisions are being eliminated because provisions regarding indemnification will instead be contained in Article 10 of the New Certificate of Incorporation.

### Future Bylaws Amendments

In addition to the power of the board to adopt, amend or repeal bylaws provided by Article Eighth of the current certificate of incorporation and Article 9 of the New Certificate of Incorporation, Article XII of the Current Bylaws permit the bylaws to be amended or repealed by the action of stockholders holding seventy percent of the shares

entitled to vote. To conform to the New Certificate of Incorporation, Article 11 of the New Bylaws would amend Article XII to provide that, until a Change in Ownership, the bylaws may be adopted, amended or repealed by the stockholders with the affirmative vote of not less than a majority of the total voting power then entitled to vote in the election of directors. Upon the occurrences of a Change in Ownership, the New Bylaws would provide that bylaws may be adopted, amended or repealed by the stockholders only with the affirmative vote of not less than seventy percent of the total voting power then entitled to vote in the election of directors.

This change is consistent with amendments contained in Section 9.02 of the New Certificate of Incorporation. Section 11.01(c) of the New Bylaws will maintain the provisions contained in Article XII of the Current Bylaws requiring that, for so long as BATS Global Markets, Inc. will control the Exchange, before any amendment to the New Bylaws may become effective, the amendment must be submitted to the board of directors of the Exchange, and if required by Section 19 of the Act,<sup>5</sup> filed with or filed with and approved by the Commission.

#### Loans to Officers

Article XIII of the Current Bylaws authorize BATS Global Markets, Inc. to lend money to or guarantee obligations of any officer of the company under certain circumstances. In order to comply with Section 13(k)(1) of the Act,<sup>6</sup> which will apply to BATS Global Markets, Inc. after the IPO, the New Bylaws eliminate this authority.

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<sup>5</sup> 15 U.S.C. 78s.

<sup>6</sup> 15 U.S.C. 78m(k)(1).

(b) Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>7</sup> In particular, Sections 2.03 and 2.10(c) of the proposed New Bylaws, which prohibit the ability of the stockholders to call a special meeting of the stockholders to act by written consent is consistent with Section 6(b)(1) of the Act, because it prevents any stockholder from exercising undue control over the operation of the Exchange and thereby 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, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

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 or received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

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<sup>7</sup> 15 U.S.C. 78f(b).

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

Not applicable.

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

Not applicable.

9. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibits 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Amendment to Amended and Restated Bylaws of BATS Global Markets, Inc.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-BATS-2011-035)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change to Amend and Restate the Amended and Restated Bylaws of BATS Global Markets, 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 September 7, 2011, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“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

The Exchange is filing with the Commission a proposal to proposal to amend the bylaws of the Exchange’s sole stockholder, BATS Global Markets, Inc.

The text of the proposed rule change is available at the Exchange’s Web site at <http://www.batstrading.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

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

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



the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

On May 13, 2011, BATS Global Markets, Inc., the sole stockholder of the Exchange, filed a registration statement on Form S-1 with the Commission seeking to register shares of Class A common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the "IPO"). In connection with its IPO, BATS Global Markets, Inc. intends to amend and restate its Amended and Restated Bylaws (the "Current Bylaws") and adopt these changes as its Second Amended and Restated Bylaws (the "New Bylaws").

The amendments to the Current Bylaws include, among other things, (i) revising the procedures for stockholder proposals and nomination of directors, (ii) revising the authority to call special meetings of the stockholders, (iii) revising the process for action by written consent of stockholders, (iv) revising the requirements for removal of directors, (v) removal of provisions relating to indemnification of officers and directors, (vi) eliminating the authority to make loans to corporate officers, and (vii) revising certain requirements for approval of future amendments to the New Bylaws.

The purpose of this rule filing is to submit for Commission approval the New Bylaws adopted by BATS Global Markets, Inc., the sole stockholder of the Exchange. The changes described herein relate to the bylaws of BATS Global Markets, Inc. only, not to the governance of the Exchange. The Exchange will continue to be governed by

its existing certificate of incorporation and by-laws. The stock in, and voting power of, the Exchange will continue to be directly and solely held by BATS Global Markets, Inc.

The Exchange has separately filed with the Commission a proposed amendment to the certificate of incorporation of BATS Global Markets, Inc. (the “New Certificate of Incorporation”). It is anticipated that the New Bylaws and the New Certificate of Incorporation will become effective (the “Effective Date”) the moment before the closing of the IPO. The amendments to the bylaws primarily reflect (i) changes to conform the Current Bylaws to provisions more customary for publicly-owned companies, (ii) amendments to conform the Current Bylaws to the New Certificate of Incorporation, and (iii) stylistic and other non-substantive changes.

#### Registered Office

Article I of the Current Bylaws designates the initial registered office of BATS Global Markets, Inc. in the State of Delaware as 1209 Orange Street in the City of Wilmington, County of New Castle, Delaware. Section 1.01 of the New Bylaws would amend Article I to state the registered office will continue to be located at the same location and to further provide the board of directors with the authority to designate another location from time to time. This will provide the board with the flexibility to change the registered office in the future if it believes such a change is necessary.

#### Annual Meeting of Stockholders

Section 2.02(a) of the Current Bylaws require that an annual meeting of stockholders for the purpose of election of directors and such other business that comes before the meeting occur on the third Tuesday of January, or such other time as the board of directors may designate. The Amended Bylaws remove the reference to the third

Tuesday of January from Section 2.02(a) and authorize the board of directors to determine the date and time of the annual meeting.

Section 2.02(b) of the Current Bylaws specifies the procedures for stockholders to properly bring matters before the annual meeting, including specifying that stockholders provide timely notice to BATS Global Markets, Inc. of the business desired to be brought before the meeting. In addition to the requirements contained in the Current Bylaws, Section 2.02(b) of the New Bylaws would require that the stockholder's notice (i) disclose the text of the proposal, (ii) disclose the beneficial owner on whose behalf the proposal is being made, (iii) disclose all agreements, arrangements or understandings between the stockholder and any other person pursuant to which the proposal is being made, (iv) disclose all arrangements or understandings (including derivative positions) to create or mitigate loss or manage the risk or benefit of share price changes, or increase or decrease the voting power of the stockholder or any beneficial owner with respect to the securities of BATS Global Markets, Inc., and (v) provide a representation as to whether the stockholder or any beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of BATS Global Markets, Inc. needed to approve or adopt the proposal, or otherwise solicit proxies from stockholders in support of the proposal.

Section 2.02(c) of the Current Bylaws specifies the procedures for stockholders to properly nominate persons for the board of directors, including that the stockholder provide timely notice to BATS Global Markets, Inc. In addition to the requirements contained in the Current Bylaws, Section 2.02(c) of the New Bylaws would require that the stockholder's notice (i) disclose all agreements, arrangements or understandings

(including derivative positions) to create or mitigate loss or manage the risk or benefit of share price changes, or increase or decrease the voting power of the stockholder, beneficial owner or any such nominee with respect to the securities of BATS Global Markets, Inc., (ii) provide a representation that such stockholder is a stockholder entitled to vote at such meeting and intends to appear in person or by proxy at the meeting and to bring such nomination or other business before the meeting, and (iii) provide a representation as to whether the stockholder or any beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of BATS Global Markets, Inc. needed to elect each such nominee, or otherwise solicit proxies from stockholders in support of the nomination.

The additional disclosure requirements being added to Sections 2.02(b) and 2.02(c) are intended to assure that stockholders asked to vote on a stockholder proposal or stockholder nominee are more fully informed in their voting and are able to consider any proposals or nominations along with the interests of those stockholders or the beneficial owners on whose behalf such proposal or nomination is being made.

The New Bylaws would further include a new Section 2.02(d) which would require that a stockholder proposal or a stockholder nomination be disregarded if the stockholder (or a qualified representative) does not appear at the annual or special meeting to present the proposal or nomination, notwithstanding that proxies may have been received and counted for purposes of determining a quorum. A “qualified representative” would include a duly authorized officer, manager or partner of the stockholder, or such other person authorized in writing to act as such stockholder’s

proxy. The purpose of this requirement is to assure that the stockholders' time at meetings is used efficiently and only serious stockholder proposals and nominations are considered.

The New Bylaws would also add Section 2.02(e), which would require that a stockholder, in addition to (and in no way limiting) all requirements set forth in Section 2.02 with respect to proposals or nominations, must also comply with all applicable requirements of the Act and the rules and regulations promulgated thereunder.

New Section 2.02(f) of the New Bylaws would note that, notwithstanding anything to the contrary in the New Bylaws, the notice requirements with respect to business proposals or nominations would be deemed satisfied if the stockholder submitted a proposal in compliance with Rule 14a-8 of the Act<sup>3</sup> and the proposal has been included in a proxy statement prepared by BATS Global Markets, Inc. to solicit proxies of the meeting of stockholders. This provision would assure that, in addition to proposals that meet the requirements of Section 2.02(b) of the New Bylaws, BATS Global Markets, Inc. would comply with the provisions of the Act and the rules promulgated thereunder with respect to the inclusion of stockholder proposals in its proxy statement.

#### Special Meetings of Stockholders

Section 2.03 of the Current Bylaws permits a special meeting of the stockholders to be called by any of (i) the chairman of the board of directors, (ii) the chief executive officer, (iii) the board of directors pursuant to a resolution passed by a majority of the board, or (iv) by the stockholders entitled to vote at least ten percent of the votes at the

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<sup>3</sup> 17 CFR 240.14a-8.

meeting. The New Bylaws would amend Section 2.03 to only permit a special meeting of the stockholders to be called by the board of directors pursuant to a resolution adopted by the majority of the board. Additionally, whenever any holders of preferred stock have the right to elect directors pursuant to the New Certificate of Incorporation, such holders may call, pursuant to the terms of a resolution adopted by the board, a special meeting of the holders of such preferred stock. These amendments are designed to prevent any stockholder from exercising undue control over the operation of the Exchange by circumventing the board of directors of BATS Global Markets, Inc. through a special meeting of the stockholders.

#### Voting Rights

Section 2.07 of the Current Bylaws describes the rights of stockholders of BATS Global Markets, Inc. to vote their shares at a meeting of stockholders. The New Bylaws would amend Section 2.07 to further clarify that any share of stock of BATS Global Markets, Inc. held by BATS Global Markets, Inc. shall have no voting rights, except when such shares are held in a fiduciary capacity.

#### Action without a Meeting

Section 2.10 of the Current Bylaws permits certain actions to be taken by written consent of stockholders if signed by the holders of outstanding stock representing not less than the number of votes necessary to authorize or take such action at a meeting where all shares entitled to vote were present and voted. Section 2.10(c) of the Current Bylaws also require that prompt notice of such actions by less than unanimous consent be given to those stockholders that did not consent in writing. The New Bylaws would amend Section 2.10(c) to clarify that such notice need only be provided to those stockholders

who would have been entitled to notice of the meeting if the record date for such notice had been the date the written consent was delivered to BATS Global Markets, Inc.

Section 2.10(c) of the Current Bylaws further provides that no action by written consent may be taken following an initial public offering of the common stock of BATS Global Markets, Inc. The New Bylaws would amend Section 2.10(c) to instead provide that no action by written consent may be taken following a Change in Ownership, as defined in the New Certificate of Incorporation.<sup>4</sup> This change is consistent with amendments contained in the New Certificate of Incorporation and is designed to prevent any stockholder from exercising undue control over the operation of the Exchange by circumventing the board of directors of BATS Global Markets, Inc. through action by written consent.

#### Removal of Directors

Section 3.05 of the Current Bylaws provides that the board of directors or any director may be removed, with or without cause, by the affirmative vote of at least sixty-six and two-thirds percent of the voting power of all then-outstanding shares of voting stock of BATS Global Markets, Inc. The New Bylaws would amend Section 3.05 to reduce the percentage of the voting power required to remove a director, with or without cause, from sixty-six and two-thirds percent to a simple majority.

The purpose of this amendment is to align BATS Global Markets, Inc.'s requirements for removal of directors with Section 141(k) of the Delaware General

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<sup>4</sup> Under the New Certificate of Incorporation, a "Change in Ownership" is deemed to occur at such time as the beneficial owners of the Class B Common Stock and Non-Voting Class B Common Stock own, in the aggregate, less than a majority of the total voting power of BATS Global Markets, Inc.

Corporation Law, which generally permits a simple majority of stockholders to remove any director or a the board of directors with or without cause.

#### Committees of Directors

Section 3.10(a) of the Current Bylaws permit the board of directors to appoint an executive committee with certain enumerated powers of the board, as well as other committees permitted by law. The New Bylaws would amend Section 3.10(a) to eliminate specific reference to an executive committee and authorize the board to designate one or more committees that may exercise the power of the board to the extent permitted in the resolution designating the committee. This amendment would enhance the board's flexibility to create those committees it deems necessary and most efficient for the functioning of the board. Section 3.10(a) would be further amended to provide that no committee would have the power to (i) approve, adopt or recommend to the stockholders any matter required by Delaware law to be submitted to stockholder approval, or (ii) adopt, amend or repeal any bylaw. These amendments are being made to assure that the full board of directors considers and passes upon these significant corporate decisions.

#### Preferred Stock Directors

The New Bylaws would add new Section 3.12 to clarify that whenever the holders of one or more classes or series of preferred stock have the right to elect a preferred stock director, pursuant to the New Certificate of Incorporation, the provisions of Article 3 of the New Bylaws relating to the election, term of office, filling of vacancies, removal, and other features of directorships would not apply to preferred stock directors. Rather, such features would be governed by the applicable provisions of the New Certificate of



Incorporation. This amendment is consistent with the New Certificate of Incorporation with respect to the rights of preferred stockholders, should any class or series of preferred stock be issued with director voting rights in the future.

#### Form of Stock Certificates

The New Bylaws would amend Section 6.01 of the Current Bylaws to state that the shares of BATS Global Markets, Inc. shall be represented by certificates, unless the board provides by resolution that some or all of any class or series of stock be uncertificated. Except as otherwise provided by law, holders of certificated and uncertificated shares of the same class and series would have identical rights and obligations. The board will also have the power to make rules for issuance, transfer and registration of certificated or uncertificated shares, and the issuance of new certificates in lieu of those lost or destroyed. The New Bylaws further amend Section 6.01 to provide that BATS Global Markets, Inc. will not have the power to issue a certificate in bearer form. These amendments are intended to align the bylaws of BATS Global Markets, Inc. with standard provisions for Delaware public companies.

#### Indemnification

Article X of the Current Bylaws contains certain provisions for the indemnification of directors, officers, employees and certain other agents of BATS Global Markets, Inc. The New Bylaws will eliminate such provisions in their entirety. These provisions are being eliminated because provisions regarding indemnification will instead be contained in Article 10 of the New Certificate of Incorporation.

#### Future Bylaws Amendments

In addition to the power of the board to adopt, amend or repeal bylaws provided by Article Eighth of the current certificate of incorporation and Article 9 of the New Certificate of Incorporation, Article XII of the Current Bylaws permit the bylaws to be amended or repealed by the action of stockholders holding seventy percent of the shares entitled to vote. To conform to the New Certificate of Incorporation, Article 11 of the New Bylaws would amend Article XII to provide that, until a Change in Ownership, the bylaws may be adopted, amended or repealed by the stockholders with the affirmative vote of not less than a majority of the total voting power then entitled to vote in the election of directors. Upon the occurrences of a Change in Ownership, the New Bylaws would provide that bylaws may be adopted, amended or repealed by the stockholders only with the affirmative vote of not less than seventy percent of the total voting power then entitled to vote in the election of directors.

This change is consistent with amendments contained in Section 9.02 of the New Certificate of Incorporation. Section 11.01(c) of the New Bylaws will maintain the provisions contained in Article XII of the Current Bylaws requiring that, for so long as BATS Global Markets, Inc. will control the Exchange, before any amendment to the New Bylaws may become effective, the amendment must be submitted to the board of directors of the Exchange, and if required by Section 19 of the Act,<sup>5</sup> filed with or filed with and approved by the Commission.

#### Loans to Officers

Article XIII of the Current Bylaws authorize BATS Global Markets, Inc. to lend money to or guarantee obligations of any officer of the company under certain

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<sup>5</sup> 15 U.S.C. 78s.

circumstances. In order to comply with Section 13(k)(1) of the Act,<sup>6</sup> which will apply to BATS Global Markets, Inc. after the IPO, the New Bylaws eliminate this authority.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>7</sup> In particular, Sections 2.03 and 2.10(c) of the proposed New Bylaws, which prohibit the ability of the stockholders to call a special meeting of the stockholders to act by written consent is consistent with Section 6(b)(1) of the Act, because it prevents any stockholder from exercising undue control over the operation of the Exchange and thereby 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, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

### (B) 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.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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<sup>6</sup> 15 U.S.C. 78m(k)(1).

<sup>7</sup> 15 U.S.C. 78f(b).

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 Exchange 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 proposal 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-BATS-2011-035 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-BATS-2011-035. 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 Commission's 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 changes 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing will also 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 No. SR-BATS-2011-035 and should be submitted on or before [\_\_\_\_\_21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).

Note: Proposed new language is underlined. Proposed deletions are enclosed in [brackets].

**SECOND AMENDED AND RESTATED**  
**BYLAWS OF**  
**BATS GLOBAL MARKETS, INC.**

ARTICLE [I] 1  
OFFICES

Section 1.01. *Registered Office.* The[ initial] registered office of BATS Global Markets, Inc. (the “Corporation”) in the State of Delaware shall be located at 1209 Orange Street in the City of Wilmington, County of New Castle, Delaware 19801, or at such other location within the State of Delaware. The initial registered agent at such address shall be] as the board of directors of the Corporation [Trust Company](the “Board of Directors”) may from time to time designate.

Section 1.02. *Other Offices.* The Corporation may have such other office or offices, either within of without the State of Delaware, as the Board of Directors may from time to time designate or as the purposes of the Corporation may require from time to time.

ARTICLE [II] 2  
STOCKHOLDERS MEETINGS

Section 2.01. *Place of Meetings.* Meetings of the stockholders of the Corporation (the “Stockholders”) shall be held at such place, either within or without the State of Delaware, as may be designated from time to time by the Board of Directors.

Section 2.02. *Annual Meeting.* (a) [The]An annual meeting of[ the] Stockholders [of the Corporation, ]for the[ purpose of] election of directors to succeed those whose terms expire and for the transaction of such other business as may [lawfully]properly come before [it,]the meeting shall be held [on the third Tuesday of January of each year or]at such place, on such date and at such [other ]time as[ may be designated from time to time by] the Board of Directors shall determine.

(b) At an annual meeting of the Stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be: (A) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (B) otherwise properly brought before the meeting by or at the direction of the Board of Directors[, ] or (C) otherwise properly brought before the meeting by a Stockholder. For business to be properly brought before an annual meeting by a Stockholder, the Stockholder must have given timely notice thereof in

writing to the Secretary of the Corporation. To be timely, a Stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not later than the close of business on the sixtieth (60th) day nor earlier than the close of business on the ninetieth (90th) day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) days from the date contemplated at the time of the previous year's proxy statement, notice by the Stockholder to be timely must be so received not earlier than the close of business on the ninetieth (90th) day prior to such annual meeting and not later than the close of business on the later of the sixtieth (60th) day prior to such annual meeting or, in the event public announcement of the date of such annual meeting is first made by the Corporation fewer than seventy (70) days prior to the date of such annual meeting, the close of business on the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation. A Stockholder's notice to the Secretary shall set forth as to each matter the Stockholder proposes to bring before the annual meeting: (i) a brief description of the business desired to be brought before the annual meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these bylaws of the Corporation (the "Bylaws") the language of the proposed amendment), and the reasons for conducting such business at the annual meeting, (ii) the name and address, as they appear on the Corporation's books, of the Stockholder proposing such business, and the beneficial owner, if any, on whose behalf the proposal is being made (iii) the class and number of shares of the Corporation which are beneficially owned by the Stockholder, (iv) any material interest of the Stockholder or such beneficial owner in such business and (v), (v) a description of all arrangements or understandings between the Stockholder and any other person or persons (naming such person or persons) pursuant to which the proposal is to be made by the Stockholder, (vi) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative, long or short positions, profit interests, forwards, futures, swaps, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into by or on behalf of, or any other agreement, arrangement or understanding that has been made, the effect or intent of which is to create or mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such Stockholder or any such beneficial owner with respect to the Corporation's securities, (vii) a representation as to whether such Stockholder or any such beneficial owner intends or is part of a group that intends to (A) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding capital stock required to approve or adopt the proposal and/or (B) otherwise to solicit proxies from Stockholders in support of such proposal, and (viii) any other information that [is]would be required to be provided by the Stockholder pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "1934 Act"), in his or her capacity as a proponent [to]of a Stockholder proposal.

Notwithstanding the foregoing, in order to include information with respect to a Stockholder proposal in the proxy statement and form of proxy for a Stockholder's meeting, Stockholders must provide notice as required by the regulations promulgated under the 1934 Act. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at any annual meeting except in accordance with the procedures set forth in this [paragraph ]Section 2.02(b). The chairman of the annual meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting and in accordance with the provisions of this [paragraph ]Section 2.02(b), and, if he or she should so determine, he or she shall so declare at the meeting that any such business not properly brought before the meeting shall not be transacted.

(c) Only persons who are nominated in accordance with the procedures set forth in this Section 2.02(c) shall be eligible for election as directors. Nominations of persons for election to the Board of Directors [of the Corporation ]may be made at a meeting of Stockholders by or at the direction of the Board of Directors or by any Stockholder of the Corporation entitled to vote in the election of directors at the meeting who complies with the notice procedures set forth in this [paragraph (c) and Section 4.1 of that certain Investor Rights Agreement (the "Investor Agreement"), dated January 1, 2008, as may be amended from time to time, for so long as such Investor Agreement is in effect (capitalized terms in the Investor Agreement shall have the meanings assigned to them in such Investor Agreement, a copy of which is attached to these Bylaws as Exhibit A]Section 2.02(c). Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation in accordance with the provisions of [paragraph (b) of this ]Section [2.02.]2.02(b). Such Stockholder's notice shall set forth (i) as to each person, if any, whom the Stockholder proposes to nominate for election or re-election as a director: ([A]I) the name, age, business address and residence address of such person, ([B]II) the principal occupation or employment of such person, ([C]III) the class and number of shares of the Corporation which are beneficially owned by such person, ([D]IV) a description of all arrangements or understandings between the Stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the Stockholder, [and (E)(V) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative, long or short positions, profit interests, forwards, futures, swaps, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into by or on behalf of, or any other agreement, arrangement or understanding that has been made, the effect or intent of which is to create or mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such Stockholder or any such beneficial owner or any such nominee with respect to the Corporation's securities, (VI) a representation that the Stockholder is a Stockholder of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to bring such nomination or other business before the



meeting, (VII) a representation as to whether such Stockholder or any such beneficial owner intends or is part of a group that intends to (a) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding capital stock required to elect each such nominee and/or (b) otherwise to solicit proxies from Stockholders in support of such nomination and (VIII) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation such person's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected); and (ii) as to [such]the Stockholder giving notice, and the beneficial owner, if any, on whose behalf the notice was given, the information required to be provided by a Stockholder proposing business pursuant to [paragraph (b) of this ]Section [2.02.]2.02(b). At the request of the Board of Directors, any person nominated by a Stockholder for election as a director shall furnish to the Secretary of the Corporation that information required to be set forth in the Stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in [this paragraph ]Section 2.02(c). The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by these Bylaws, and if he or she should so determine, he or she shall so declare at the meeting, and the defective nomination shall be disregarded.

(d) Notwithstanding the foregoing provisions of Section 2.02(b) and Section 2.02(c), unless otherwise required by law, if a Stockholder (or a qualified representative of the Stockholder) does not appear at the annual or special meeting of Stockholders of the Corporation to present a nomination or other proposed business, such nomination shall be disregarded or such proposed business shall not be transacted, as the case may be, notwithstanding that proxies in respect of such vote may have been received by the Corporation and counted for purposes of determining a quorum. For purposes of this Section 2.02(d), to be considered a qualified representative of the Stockholder, a person must be a duly authorized officer, manager or partner of such Stockholder or must be authorized by a writing executed by such Stockholder or an electronic transmission delivered by such Stockholder to act for such Stockholder as proxy at the meeting of Stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of Stockholders.

(e) Without limiting the foregoing provisions of this Section 2.02, a Stockholder shall also comply with all applicable requirements of the 1934 Act, and the rules and regulations thereunder, with respect to the matters set forth in this Section 2.02; provided, however, that any references in these Bylaws to the 1934 Act or such rules and regulations are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be

considered pursuant to this Section 2.02, and compliance with this Section 2.02 shall be the exclusive means for a Stockholder to make nominations or submit other business (other than as provided in Section 2.02(f)).

(f) Notwithstanding anything to the contrary, the notice requirements set forth herein with respect to the proposal of any business pursuant to Section 2.02(b) shall be deemed satisfied by a Stockholder if such Stockholder has submitted a proposal to the Corporation in compliance with Rule 14a-8 under the 1934 Act and such Stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for the meeting of Stockholders.

Section 2.03. *Special Meetings.* [(a)] Special meetings of the Stockholders [of the Corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, (iii) the Board of Directors] may be called only by the Board of Directors acting pursuant to a resolution adopted by a majority of the [total number] Board of [authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to)] Directors. Notwithstanding the foregoing, whenever holders of one or more classes or series of Preferred Stock, as defined in the Corporation's Third Amended and Restated Certificate of Incorporation (the "**Certificate of Incorporation**"), shall have the right, voting separately as a class or series, to elect directors, such holders may call, pursuant to the terms of the resolution or resolutions adopted by the Board of Directors [for adoption) or (iv) by the holders of shares entitled to cast not less than ten percent (10%) of the votes at the meeting, and shall be held at such place, on such date, and at such time as the Board of Directors, shall fix. ]pursuant to the Certificate of Incorporation, special meetings of holders of such Preferred Stock.

[(b) If a special meeting is called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the Chairman of the Board of Directors, the Chief Executive Officer, or the Secretary of the Corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than thirty-five (35) nor more than one hundred twenty (120) days after the date of the receipt of the request. Upon determination of the time and place of the meeting, the officer receiving the request shall cause notice to be given to the Stockholders entitled to vote, in accordance with the provisions of Section 2.04 of these Bylaws. If the notice is not given within sixty (60) days after the receipt of the request, the person or persons requesting the meeting may set the time and place of the meeting and give the notice. Nothing contained in this Section 2.03(b) shall be construed as limiting, fixing, or affecting the time when a meeting of Stockholders called by action of the Board of Directors may be held. ]

Section 2.04. *Notice of Meetings.* Except as otherwise provided by law or the Certificate of Incorporation, written notice of each meeting of Stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each Stockholder entitled to vote at such meeting, such notice to specify the place, date and hour and purpose or purposes of the meeting. Notice of the time, place and purpose of any meeting of Stockholders may be waived in writing, signed by the person entitled to notice thereof, either before or after such meeting, and will be waived by any Stockholder by his or her attendance thereat in person or by proxy, except when the Stockholder 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. Any Stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 2.05. *Quorum[.]; Vote Requirements.* At all meetings of Stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person or by proxy duly authorized, of the holders of a majority of the voting power of all the then outstanding shares of stock entitled to vote at a meeting of Stockholders shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of Stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the voting power of the shares represented thereat, but no other business shall be transacted at such meeting. The Stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough Stockholders to leave less than a quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all action taken by the holders of a majority of the [vote]votes cast[, excluding abstentions,] at any meeting at which a quorum is present shall be valid and binding upon the Corporation; *provided, however,* that directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by [the statute]Delaware law or by the Certificate of Incorporation or these Bylaws, a majority of the voting power of the outstanding shares of such class or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality of the votes of the shares present in person or represented by proxy, in the case of the election of directors) of the votes [cast]present in person or represented by proxy, excluding abstentions, by the holders of shares of such class or classes or series shall be the act of such class or classes or series.

Section 2.06. *Adjournment and Notice of Adjourned Meetings.* Any meeting of Stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the voting power of the shares casting votes, excluding abstentions. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. 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.

Section 2.07. *Voting Rights.* For the purpose of determining those Stockholders entitled to vote at any meeting of the Stockholders, except as otherwise provided by law or the Certificate of Incorporation, only persons in whose names shares stand on the stock records of the Corporation on the record date, as provided in Section 6.04 [of these Bylaws], shall be entitled to vote at any meeting of Stockholders. Any share of capital stock of the Corporation held by the Corporation shall have no voting rights, except where such shares are held in a fiduciary capacity by the Corporation. Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a Stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

Section 2.08. *Joint Owners of Stock.* If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety[, ] or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his or her act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in Section 217(b) of the General Corporation Law of the State of Delaware[, Section 217(b)]. If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even split for the purpose of [subsection] clause (c) above shall be a majority or even split in interest.

Section 2.09. *List of Stockholders.* The Secretary shall prepare and make, at least ten (10) days before every meeting of Stockholders, a complete list of the Stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each Stockholder and the number of shares registered in the name of each Stockholder. Such list shall be open to the examination of any

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

Section 2.10. *Action Without Meeting.* (a) [Unless] Except as otherwise provided in the Certificate of Incorporation, any action required by statute to be taken at any annual or special meeting of the Stockholders, or any action which may be taken at any annual or special meeting of the Stockholders, 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 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.

(b) Every written consent shall bear the date of signature of each Stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the Corporation in the manner herein required, written consents signed by a sufficient number of Stockholders to take action are 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 a Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

(c) 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 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 notice of 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 as provided in Section 2.10(b). If the action which is consented to is such as would have required the filing of a certificate under any section of the General Corporation Law of the State of Delaware if such action had been voted on by Stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of Stockholders, that written notice and written consent have been given as provided in Section 228 of the General Corporation Law of the State of Delaware. Notwithstanding the foregoing, no such action by written consent may be taken following the [closing of the initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "1933 Act"), covering the offer and sale of Common Stock of the Corporation (the "Initial Public Offering")] occurrence of a Change in Ownership (as defined in the Certificate of Incorporation).

Section 2.11. *Organization.* (a) At every meeting of Stockholders, the Chairman of the Board of Directors, or, if a Chairman of the Board of Directors has not been appointed or is absent, the President and Chief Executive Officer, or, if the President and Chief Executive Officer is absent, a chairman of the meeting chosen by a majority [in interest]of the voting power of the then outstanding shares entitled to vote at a meeting of the Stockholders[ entitled to vote], present in person or by proxy, shall act as chairman. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the President and Chief Executive Officer, shall act as secretary of the meeting.

(b) The Board of Directors[ of the Corporation] shall be entitled to make such rules or regulations for the conduct of meetings of Stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to Stockholders of record of the Corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. 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 rules of parliamentary procedure.

### ARTICLE [III] 3 DIRECTORS

Section 3.01. *Number and Term of Office.* The Board of Directors[ of the Corporation] shall consist of one or more members, the number thereof to be determined from time to time by resolution of the Board of Directors unless otherwise provided in the Certificate of Incorporation. Directors need not be Stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the Stockholders called for that purpose in the manner provided in these Bylaws. No person that is subject to any statutory disqualification (as defined in Section 3(a)(39) of the 1934 Act) may be a director of the Corporation.

Section 3.02. *Powers.* The [powers]business and affairs of the Corporation shall be [exercised, its business conducted and its property controlled by]managed by or under the direction of a Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation. The Board of Directors

shall have the power to interpret these [By-Laws]Bylaws and any interpretation made by it shall be final and conclusive.

Section 3.03. *Vacancies.* Unless otherwise provided in the Certificate of Incorporation, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall [unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by Stockholders, ]be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by Stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under [this Bylaw]these Bylaws in the case of the death, removal or resignation of any director.

Section 3.04. *Resignation.* Any director may resign at any time by delivering his or her written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his or her successor shall have been duly elected and qualified.

Section 3.05. *Removal.* Subject to the rights of the holders of any series of Common Stock (as defined in the Certificate of Incorporation), the Board of Directors or any individual director may be removed from office [at any time (i) ]with or without cause by [the]an affirmative vote of [at least sixty-six and two-thirds percent (66 2/3%)]not less than a majority of the voting power of all the then-outstanding shares of voting stock of the Corporation, entitled to vote at an election of directors[ (the "Voting Stock") or (ii) without cause by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all the then-outstanding shares of the Voting Stock. ].

Section 3.06. *Meetings.* (a) *Annual Meetings.* The annual meeting of the Board of Directors shall be held immediately before or after the annual meeting of Stockholders and at the place where such meeting is held. No notice of an annual meeting of the Board of Directors shall be necessary, and such meeting shall be

held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) *Regular Meetings.* Unless otherwise specified by the Certificate of Incorporation, regular meetings of the Board of Directors shall be held at any place within or without the State of Delaware which has been designated by resolution of the Board of Directors or the written consent of all directors.

(c) *Special Meetings.* Unless otherwise specified by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the President and Chief Executive Officer or any two of the directors.

(d) *Telephone Meetings.* Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(e) *Notice of Meetings.* Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, facsimile, telegraph or telex, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting, or sent in writing to each director by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(f) *Waiver of Notice.* The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present shall sign a written waiver of notice. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.07. *Quorum and Voting.* (a) Unless the Certificate of Incorporation requires a greater number and except with respect to indemnification questions arising under [Section 10.01 hereof] Article 10 thereof, for which a quorum shall be one third (1/3) of the exact number of directors fixed from time to time in accordance with the Certificate of Incorporation, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however*, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until



the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote [be]is required by Delaware law, the Certificate of Incorporation or these Bylaws.

Section 3.08. *Action Without Meeting.* Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, 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 such committee, as the case may be, consent thereto in writing, and such writing or writings are filed with the minutes of proceedings of the Board of Directors or such committee.

Section 3.09. *Fees and Compensation.* Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee[, ] or otherwise and receiving compensation therefor.

Section 3.10. *Committees.* (a)[ Executive Committee.] The Board of Directors may [by resolution passed by a majority of the whole Board of Directors appoint an Executive]designate one or more committees, each committee to consist of one [(1) ]or more [members of the Board of]of the directors[. The Executive]of the Corporation. Any such committee, to the extent[ permitted by law and] provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, [including without limitation the power or authority to declare a dividend, to authorize ][the issuance of stock and to adopt a certificate of ownership and merger, ]and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to [amending the Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board of Directors fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), adopting an agreement of merger or consolidation,]the following matters: (i) approving or adopting, or recommending to the Stockholders[ the sale, lease or exchange of all

or substantially all of the Corporation's property and assets, recommending to the Stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the Bylaws of the Corporation. ], any action or matter expressly required by Delaware law to be submitted to the Stockholders for approval or (ii) adopting, amending or repealing these Bylaws.

[(b) Other Committees. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, from time to time appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall such committee have the powers denied to the Executive Committee in these Bylaws. ]

[(c)b] [ Term. ] Each member of a committee of the Board of Directors shall serve a term on the committee coexistent with such member's term on the Board of Directors. The Board of Directors, subject to the provisions of [subsections (a) or (b) of this Bylaw] Section 3.10(a) may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his or her death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member, and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors 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, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

[(d) Meetings. ] (c) Unless the Board of Directors shall otherwise provide, regular meetings of [the Executive Committee or any other] any committee appointed pursuant to this Section 3.10 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special 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. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 3.11. *Organization.* At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman of the Board of Directors has not been appointed or is absent, the President and Chief Executive Officer, or if the President and Chief Executive Officer is absent, the most senior Vice President, or, in the absence of any such officer, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his or her absence, an Assistant Secretary directed to do so by the President and Chief Executive Officer, shall act as secretary of the meeting.

Section 3.12. *Preferred Stock Directors.* Notwithstanding anything else contained herein, whenever the holders of one or more classes or series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors (“Preferred Stock Directors”), the election, term of office, filling of vacancies, removal and other features of such preferred stock directorships shall be governed by the terms of the applicable provisions of the Certificate of Incorporation, and the provisions of this Article 3 regarding such matters shall not be applicable to Preferred Stock Directors unless otherwise expressly provided therein.

#### ARTICLE [IV] 4 OFFICERS

Section 4.01. *Officers Designated.* The officers of the Corporation shall include, if and when designated by the Board of Directors, the Chairman of the Board of Directors, the President and Chief Executive Officer, one or more Vice Presidents, the Secretary, the Chief Financial Officer, the Treasurer[,], and the Controller, all of whom shall be elected at the annual[ organizational] meeting of the Board of Directors. The Board of Directors may also appoint one or more Assistant Secretaries, Assistant Treasurers, Assistant Controllers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the Corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the Corporation shall be fixed by or in the manner designated by the Board of Directors.

Section 4.02. *Tenure and Duties of Officers.* (a) *General.* All officers shall hold office at the pleasure of the Board of Directors and until their successors shall

have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. No person that is subject to any statutory disqualification (as defined in Section 3(a)(39) of the 1934 Act) may be an officer of the Corporation.

(b) *Duties of Chairman of the Board of Directors.* The Chairman of the Board of Directors, when present, shall preside at all meetings of the Stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform other duties commonly incident to his or her office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(c) *Duties of President and Chief Executive Officer.* The President and Chief Executive Officer shall preside at all meetings of the Stockholders and at all meetings of the Board of Directors, unless [the]a Chairman of the Board of Directors has been appointed and is present. Unless some other officer has been elected Chief Executive Officer of the Corporation, the President and Chief Executive Officer shall be the chief executive officer of the Corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the Corporation. The President and Chief Executive Officer shall perform other duties commonly incident to his or her office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. In the absence or disability of the President and Chief Executive Officer, or if there is no President and Chief Executive Officer, the Vice President who has served as such for the longest duration or another Vice President designated by the Board of Directors shall serve as the chief executive officer of the Corporation and shall have the powers and duties prescribed in this [paragraph ]Section 4.02(c).

(d) *Duties of Vice Presidents.* The Vice Presidents shall perform duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the President and Chief Executive Officer shall designate from time to time.

(e) *Duties of Secretary.* The Secretary shall attend all meetings of the Stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the Corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the Stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties given to him or her in these Bylaws and other duties commonly incident to his or her office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President and Chief Executive Officer may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform

other duties commonly incident to his or her office and shall also perform such other duties and have such other powers as the Board of Directors or the President and Chief Executive Officer shall designate from time to time.

(f) *Duties of Chief Financial Officer.* The Chief Financial Officer shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner and shall render statements of the financial affairs of the Corporation in such form and as often as required by the Board of Directors or the President and Chief Executive Officer. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the Corporation. The Chief Financial Officer shall perform other duties commonly incident to his or her office and shall also perform such other duties and have such other powers as the Board of Directors or the President and Chief Executive Officer shall designate from time to time. The President and Chief Executive Officer may direct the Treasurer or any Assistant Treasurer, or the Controller or any Assistant Controller, to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer[ and], Assistant Treasurer[ and each], Controller and Assistant Controller shall perform other duties commonly incident to his or her office and shall also perform such other duties and have such other powers as the Board of Directors or the President and Chief Executive Officer shall designate from time to time.

Section 4.03. *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.

Section 4.04. *Resignations.* Any officer may resign at any time by giving written notice to the Board of Directors or to the President and Chief Executive Officer or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the Corporation under any contract with the resigning officer.

Section 4.05. *Removal.* Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE [V] 5  
EXECUTION OF CORPORATE INSTRUMENTS AND VOTING  
OF SECURITIES OWNED BY THE CORPORATION

Section 5.01. *Execution of Corporate Instruments.* The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the Corporation any corporate instrument or document, or to sign on behalf of the Corporation the corporate name without limitation, or to enter into contracts on behalf of the Corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the Corporation.

Unless otherwise specifically determined by the Board of Directors or otherwise required by law, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the Corporation, and other corporate instruments or documents requiring the corporate seal, and certificates of shares of stock owned by the Corporation, shall be executed, signed or endorsed by the Chairman of the Board of Directors, or the President and Chief Executive Officer or any Vice President, and by the Secretary or Treasurer or any Assistant Secretary or Assistant Treasurer. All other instruments and documents requiring the corporate signature, but not requiring the corporate seal, may be executed as aforesaid or in such other manner as may be directed by the Board of Directors.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the Corporation or in special accounts of the Corporation shall be signed by such person or persons as the Board of Directors shall authorize[ so to do].

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 5.02. *Voting of Securities Owned by the Corporation.* (a) Unless otherwise instructed by the Board of Directors, and subject to Section 5.02(b)[ below], the President and Chief Executive Officer of the Corporation shall have the power and authority on behalf of the Corporation to attend and to vote at any meeting of Stockholders, partners or equity holders of any corporation, partnership or any other entity (including BATS Exchange, Inc. and BATS Y-Exchange, Inc.) in which the Corporation may hold stock, partnership or other equity interests, as the case may be, and may exercise on behalf of the Corporation 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 Corporation in connection with the exercise by the Corporation of the rights and powers incident to the ownership of such stock, partnership or other equity interest. The Board of Directors may from time to time confer like powers upon any other person or persons.

(b) At any meeting of the Stockholders of BATS Exchange, Inc. held for the purpose of electing directors and members of the Member Nominating Committee of BATS Exchange, Inc. (as set forth in the [By-Laws]bylaws of BATS

Exchange, Inc.[, the “Member Nominating Committee”]), or in the event written consents are solicited or otherwise sought from the Stockholders of BATS Exchange, Inc. with respect thereto, the Corporation shall cause all outstanding shares of BATS Exchange, Inc. owned by the Corporation and entitled to vote at such election to be voted in favor of only those BATS Exchange, Inc. member representative directors and nominees for the Member Nominating Committee of BATS Exchange, Inc. nominated in accordance with the [By-Laws]bylaws of BATS Exchange, Inc. and, with respect to any such written consents, shall cause to be validly executed only such written consents electing only such directors and members of the Member Nominating Committee of BATS Exchange, Inc. nominated in accordance with the bylaws of BATS Exchange, Inc.

(c) At any meeting of the Stockholders of BATS Y-Exchange, Inc. held for the purpose of electing directors and members of the Member Nominating Committee of BATS Y-Exchange, Inc. (as set forth in the [By-Laws]bylaws of BATS Y-Exchange, Inc.[, the “Member Nominating Committee”]), or in the event written consents are solicited or otherwise sought from the Stockholders of BATS Y-Exchange, Inc. with respect thereto, the Corporation shall cause all outstanding shares of BATS Y-Exchange, Inc. owned by the Corporation and entitled to vote at such election to be voted in favor of only those BATS Y-Exchange, Inc. member representative directors and nominees for the Member Nominating Committee of BATS Y-Exchange, Inc. nominated in accordance with the [By-Laws]bylaws of BATS Y-Exchange, Inc. and, with respect to any such written consents, shall cause to be validly executed only such written consents electing only such directors and members of the Member Nominating Committee of BATS Y-Exchange, Inc. nominated in accordance with the bylaws of BATS Y-Exchange, Inc.

## ARTICLE [VI] 6 SHARES OF STOCK

Section 6.01. *Form and Execution of Certificates.* [Certificates for ]The shares off[ stock of] the Corporation shall be [in such form as is consistent with the Certificate of Incorporation and applicable law]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 its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Except as otherwise provided by Delaware law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of shares represented by certificates of the same class and series shall be identical. Every holder of stock in the Corporation shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman of the Board of Directors, or the President [or]and Chief Executive Officer or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by [him]such holder in the Corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent[,] or registrar who has signed

or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent[,] or registrar before such certificate is issued, it may be issued with the same effect as if he, she or it were such officer, transfer agent, or registrar at the date of issue. Each certificate shall state upon the face or back thereof, in full or in summary, all of the powers, designations, preferences, and rights[,] and the limitations or restrictions of the shares authorized to be issued or shall, except as otherwise required by Delaware law, set forth on the face or back 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. Within a reasonable time after the issuance or transfer of uncertificated stock, 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 this Section 6.01 or otherwise required by Delaware law or with respect to this Section 6.01 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. [Except as otherwise expressly provided by law, the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.]The Corporation shall not have power to issue a certificate in bearer form.

Section 6.02. *Lost Certificates.* A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen[,] or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The Corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen[,] or destroyed certificate or certificates, or [his]the owner's legal representative, to advertise the same in such manner as it shall require or to give the Corporation and/or transfer agent and/or registrar a surety bond in such form and amount as it may direct as indemnity against any claim that may be made [against the Corporation ]with respect to the certificate alleged to have been lost, stolen[,] or destroyed.

Section 6.03. *Transfers.* (a) Transfers of record of shares of stock of the Corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The Corporation shall have power to enter into and perform any agreement with any number of Stockholders of any one or more classes of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such Stockholders in any manner not prohibited by the [General Corporation Law of ]Delaware law.



(c) The Corporation shall have the right by appropriate action to impose restrictions upon the transfer of any shares of its stock, or any interest therein, from time to time, so long as such restrictions are consistent with the provisions of the Certificate of Incorporation.

(d) The Board of Directors shall have the power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificated or uncertificated shares of the stock of the Corporation, as well as for the issuance of new certificates in lieu of those which may be lost or destroyed.

Section 6.04. *Fixing Record Dates.* (a) In order that the Corporation may determine the Stockholders entitled to notice of or to vote at any meeting of Stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, 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 next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. 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.

(b) Prior to [the Initial Public Offering] any Change in Ownership (as defined in the Certificate of Incorporation), in order that the Corporation may determine the Stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any Stockholder of record seeking to have the Stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within ten (10) days of the date on which such a request is received, the record date for determining Stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by [applicable] Delaware law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is 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 by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by Delaware law, the record date for determining Stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the Stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the Stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining Stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 6.05. *Registered Stockholders.* The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by [the laws of ]Delaware law.

#### ARTICLE [VII] 7 OTHER SECURITIES OF THE CORPORATION

All bonds, debentures and other corporate securities of the Corporation, other than stock certificates (covered in Section 6.01), may be signed by the Chairman of the Board of Directors, the President [or]and Chief Executive Officer or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however,* that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the Corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such

interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the Corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the Corporation.

ARTICLE [VIII] 8  
DIVIDENDS

Section 8.01. *Declaration of Dividends.* Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors pursuant to Delaware law at any regular or special meeting. Dividends may be paid in cash, in property[,] or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 8.02. *Dividend Reserve.* Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in [their]its absolute discretion, [think]thinks proper as a reserve or reserves to meet contingencies[,] or for equalizing dividends[,] or for repairing or maintaining any property of the Corporation[,] or for such other purpose as the Board of Directors shall think conducive to the interests of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE [IX] 9  
FISCAL YEAR

The fiscal year of the Corporation shall be the calendar year.

[ARTICLE X]  
[INDEMNIFICATION ]

[Section 10.01 Indemnification of Directors, Officers, Employees And Other Agents. The Corporation shall indemnify its directors and executive officers to the fullest extent not prohibited by the Delaware General Corporation Law; provided, however, that the Corporation may limit the extent of such indemnification by individual contracts with its directors and executive officers; and, provided, further, that the Corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against the Corporation or its directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the Corporation or (iii) such indemnification is provided by the Corporation, in its sole discretion, pursuant to the powers vested in the Corporation under the Delaware General Corporation Law. ]

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

[(b) Expenses. The Corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or executive officer, of the Corporation, or is or was serving at the request of the Corporation as a director or executive officer of another Corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or executive officer in connection with such proceeding upon receipt of an undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Bylaw or otherwise. ]

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

[(c) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the Corporation and the director or executive officer. Any right to indemnification or advances granted by this Bylaw to a director or executive officer shall be enforceable by or on behalf of the person holding such right in the forum in which the proceeding is or was pending or, if such forum is not available or a determination is made that such forum is not convenient, in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting his claim. The Corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the Delaware General Corporation Law for the Corporation to indemnify the claimant for the amount claimed. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its Stockholders) to have made a determination prior to the commencement of such

action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or its Stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. ]

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

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

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

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

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

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

[(1) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement and appeal of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitative or investigative. ]

[(2) The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature

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

[ (3) The term the “Corporation” shall include, in addition to the resulting Corporation, any constituent Corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent Corporation, or is or was serving at the request of such constituent Corporation as a director, officer, employee or agent of another Corporation, partnership, limited liability company, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Bylaw with respect to the resulting or surviving Corporation as he would have with respect to such constituent Corporation if its separate existence had continued. ]

[(4) References to a “director,” “officer,” “employee,” or “agent” of the Corporation shall include, without limitation, situations where such person is serving at the request of the Corporation as a director, officer, employee, trustee or agent of another Corporation, partnership, joint venture, trust or other enterprise. ]

[Section 10.02 Corporation Not Liable. The Corporation shall not be liable for any loss or damage sustained by any current or former member of BATS Exchange, Inc. or BATS Y-Exchange, Inc. growing out of the use or enjoyment by such current or former member of the facilities afforded by the Corporation or its subsidiaries, including, without limitation, BATS Exchange, Inc. and BATS Y-Exchange, Inc.]

## ARTICLE [XI] 10 NOTICES

Section [11.01 Notices. ][(a) ]10.01. Notice to Stockholders. Whenever, under any provisions of these Bylaws, notice is required to be given to any Stockholder, it shall be given in writing, timely and duly deposited in the United States mail, postage prepaid, and addressed to [his]the Stockholder’s last known post office address as shown by the stock record of the Corporation or its transfer agent.

[(b) ]Section 10.02. Notice to Directors. Any notice required to be given to any director may be given by the method stated in [subsection (a),]Section 10.01, or by facsimile, telex or telegram, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary[,] or, in the absence of such filing, to the last known post office address of such director.

[(c) ]Section 10.03. Affidavit of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the Corporation or its transfer

agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the Stockholder or Stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

[(d)] Section 10.04. Time Notices Deemed Given. All notices given by mail, as above provided, shall be deemed to have been given as at the time of mailing, and all notices given by facsimile, telex or telegram shall be deemed to have been given as of the sending time recorded at time of transmission.

[(e)] Section 10.05. Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

[(f)] Section 10.06. Failure to Receive Notice. The period or limitation of time within which any Stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent [him] to such Stockholder or director in the manner above provided, shall not be affected or extended in any manner by the failure of such Stockholder or such director to receive such notice.

[(g)] Section 10.07. Notice to Person with Whom Communication Is Unlawful. Whenever notice is required to be given, under any provision of Delaware law or of the Certificate of Incorporation or these Bylaws [ of the Corporation], to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate under any provision of the [Delaware] General Corporation Law of the State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

[(h)] Section 10.08. Notice to Person with Undeliverable Address. Whenever notice is required to be given, under any provision of Delaware law or the Certificate of Incorporation or these Bylaws [ of the Corporation], to any Stockholder to whom [(i)a) notice of two (2) consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two (2) consecutive annual meetings, or [(ii)b) all, and at least two (2), payments (if sent by first class mail) of dividends or interest on securities during a twelve-month period, have been mailed addressed

to such person at [his]such person's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the Corporation a written notice setting forth [his]such person's then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate under any provision of the [Delaware ]General Corporation Law of the State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to this [paragraph. ]Section 10.08.

ARTICLE [XII] 11  
AMENDMENTS

Section 11.01. Amendments to the Bylaws. (a) [Subject to paragraph (h) of Section 10.01 of the Bylaws, or as set forth] Prior to any Change in Ownership (as defined in the Certificate of Incorporation[ of the Corporation, the Bylaws of the Corporation may be amended or repealed, or new Bylaws of the Corporation may be adopted, by action taken by the stockholders of the Corporation adopted by]), the Stockholders may adopt, amend or repeal these Bylaws only with the affirmative vote of the holders of not less than a majority of the total voting power of all outstanding securities of the Corporation then entitled to vote generally in the election of directors, voting together as a single class.

(b) Immediately upon the occurrence of a Change in Ownership and without any action on the part of the Corporation or the Stockholders[ of], the Stockholders may adopt, amend or repeal these Bylaws only with the affirmative vote of the holders of not less than seventy percent (70%) of the [shares]total voting power of all outstanding securities of the Corporation then entitled to vote generally in the election of directors, voting together as a single class.

(c) For so long as the Corporation shall control, directly or indirectly, either one or both of BATS Exchange, Inc. and BATS Y-Exchange, Inc., before any amendment to or repeal of any provision of [the]these Bylaws[ of the Corporation] shall be effective, those changes shall be submitted to the board of directors of any such exchange and if the same must be filed with or filed with and approved by the Securities and Exchange Commission (the "**Commission**") before the changes may be effective, under Section 19 of the 1934 Act and the rules promulgated under the 1934 Act by the Commission or otherwise, then the proposed changes to [the]these Bylaws[ of the Corporation] shall not be effective until filed with or filed with and approved by the Commission, as the case may be.

[ARTICLE XIII]  
[LOANS TO OFFICERS ]



[The Corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the Corporation or of its subsidiaries, including any officer or employee who is a Director of the Corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or other assistance may reasonably be expected to benefit the Corporation. Such loan may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the Corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the Corporation at common law or under any statute. ]

ARTICLE [XIV] 12  
SRO FUNCTIONS OF BATS EXCHANGE, INC. AND BATS Y-EXCHANGE,  
INC.

Section [14.01] 12.01. Non-Interference. For so long as the Corporation shall, directly or indirectly, control either one or both of BATS Exchange, Inc. and BATS Y-Exchange, Inc. (for purposes of this Article [XIV], 12, both entities generically referred to as the “**Exchange**”), the directors, officers and employees of the Corporation shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange and to its obligations to investors and the general public and shall not take actions which would interfere with the effectuation of decisions by the Board of Directors of the Exchange relating to its regulatory functions (including disciplinary matters) or which would interfere with the Exchange’s ability to carry out its responsibilities under the 1934 Act. No present or past Stockholder, employee, beneficiary, agent, customer, creditor, regulatory authority (or member thereof) or other person or entity shall have any rights against the Corporation or any director, officer, employee or agent of the Corporation under this Section [14.01] 12.01.

Section [14.02] 12.02. Confidentiality. All books and records of the Exchange reflecting confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) 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 and the members of 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 in these [By-Laws] Bylaws shall be interpreted so as to limit or impede the rights of the Commission 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 officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission or the Exchange.

Section [14.03 ]12.03. *Books and Records, etc.* All books and records of the Corporation shall be maintained at a location within the United States. To the extent they are related to the operation or administration of the Exchange, 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 the Exchange for the purposes of, and subject to oversight pursuant to, the 1934 Act. For so long as the Corporation shall control, directly or indirectly, the Exchange, the Corporation's books and records shall be subject at all times to inspection and copying by the Commission and the Exchange, provided that such books and records are related to the operation or administration of the Exchange.

Section [14.04 ]12.04. *Compliance with Securities Laws; Cooperation with the Securities and Exchange Commission.* The Corporation shall comply with the federal securities laws and the rules and regulations promulgated thereunder and shall cooperate with the Commission and the Exchange 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 comply with the federal securities laws and the rules and regulations promulgated thereunder and shall be deemed to agree to cooperate with the Commission and the Exchange in respect of the Commission's oversight responsibilities regarding the Exchange and the self-regulatory functions and responsibilities of the Exchange, and the Corporation shall take reasonable steps necessary to cause its officers, directors, employees and agents to so cooperate. No present or past Stockholder, employee, beneficiary, agent, customer, creditor, regulatory authority (or member thereof) or other person or entity shall have any rights against the Corporation or any director, officer, employee or agent of the Corporation under this Section [14.04]12.04.

Section [14.05 ]12.05. *Consent to Jurisdiction.* The Corporation and its officers, directors, employees and agents by virtue of their acceptance of such positions, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the Commission[,] and the Exchange, for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to, the activities of the Exchange, 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 Commission or 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. 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 the Exchange.

Section [14.06 ]12.06. *Consent to Application.* The Corporation shall take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, of the Corporation to consent in writing to the applicability to them of this Article [XIV,]12, as applicable, with respect to their activities related to the Exchange.