

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="117"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2011"/> - * <input type="text" value="33"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Proposed Rule Change by EDGX Exchange, Inc.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

EDGX Exchange, Inc. is submitting this rule filing to the SEC in connection with the proposed business combination of NYSE Euronext and Deutsche Borse AG.

**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 * <input type="text" value="Thomas"/>	Last Name * <input type="text" value="McManus"/>
Title * <input type="text" value="Chief Regulatory Officer"/>	
E-mail * <input type="text" value="tmcmanus@directedge.com"/>	
Telephone * <input type="text" value="(201) 418-3471"/>	Fax <input type="text"/>

**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 <input type="text" value="10/12/2011"/>		
By <input type="text" value="Thomas N. McManus"/>	Chief Regulatory Officer	
(Name *)	(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.

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

- (a) EDGX Exchange, Inc. (the “Exchange”), a Delaware corporation, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the “Proposed Rule Change”) to the Commission in connection with the proposed business combination (the “Combination”) of NYSE Euronext, a Delaware corporation, and Deutsche Börse AG, an *Aktiengesellschaft* organized under the laws of the Federal Republic of Germany (“Deutsche Börse”).

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (“NYSE Group”), which in turn directly or indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the “NYSE Exchanges”)—the New York Stock Exchange, LLC (“NYSE”), NYSE Arca, Inc. (“NYSE Arca”) and NYSE Amex LLC (“NYSE Amex”)—and (2) 100% of the equity interest of NYSE Market, Inc. (“NYSE Market”), NYSE Regulation, Inc. (“NYSE Regulation”), NYSE Arca L.L.C. (“NYSE Arca LLC”) and NYSE Arca Equities, Inc. (“NYSE Arca Equities”) (the NYSE Exchanges, together with NYSE Market, NYSE Regulation, NYSE Arca LLC and NYSE Arca Equities, the “NYSE U.S. Regulated Subsidiaries” and each, a “NYSE U.S. Regulated Subsidiary”). NYSE, NYSE Arca and NYSE Amex will be separately filing a proposed rule change in connection with the Combination.

Deutsche Börse indirectly owns 50% of the equity interest of International Securities Exchange Holdings, Inc. (“ISE Holdings”), which in turn holds 100% of the equity interest of International Securities Exchange, LLC (“ISE”). ISE Holdings also holds 31.54% of the equity interest of Direct Edge Holdings, LLC (“Direct Edge Holdings”), which in turn indirectly holds 100% of the equity interest of two registered national securities exchanges and self-regulatory organizations—the Exchange and EDGA Exchange, Inc. (“EDGA”) (each of the Exchange, ISE and EDGA, a “DB Exchange” and a “DB U.S. Regulated Subsidiary” and together, the “DB Exchanges” and the “DB U.S. Regulated Subsidiaries”). ISE and EDGA will be separately filing a proposed rule change in connection with the Combination that will be the substantially the same as the Proposed Rule Change.

If the Combination is completed, the businesses of NYSE Euronext and Deutsche Börse, including the NYSE U.S. Regulated Subsidiaries and the DB U.S. Regulated Subsidiaries (together, the “U.S. Regulated Subsidiaries” and each, a “U.S. Regulated Subsidiary”), will be held under a single, publicly traded holding company organized under the laws of the

Netherlands (“Holdco”).<sup>1</sup> The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

The Exchange is proposing that, pursuant to the Combination, its indirect parent, Deutsche Börse, will become a wholly owned subsidiary of Holdco. In addition, the Exchange is proposing that, in connection with the Combination, the Commission approve certain amendments to the organizational and other governance documents of Holdco and ISE Holdings. The Proposed Rule Change is summarized as follows:

- Proposed Approval of Waiver of Ownership and Voting Restrictions of ISE Holdings. The Amended and Restated Certificate of Incorporation of ISE Holdings (the “ISE Holdings Certificate”) currently restricts any person, either alone or together with its related persons, from having voting control over more than 20% of the outstanding capital stock of ISE Holdings and from owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings (or in the case of any Exchange member, acting alone or together with its related persons, from owning of record or beneficially more than 20% of the outstanding capital stock of ISE Holdings). If a person were to obtain a voting or ownership interest in excess of the voting or ownership restrictions without obtaining the approval of the Commission, the shares of ISE Holdings would automatically transfer to a statutory trust established under and pursuant to the provisions of the Delaware Statutory Trust Act, 12 Del. C. §§ 3801 et seq. (“ISE Trust”). The ISE Holdings Certificate and the Amended and Restated Bylaws of ISE Holdings (the “ISE Holdings Bylaws”) provide that the board of directors of ISE Holdings may waive these voting and ownership restrictions in an amendment to the ISE Holdings Bylaws if it makes certain findings and the amendment to the ISE Holdings Bylaws has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act. Acting pursuant to this waiver provision, the board of directors of ISE Holdings has approved the amendment to the ISE Holdings Bylaws set forth in Exhibit 5A (the “ISE Holdings Bylaws Amendment”) in order to permit Holdco to indirectly own 50% of the outstanding common stock of ISE Holdings as of and after the Combination. The Exchange is requesting approval by the Commission of the ISE Holdings Bylaws Amendment in order to allow the Combination to take place.

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<sup>1</sup> Holdco is currently named “Alpha Beta Netherlands Holding N.V.,” but it is expected that Holdco will be renamed prior to the completion of the Combination to a name agreed between NYSE Euronext and Deutsche Börse.

Under the Proposed Rule Change, Holdco would take appropriate steps to incorporate voting and ownership restrictions, requirements relating to submission to jurisdiction, access to books and records and other requirements related to its control of the U.S. Regulated Subsidiaries. Specifically, the Articles of Association of Holdco in effect as of the completion of the Combination (the “Holdco Articles”) would contain provisions<sup>2</sup> to incorporate these concepts with respect to itself, as well as its directors, officers, employees and agents (as applicable):

- Voting and Ownership Restrictions in the Holdco Articles. The Holdco Articles would contain voting and ownership restrictions that will restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the then outstanding votes entitled to be cast on a matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes entitled to be cast on a matter (except that a 20% ownership restriction would apply to any person who is a Member of NYSE<sup>3</sup> (a “NYSE Member”), a Member<sup>4</sup> of NYSE Amex (including any person who is a related person of such member, an “Amex Member”), an ETP Holder of NYSE Arca Equities<sup>5</sup> (an “ETP Holder”) an OTP Holder or OTP Firm of NYSE Arca<sup>6</sup> (an “OTP Holder” and “OTP Firm,” respectively), a Member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of ISE (an “ISE Member”), or a member of EDGA or EDGX (as such terms are defined in the rules of EDGA and EDGX, respectively, an “EDGA Member” and “EDGX Member,” respectively)). The Holdco Articles would provide that Holdco will be required to disregard any votes purported to be cast in excess of the voting restriction. In the event that any such person(s) exceeds the ownership restriction, it will be required to offer for sale and transfer the number of Holdco shares required to comply with the ownership restriction, and the rights to vote, attend general meetings of Holdco shareholders and receive dividends or other distributions attached to shares held in excess of the 40% threshold (or 20% threshold, if applicable) will be suspended for so long as such threshold is exceeded. If such person(s) fails to comply with the transfer

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<sup>2</sup> The text of the proposed Holdco Articles is attached to the Proposed Rule Change as Exhibit 5B.

<sup>3</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 34.3(c).

<sup>4</sup> See id.

<sup>5</sup> See id.

<sup>6</sup> See id.

obligation within two weeks, then the Holdco Articles would provide that Holdco will be irrevocably authorized to take actions on behalf of such person(s) in order to cause it to comply with such obligations. The Holdco board of directors may waive the voting and ownership restrictions if it makes certain determinations (which will be subject to the same requirements which are currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the current NYSE Euronext Certificate and the ISE Holdings Certificate, as applicable) and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European Regulators<sup>7</sup> having appropriate jurisdiction and authority.

- Jurisdiction. The Holdco Articles will provide that Holdco and its directors, and to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws and the rules or regulations thereunder, arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. In addition, the Holdco Articles would provide that so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act. The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary. Furthermore, the Holdco Articles would provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco would sign an irrevocable agreement

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<sup>7</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 1.1.

and consent for the benefit of each U.S. Regulated Subsidiary<sup>8</sup> that it will comply with these provisions of the Holdco Articles.

- Books and Records. The Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act, and that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and by any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight. In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, Holdco may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.
- Amendments to Holdco Articles. The Holdco Articles would provide that before any amendment to the Holdco Articles may be effectuated by execution of a notarial deed of amendment, such amendment would need to be submitted to the board of directors of each U.S. Regulated Subsidiary and, if so determined by any such board, would need to be filed with, or filed with and approved by, the Commission before such amendment may become effective.
- Additional Matters. The Holdco Articles would include provisions regarding cooperation with the Commission and the U.S. Regulated Subsidiaries, compliance with U.S. federal securities laws, confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function, preservation of the independence of the U.S. Regulated Subsidiaries' self-regulatory function, and directors' consideration of the effect of Holdco's actions on the U.S. Regulated Subsidiaries' ability to carry out their respective responsibilities under the Exchange Act. In addition, the Holdco Articles would provide that Holdco will 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 Holdco to agree and consent in writing to the applicability to them of these provisions of the Holdco Articles with respect to their

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<sup>8</sup> The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

activities related to any U.S. Regulated Subsidiary. The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco will sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary<sup>9</sup> that it will comply with these provisions of the Holdco Articles.<sup>10</sup>

In addition, Holdco would adopt a Director Independence Policy in the form attached hereto as Exhibit 5D (the "Holdco Independence Policy"), which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors. The Proposed Rule Change filed by the NYSE in connection with the combination describes the Holdco Independence Policy as it relates to the current Independence Policy of the NYSE Euronext board of directors.<sup>11</sup>

The text of the Proposed Rule Change is available at the Exchange, the Commission's Public Reference Room, and on the website of the Exchange ([www.directedge.com](http://www.directedge.com)). The text of Exhibits 5A through 5D of the Proposed Rule Change are also available on the Exchange's website and on the Commission's website ([www.sec.gov/rules/sro.shtml](http://www.sec.gov/rules/sro.shtml)).

Other than as described herein and set forth in the attached Exhibits 5A through 5D, the Exchange will continue to conduct its regulated activities in the manner currently conducted and will not make any changes to its regulated activities in connection with the Combination. If the Exchange determines to make any such changes, it will seek approval of the Commission.

- (b) Except as otherwise noted below, the Exchange does not believe that the Proposed Rule Change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

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<sup>9</sup> The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

<sup>10</sup> The Holdco Articles will also set forth certain restrictions and requirements relating to Holdco's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco's U.S. Regulated Subsidiaries and U.S. regulatory matters.

<sup>11</sup> See File No. SR-NYSE-2011-51.



2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on April 27, 2010. Exchange staff will advise the EDGX Exchange Board of Directors of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change. Therefore, the Exchange's internal procedures with respect to the proposed change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Thomas N. McManus  
Chief Regulatory Officer  
EDGX Exchange, Inc.  
201-418-3471

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

(a) Purpose

The purpose of this rule filing is to adopt the rules necessary to permit Deutsche Börse to effect the Combination and to amend certain provisions of the organizational and other governance documents of Holdco.

**1. Overview of the Combination**

The Exchange is submitting this Proposed Rule Change to the Commission in connection with the Combination of NYSE Euronext and Deutsche Börse. The Combination will create a holding company, Holdco, which will hold the businesses of NYSE Euronext and Deutsche Börse. Following the Combination, each of NYSE Euronext and Deutsche Börse will be a separate subsidiary of Holdco. Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world's financial centers including New York, London, Frankfurt, Paris and Luxembourg. This global presence should facilitate providing world-class services to global and local customers worldwide.

Other than as described herein, Holdco and the Exchange will not make any changes to the regulated activities of the DB Exchanges in connection with the Combination, and, other than as described in the separate proposed rule changes filed by each of the NYSE Exchanges in connection with the Combination, Holdco and the NYSE Exchanges will not make any changes to the regulated activities of the NYSE U.S. Regulated Subsidiaries in connection with

the Combination. If Holdco determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission. The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

The Combination will occur pursuant to the terms of the Business Combination Agreement, dated as of February 15, 2011, as amended by Amendment No. 1 dated as of May 2, 2011 and by Amendment No. 2 dated as of June 16, 2011 (as it may be further amended from time to time, the “Combination Agreement”), by and among NYSE Euronext, Deutsche Börse, Holdco and Pomme Merger Corporation, a Delaware corporation and newly formed wholly owned subsidiary of Holdco (“Merger Sub”). Subject to the terms and conditions set forth in the Combination Agreement and in compliance with applicable law, Holdco has conducted a public exchange offer (the “Exchange Offer”), in which shareholders of Deutsche Börse have been afforded the opportunity to tender each share of Deutsche Börse for one ordinary share of Holdco (each, a “Holdco Share”).

Immediately after the time that Holdco accepts for exchange, and exchanges, the Deutsche Börse shares that are validly tendered and not withdrawn in the Exchange Offer, Merger Sub will merge with and into NYSE Euronext, as a result of which NYSE Euronext will become a wholly owned subsidiary of Holdco (the “Merger”). In the Merger, each outstanding share of NYSE Euronext common stock will be converted into the right to receive 0.47 of a fully paid and non-assessable Holdco Share. NYSE Euronext’s obligation to complete the Merger is subject to the completion of the Exchange Offer and the acquisition by Holdco of all of the Deutsche Börse shares validly tendered and not withdrawn in the Exchange Offer. The completion of the Exchange Offer (and, therefore, the completion of the Merger) is subject to the satisfaction of a number of conditions, including that Deutsche Börse shares representing at least 75% of the Deutsche Börse shares outstanding, on a fully diluted basis, must be validly tendered and not withdrawn in the Exchange Offer, and that holders of a majority of the outstanding shares of NYSE Euronext shall have adopted the Combination Agreement. Both of these conditions have been satisfied.

Following the completion of the Exchange Offer, and depending on the percentage of Deutsche Börse shares acquired by Holdco in the Exchange Offer, Deutsche Börse and Holdco intend to complete a post-completion reorganization pursuant to which Holdco will enter into a domination agreement or a combination of a domination agreement and a profit and loss transfer agreement, pursuant to which the remaining shareholders of Deutsche Börse will have limited rights, including a limited ability to participate in the profits of Deutsche Börse.

Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world’s financial centers including New York, London, Frankfurt, Paris and Luxembourg.

This global presence should facilitate providing world-class services to global and local customers worldwide. Following the Combination, Holdco and its subsidiaries (together, the “Holdco Group”) expect to serve as a benchmark regulatory model, facilitating transparency and harmonization of capital markets globally, while continuing to operate all national exchanges under local regulatory frameworks and their respective brand names.

## **2. Overview of the Holdco Group Following the Combination**

Following the Combination, Holdco will be a for-profit, publicly traded corporation formed under the laws of The Netherlands and will act as the holding company for the businesses of NYSE Euronext and Deutsche Börse. Holdco will hold all of the equity interests in NYSE Euronext, which holds (1) 100% of the equity interest of NYSE Group (which, in turn, directly or indirectly holds 100% of the equity interests of the NYSE U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (which, in turn, directly or indirectly holds 100% of the equity interests of trading markets in Belgium, France, the Netherlands, Portugal and the United Kingdom). Holdco will also hold a majority of the equity interests in Deutsche Börse, which indirectly holds 50% of the equity interest of ISE Holdings (which, in turn, holds (1) 100% of the equity interest of ISE and (2) 31.54% of the equity interest of Direct Edge Holdings). Direct Edge Holdings indirectly holds 100% of the equity interest of the Exchange and EDGA. Holdco intends to list its ordinary shares on the New York Stock Exchange, the Frankfurt Stock Exchange and Euronext Paris. The Holdco Group will have dual headquarters in Frankfurt and New York.

After the Combination, NYSE Group will continue to be directly wholly owned by NYSE Euronext and will continue to directly or indirectly own the three NYSE Exchanges—NYSE, NYSE Arca and NYSE Amex—which provide marketplaces where investors buy and sell listed companies’ common stock and other securities as well as equity options and securities traded on the basis of unlisted trading privileges. NYSE Regulation, Inc., an indirect not-for-profit subsidiary of NYSE Group, oversees FINRA’s performance of certain market surveillance and enforcement functions for NYSE Euronext’s U.S. securities exchanges, enforces listed company compliance with applicable standards, and oversees regulatory policy determinations, rule interpretation and regulation related rule development.

In Europe, NYSE Euronext, Deutsche Börse and their respective subsidiaries own several European exchanges, including trading operations on regulated and non-regulated markets for cash products in Germany, France, Belgium, The Netherlands, and Portugal and derivatives in the United Kingdom and in the five above-mentioned locations. As a result, the activities of the NYSE Euronext and Deutsche Börse European markets are or may be subject to the jurisdiction and authority of a number of European regulators, including the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*), the Hessian Exchange Supervisory Authority, the

Dutch Minister of Finance, the French Minister of the Economy, the French Financial Market Authority (*Autorité des Marchés Financiers*), the French Prudential Supervisory Authority (*Autorité de Contrôle Prudentiel*), the Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten), the Belgian Financial Services and Markets Authority (Autorité des Services et Marchés Financiers), the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários – CMVM) and the U.K. Financial Services Authority (FSA).

Other than certain modifications described herein, the current corporate structure, governance and self-regulatory independence and separation of the Exchange will be preserved. Specifically, after the Combination, Direct Edge Holdings' businesses and assets will continue to be structured as follows:

- The Exchange will remain an indirect wholly owned subsidiary of Direct Edge Holdings, with ISE Holdings and Deutsche Börse holding equity interests of 31.54% and 15.77%, respectively.
- The Combination will have no effect on the ability of any party to trade securities on the Exchange, ISE or EDGA.

Similarly, Deutsche Börse and its subsidiaries, and NYSE Euronext and its subsidiaries, will continue to conduct their regulated activities in the same manner as they are currently conducted, with any changes subject to the relevant approvals of their respective European regulators and, in the case of the U.S. Regulated Subsidiaries, with any changes subject to the approval of the Commission.

Holdco acknowledges that to the extent it becomes aware of possible violations of the rules of the Exchange, it will be responsible for referring such possible violations to the Exchange.

### **3. Proposed Approval of Waiver of Voting and Ownership Restrictions of ISE Holdings**

Article FOURTH, Section III of the current ISE Holdings Certificate provides that (1) no person, either alone or together with its "related persons" (as defined in the ISE Holdings Certificate), may be entitled to vote or cause the voting of shares of ISE Holdings at any time, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, to the extent that such shares represent more than 20% of the voting power of the then outstanding votes entitled to be cast on such matter; and (2) no person, either alone or together with its related persons, at any time, directly, indirectly or pursuant to any voting trust, may enter into any agreement, plan or other arrangement with any other person, either alone or together with its related persons, under circumstances which would result in the voting shares that shall be subject to such agreement, plan or other arrangement not being voted on any matter or matters or the withholding of any

proxy relating thereto, where the effect of such agreement, plan or arrangement would be to enable any person, either alone or together with its related persons, to possess more than 20% of the voting power of the then outstanding votes entitled to be cast on any such matter (the “ISE Holdings Voting Restriction”).<sup>12</sup> If any person, either alone or together with its related persons, acquires voting power in excess of the ISE Holdings Voting Restriction, the ISE Holdings board of directors must notify the ISE Trust and such ISE Holdings Voting Restriction shall result in the automatic transfer to the ISE Trust of a majority of the voting shares then outstanding pro rata from the holders thereof.

In addition, the ISE Holdings Certificate provides that no person, either alone or together with its related persons, may at any time of record or beneficially own, directly or indirectly, shares of ISE Holdings representing more than 40% of the then outstanding votes entitled to be cast on any matter and no person who is a member of the Exchange, either alone or together with its related person, may at any time of record or beneficially own, directly or indirectly, shares of ISE Holdings representing in the more than 20% of the then outstanding votes entitled to be cast on any matter (the “ISE Holdings Ownership Restriction”).<sup>13</sup> If any person, either alone or together with its related persons, owns shares of ISE Holdings in excess of the ISE Holdings Ownership Restriction, then the ISE Holdings board of directors must notify the ISE Trust and such ISE Holdings Ownership Restriction shall result in the automatic transfer to the ISE Trust of a majority of the voting shares then outstanding pro rata from the holders thereof.<sup>14</sup>

The ISE Holdings board of directors may waive the ISE Holdings Voting Restriction and the ISE Holdings Ownership Restriction pursuant to an amendment to the ISE Holdings Bylaws adopted by the ISE Holdings board of directors, if in connection with the adoption of such amendment, the board of directors in its sole discretion adopts a resolution stating that it is the determination of the board of directors that such amendment:

- will not impair the ability of ISE Holdings and any of the DB U.S. Regulated Subsidiaries, or facility thereof, to carry out their respective responsibilities under the Exchange Act and the rules and regulations thereunder;

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<sup>12</sup> See Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III.

<sup>13</sup> See Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III.

<sup>14</sup> See Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III.

- is otherwise in the best interest of ISE Holdings, its stockholders and the DB U.S. Regulated Subsidiaries;
- will not impair the Commission’s ability to enforce the Exchange Act;
- for so long as ISE Holdings directly or indirectly controls the Exchange, neither such person nor any of its related persons is an ISE Member, EDGA Member or EDGX Member; and
- neither such person nor any of its related persons is subject to any “statutory disqualification” (as such term is defined in Section 3(a)(39) of the Exchange Act).<sup>15</sup>

Such amendment shall not be effective unless it has been filed with and approved by the Commission under Section 19(b) of the Exchange Act<sup>16</sup> and has become effective thereunder.

In order to allow Holdco to indirectly own 50% of the outstanding common stock of ISE Holdings upon consummation of the Combination, Holdco has delivered written notice to the board of directors of ISE Holdings pursuant to the procedures set forth in the ISE Holdings Certificate requesting approval of its voting and ownership of ISE Holdings shares in excess of the ISE Holdings Voting Restriction and the ISE Holdings Ownership Restriction. Among other things, in this notice, Holdco represented to the board of directors of ISE Holdings that neither it, nor any of its related persons, is (1) an ISE Member; (2) EDGA Member; (3) EDGX Member; or (4) subject to any “statutory disqualification.”

At a meeting duly convened on September 16, 2011, the board of directors of ISE Holdings adopted the ISE Holdings Bylaws Amendment to permit Holdco, either alone or together with its related persons, to exceed the ISE Holdings Ownership Restriction and the ISE Holdings Voting Restriction. In adopting such amendment, the board of directors of ISE Holdings made the necessary determinations set forth above and approved the submission of this Proposed Rule Change to the Commission. The Exchange will continue to operate and regulate its market and members exactly as it has done prior to the Combination. Except as set forth in this Proposed Rule Change, the Exchange is not proposing any amendments to its trading or regulatory rules.

With respect to the ability of the Commission to enforce the Exchange Act as it applies to the Exchange after the Combination, the Exchange will operate in

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<sup>15</sup> See Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III, and Amended and Restated Bylaws of ISE Holdings, Article XI.

<sup>16</sup> 15 U.S.C. 78s(b).

the same manner following the Combination as it operates today.<sup>17</sup> Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. As described in the following sections of this filing, the Exchange is proposing certain provisions of the Holdco Articles that will create an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary. The ISE Holdings board of directors also determined that ownership of ISE Holdings by Holdco is in the best interests of ISE Holdings, its shareholders and the DB U.S. Regulated Subsidiaries.

In addition, neither Holdco, nor any of its related persons, is (1) an ISE Member; (2) an EDGA Member; (3) an EDGX Member; or (4) subject to any “statutory disqualification.”

An extract with the relevant provisions of the ISE Holdings Bylaws Amendment is attached as Exhibit 5A to the Proposed Rule Change and can be found on the Exchange’s website and the Commission’s website.

The Exchange hereby requests that the Commission approve the ISE Holdings Bylaws Amendment and allow Holdco, either alone or with its related persons, to indirectly own 50% of the outstanding common stock of ISE Holdings upon and following the consummation of the Combination.

#### **4. Proposed Amendments to Ownership and Voting Restrictions After the Combination**

##### Overview

The Exchange is proposing that, effective as of the completion of the Combination, the Holdco Articles would contain voting and ownership restrictions that restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the votes entitled to be cast on any matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes that may be cast on any matter (except that a 20% ownership restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP

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<sup>17</sup> The Exchange has been informed by NYSE Euronext, EDGA and EDGX that the NYSE U.S. Regulated Subsidiaries, EDGA and EDGX, respectively, are also expected to operate in the same manner following the Combination as they operate today. This is addressed in the separate proposed rule change filed by each of the NYSE Exchanges, EDGA and EDGX.

Holder, an OTP Holder, an OTP Firm, an ISE Member, an EDGA Member or an EDGX Member).

In addition, the Exchange is proposing that, effective as of the Combination, the voting and ownership restrictions currently in the Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings (“Direct Edge Holdings Operating Agreement”) would remain in effect.<sup>18</sup>

#### Voting and Ownership Restrictions in Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that no person, either alone or together with its related persons, will be entitled to vote or cause the voting of a number of shares of Holdco, in person or by proxy or through any voting agreement or other arrangement, which represent in the aggregate (1) more than 20% of the then outstanding votes entitled to be cast on such matter; or (2) more than 20% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of Holdco (the “Holdco Voting Restriction”).<sup>19</sup> The Holdco Articles would provide that Holdco will be required to disregard any votes purported to be cast in excess of the Holdco Voting Restriction.

In addition, the Holdco Articles would provide that any person who, either alone or together with its related persons, beneficially owns Holdco shares which represent in the aggregate more than 40% of the outstanding votes entitled to be cast on any matter (except that a 20% restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder, an OTP Firm, an ISE Member, an EDGA Member or an EDGX Member) (the “Holdco Ownership Restriction”), will be obligated to offer for sale and to transfer a number of Holdco shares necessary so that such person, together with its related persons, beneficially owns a number of Holdco shares that complies with the Holdco Ownership Restriction (the “Holdco Transfer Obligation”).<sup>20</sup> If such person(s) fails to comply with the Holdco Transfer Obligation within two weeks,

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<sup>18</sup> The current voting and ownership restrictions contained in the Direct Edge Holdings Operating Agreement and the ISE Holdings Certificate, as well as the related provisions contained in the amended and restated bylaws of U.S. Exchange Holdings and the board resolutions of Deutsche Börse, Eurex Frankfurt AG and other indirect parent entities of the Exchange, would remain in effect. The ISE Trust would also remain unaltered and would continue to have rights to enforce these restrictions.

<sup>19</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 34.1.

<sup>20</sup> See Form of Deed of Amendment to Holdco Articles of Association, Articles 35.1 and 35.4.



Holdco will be irrevocably authorized to act on behalf of such person(s) in order to ensure compliance with the Holdco Transfer Obligation.<sup>21</sup>

Furthermore, the Holdco Articles would provide that in the event any person, either alone or together with its related persons, exceeds the Holdco Ownership Restriction (any such person(s), a “Non-Compliant Owner”), the Non-Compliant Owner would cease to have certain rights to the extent that its shareholding exceeds the Holdco Ownership Restriction. Specifically, the Non-Compliant Owner’s rights to vote, to attend general meetings of Holdco shareholders and to receive dividends or other distributions attached to such shares in excess of the Holdco Ownership Restriction would be suspended for so long as the Holdco Ownership Restriction is exceeded.<sup>22</sup>

Pursuant to Section 2:87a of the Dutch Civil Code, the Non-Compliant Owner may request that an independent expert be appointed to determine the value of the Holdco shares, but such expert will have discretion to determine that the value of the shares is equal to the price received for the shares by the Non-Compliant Owner on any stock exchange where the Holdco shares are listed.<sup>23</sup>

The voting and ownership restrictions will apply to each person unless it (1) delivers to the Holdco board of directors a written notice of its intention to acquire voting power or ownership in excess of the relevant limitation, and such notice is delivered at least 45 days (or such shorter period as the Holdco board or directors expressly consents to) prior to acquiring Holdco shares in excess of the Holdco Voting Restriction or Holdco Ownership Restriction, and (2) obtains a written confirmation from the Holdco board of directors that the board has expressly resolved to permit such voting or ownership, and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European regulators having appropriate jurisdiction and authority.<sup>24</sup> The Holdco board of directors may waive the Holdco Voting Restriction and Holdco Ownership Restriction if it makes certain determinations, which will be consistent with the determinations currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the NYSE Euronext Certificate and the ISE Holdings Certificate, respectively.<sup>25</sup>

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<sup>21</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 35.7.

<sup>22</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 35.6.

<sup>23</sup> See Form of Deed of Amendment to Holdco Articles of Association, Articles 35.5.

<sup>24</sup> See Form of Deed of Amendment to Holdco Articles of Association, Articles 34.2 and 35.2.

<sup>25</sup> See Form of Deed of Amendment to Holdco Articles of Association, Articles 34.3 and 35.3.

## 5. Additional Matters to be Addressed in the Holdco Articles<sup>26</sup>

### Jurisdiction over Individuals

Under the Proposed Rule Change, the Holdco Articles would provide that Holdco and its directors, and to the extent that they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, would be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries.<sup>27</sup> The Holdco Articles would also provide that, with respect to any such suit, action, or proceeding brought by the Commission, Holdco and its directors, officers and employees would (1) be deemed to agree that NYSE Group may serve as U.S. agent for purposes of service of process in such suit, action, or proceeding relating to NYSE Group or any of its subsidiaries, and ISE Holdings may serve as the U.S. agent for proceedings relating to ISE Holdings or any of its subsidiaries; and (2) 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 Commission, 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 thereof may not be enforced in or by the U.S. federal courts or the Commission.<sup>28</sup>

In addition, the Holdco Articles would provide that, so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees of Holdco will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.<sup>29</sup>

The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting a

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<sup>26</sup> The Holdco Articles will set forth certain restrictions and requirements relating to Holdco's European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco's U.S. Regulated Subsidiaries and U.S. regulatory matters.

<sup>27</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(c).

<sup>28</sup> See id.

<sup>29</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.<sup>30</sup> The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.<sup>31</sup> Furthermore, Holdco would sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary<sup>32</sup> that it will comply with these provisions in the Holdco Articles.

The Exchange anticipates that the functions and activities of each U.S. Regulated Subsidiary generally will be carried out by the officers and directors of such U.S. Regulated Subsidiary, each of whom the Commission has direct authority over pursuant Section 19(h)(4) of the Exchange Act.<sup>33</sup>

#### Access to Books and Records

Under the Proposed Rule Change, the Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.<sup>34</sup> In addition, the Holdco Articles would provide that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight.<sup>35</sup> In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries,

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<sup>30</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

<sup>31</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.

<sup>32</sup> The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

<sup>33</sup> 15 U.S.C. 78s(h)(4).

<sup>34</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

<sup>35</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(e).

Holdco may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.<sup>36</sup>

#### Additional Matters

Under the Proposed Rule Change, the Holdco Articles would provide that Holdco will comply with the U.S. federal securities laws and the rules and regulations thereunder, and will cooperate with the Commission and with the U.S. Regulated Subsidiaries pursuant to and to the extent of their respective regulatory authority.<sup>37</sup> In addition, Holdco would be required to take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the U.S. Regulated Subsidiaries pursuant to their regulatory authority.<sup>38</sup> The Holdco Articles would also provide that, in discharging his or her responsibilities as a member of the Holdco board of directors or as an officer or employee of Holdco, each such director, officer or employee will (a) comply with the U.S. federal securities laws and the rules and regulations thereunder; (b) cooperate with the Commission; and (c) cooperate with the U.S. Regulated Subsidiaries pursuant to and to the extent of their regulatory authority (but this provision will not create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any such matters or to limit his or her consideration to such matters).<sup>39</sup>

The Holdco Articles would also provide that all confidential information that comes into the possession of Holdco pertaining to the self-regulatory function of any U.S. Regulated Subsidiary will (a) not be made available to any persons other than to those officers, directors, employees and agents of Holdco that have a reasonable need to know the contents thereof; (b) be retained in confidence by Holdco and the officers, directors, employees and agents of Holdco; and (c) not be used for any commercial purposes.<sup>40</sup> In addition, the Holdco Articles would provide that these obligations regarding such confidential information will not be interpreted so as to limit or impede (i) the rights of the Commission or the relevant U.S. Regulated Subsidiary to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees

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<sup>36</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(g).

<sup>37</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(a).

<sup>38</sup> See id.

<sup>39</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(l).

<sup>40</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(h).

or agents of Holdco to disclose such confidential information to the Commission or any U.S. Regulated Subsidiary.<sup>41</sup>

Additionally, the Holdco Articles would provide that, for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, Holdco and its directors, officers and employees will give due regard to the preservation of the independence of the self-regulatory function of such U.S. Regulated Subsidiary and to its obligations to investors and the general public, and will not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of such U.S. Regulated Subsidiary relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of such U.S. Regulated Subsidiary to carry out its responsibilities under the Exchange Act.<sup>42</sup>

Finally, the Holdco Articles would provide that each director of Holdco would, in discharging his or her responsibilities, to the fullest extent permitted by applicable law, take into consideration the effect that Holdco's actions would have on the ability of (a) the U.S. Regulated Subsidiaries to carry out their responsibilities under the Exchange Act; and (b) the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to (1) engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to prevent fraudulent and manipulative acts and practices in the securities markets; (2) promote just and equitable principles of trade in the securities markets; (3) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (4) remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (5) in general, protect investors and the public interest.<sup>43</sup> This requirement would not, however, create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to such matters.<sup>44</sup>

In addition, the Holdco Articles would provide that Holdco will 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 Holdco to agree and consent in writing to the applicability to them of these provisions of

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<sup>41</sup> See id.

<sup>42</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(i).

<sup>43</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

<sup>44</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

the Holdco Articles with respect to their activities related to any U.S. Regulated Subsidiary.<sup>45</sup> The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.<sup>46</sup>

Holdco would also sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary that it will comply with provisions in the Holdco Articles regarding (1) cooperation with the Commission and such U.S. Regulated Subsidiaries; (2) compliance with U.S. federal securities laws; (3) inspection and copying of Holdco's books, records and premises; (4) Holdco's books, records, premises, officers, directors and employees being deemed to be those of U.S. Regulated Subsidiaries; (5) maintenance of books and records in the United States; (6) confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function; (7) preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries; and (8) taking reasonable steps to cause Holdco's officers, directors and employees to consent to the applicability to them of the Holdco Articles. The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

#### Amendments to the Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that, before any amendment to or repeal of any provision of the Holdco Articles may become effectuated by means of a notarial deed of amendment, the same will be submitted to the board of directors of each U.S. Regulated Subsidiary (or the boards of directors of their successors) and if any or all of such boards of directors determine that the same must be filed with, or filed with and approved by, the Commission before the same may be effective under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same will not be effective until filed with, or filed with and approved by, the Commission, as the case may be. These requirements would also apply to any action by Holdco that would have the effect of amending or repealing any provision of the Holdco Articles.

#### Holdco Director Independence Policy

Under the Proposed Rule Change, Holdco would adopt the Holdco Independence Policy in the form attached hereto as Exhibit 5D, which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors. The Proposed Rule Change filed by the NYSE in connection

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<sup>45</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

<sup>46</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.

with the combination describes the Holdco Independence Policy as it relates to the current Independence Policy of the NYSE Euronext board of directors.<sup>47</sup>

(b) Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b)<sup>48</sup> of the Exchange Act in general, and furthers the objectives of Section 6(b)(1)<sup>49</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. With respect to the ability of the Commission to enforce the Exchange Act as it applies to the Exchange after the Combination, the Exchange will operate in the same manner following the Combination as it operates today. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5)<sup>50</sup> of the Exchange Act because the Proposed Rule Change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange does not expect that the Combination will impact the current operations of the Exchange. However, the Exchange believes that by incorporating Holdco's governance documents as part of the proposed rule filing, investors will be better apprised of Holdco's proposed indirect ownership interest in the Exchange.

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<sup>47</sup> See File No. SR-NYSE-2011-51.

<sup>48</sup> 15 U.S.C. 78(f)(b).

<sup>49</sup> 15 U.S.C. 78(f)(b)(1).

<sup>50</sup> 15 U.S.C. 78(f)(b)(5).

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 Exchange Act.

5. 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.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2)<sup>51</sup> of the Exchange Act.

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

Not applicable.

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

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

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of Proposed Rule Change

A. Second Amended and Restated Bylaws of International Securities Exchange Holdings, Inc.

B. Text of Proposed Articles of Association of Alpha Beta Netherlands Holding N.V.

C. Text of Proposed Agreement and Consent to be entered into by Alpha Beta Netherlands Holding N.V. and certain subsidiaries of NYSE Euronext

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<sup>51</sup> 15 U.S.C. 78s(b)(2).



D. Text of Proposed Director Independence Policy of Alpha Beta  
Netherlands Holding N.V.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-EDGX-2011-33)

[Date]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to a Corporate Transaction in which Its Indirect Parent, Deutsche Börse AG, Will Become a Wholly Owned Subsidiary of Alpha Beta Netherlands Holding N.V.

Pursuant to Section 19(b)(1)<sup>1</sup> of the U.S. Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 12, 2011, EDGX Exchange, Inc. (the “Exchange”) filed with the U.S. Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which items have been prepared substantially 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**

**A. Overview of the Proposed Combination**

The Exchange, a Delaware corporation, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the “Proposed Rule Change”) to the Commission in connection with the proposed business combination (the “Combination”) of NYSE Euronext, a Delaware corporation, and Deutsche Börse AG, an *Aktiengesellschaft* organized under the laws of the Federal Republic of Germany (“Deutsche Börse”).

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

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

NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (“NYSE Group”), which in turn directly or indirectly owns (1) 100% of the equity interest of three registered national securities exchanges and self-regulatory organizations (together, the “NYSE Exchanges”)—the New York Stock Exchange, LLC (“NYSE”), NYSE Arca, Inc. (“NYSE Arca”) and NYSE Amex LLC (“NYSE Amex”)—and (2) 100% of the equity interest of NYSE Market, Inc. (“NYSE Market”), NYSE Regulation, Inc. (“NYSE Regulation”), NYSE Arca L.L.C. (“NYSE Arca LLC”) and NYSE Arca Equities, Inc. (“NYSE Arca Equities”) (the NYSE Exchanges, together with NYSE Market, NYSE Regulation, NYSE Arca LLC and NYSE Arca Equities, the “NYSE U.S. Regulated Subsidiaries” and each, a “NYSE U.S. Regulated Subsidiary”). NYSE, NYSE Arca and NYSE Amex will be separately filing a proposed rule change in connection with the Combination.

Deutsche Börse indirectly owns 50% of the equity interest of International Securities Exchange Holdings, Inc. (“ISE Holdings”), which in turn holds 100% of the equity interest of International Securities Exchange, LLC (“ISE”). ISE Holdings also holds 31.54% of the equity interest of Direct Edge Holdings, LLC (“Direct Edge Holdings”), which in turn indirectly holds 100% of the equity interest of two registered national securities exchanges and self-regulatory organizations—the Exchange and EDGA Exchange, Inc. (“EDGA”) (each of the Exchange, ISE and EDGA, a “DB Exchange” and a “DB U.S. Regulated Subsidiary” and together, the “DB Exchanges” and the “DB U.S. Regulated Subsidiaries”). ISE and EDGA will be separately filing a proposed rule change in connection with the Combination that will be the substantially the same as the Proposed Rule Change.

If the Combination is completed, the businesses of NYSE Euronext and Deutsche Börse, including the NYSE U.S. Regulated Subsidiaries and the DB U.S. Regulated Subsidiaries (together, the “U.S. Regulated Subsidiaries” and each, a “U.S. Regulated Subsidiary”), will be held under a single, publicly traded holding company organized under the laws of the Netherlands (“Holdco”).<sup>3</sup> The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

**B. Summary of Proposed Rule Change**

The Exchange is proposing that, pursuant to the Combination, its indirect parent, Deutsche Börse, will become a wholly owned subsidiary of Holdco. In addition, the Exchange is proposing that, in connection with the Combination, the Commission approve certain amendments to the organizational and other governance documents of Holdco and ISE Holdings. The Proposed Rule Change is summarized as follows:

- Proposed Approval of Waiver of Ownership and Voting Restrictions of ISE Holdings. The Amended and Restated Certificate of Incorporation of ISE Holdings (the “ISE Holdings Certificate”) currently restricts any person, either alone or together with its related persons, from having voting control over more than 20% of the outstanding capital stock of ISE Holdings and from owning of record or beneficially more than 40% of the outstanding capital stock of ISE Holdings (or in the case of any Exchange member, acting alone or together with its related persons, from owning of record or beneficially more than 20% of the outstanding capital stock of ISE Holdings). If a person

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<sup>3</sup> Holdco is currently named “Alpha Beta Netherlands Holding N.V.,” but it is expected that Holdco will be renamed prior to the completion of the Combination to a name agreed between NYSE Euronext and Deutsche Börse.

were to obtain a voting or ownership interest in excess of the voting or ownership restrictions without obtaining the approval of the Commission, the shares of ISE Holdings would automatically transfer to a statutory trust established under and pursuant to the provisions of the Delaware Statutory Trust Act, 12 Del. C. §§ 3801 et seq. (“ISE Trust”). The ISE Holdings Certificate and the Amended and Restated Bylaws of ISE Holdings (the “ISE Holdings Bylaws”) provide that the board of directors of ISE Holdings may waive these voting and ownership restrictions in an amendment to the ISE Holdings Bylaws if it makes certain findings and the amendment to the ISE Holdings Bylaws has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act. Acting pursuant to this waiver provision, the board of directors of ISE Holdings has approved the amendment to the ISE Holdings Bylaws set forth in Exhibit 5A (the “ISE Holdings Bylaws Amendment”) in order to permit Holdco to indirectly own 50% of the outstanding common stock of ISE Holdings as of and after the Combination. The Exchange is requesting approval by the Commission of the ISE Holdings Bylaws Amendment in order to allow the Combination to take place.

Under the Proposed Rule Change, Holdco would take appropriate steps to incorporate voting and ownership restrictions, requirements relating to submission to jurisdiction, access to books and records and other requirements related to its control of the U.S. Regulated Subsidiaries. Specifically, the Articles of Association of Holdco in effect as of the completion of the Combination (the “Holdco Articles”) would contain

provisions<sup>4</sup> to incorporate these concepts with respect to itself, as well as its directors, officers, employees and agents (as applicable):

- Voting and Ownership Restrictions in the Holdco Articles. The Holdco Articles would contain voting and ownership restrictions that will restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the then outstanding votes entitled to be cast on a matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes entitled to be cast on a matter (except that a 20% ownership restriction would apply to any person who is a Member of NYSE<sup>5</sup> (a “NYSE Member”), a Member<sup>6</sup> of NYSE Amex (including any person who is a related person of such member, an “Amex Member”), an ETP Holder of NYSE Arca Equities<sup>7</sup> (an “ETP Holder”) an OTP Holder or OTP Firm of NYSE Arca<sup>8</sup> (an “OTP Holder” and “OTP Firm,” respectively), a Member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of ISE (an “ISE Member”), or a member of EDGA or EDGX (as such terms are defined in the rules of EDGA and EDGX, respectively, an “EDGA Member” and “EDGX Member,” respectively)). The Holdco Articles would provide that Holdco will be

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<sup>4</sup> The text of the proposed Holdco Articles is attached to the Proposed Rule Change as Exhibit 5B.

<sup>5</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 34.3(c).

<sup>6</sup> See id.

<sup>7</sup> See id.

<sup>8</sup> See id.

required to disregard any votes purported to be cast in excess of the voting restriction. In the event that any such person(s) exceeds the ownership restriction, it will be required to offer for sale and transfer the number of Holdco shares required to comply with the ownership restriction, and the rights to vote, attend general meetings of Holdco shareholders and receive dividends or other distributions attached to shares held in excess of the 40% threshold (or 20% threshold, if applicable) will be suspended for so long as such threshold is exceeded. If such person(s) fails to comply with the transfer obligation within two weeks, then the Holdco Articles would provide that Holdco will be irrevocably authorized to take actions on behalf of such person(s) in order to cause it to comply with such obligations. The Holdco board of directors may waive the voting and ownership restrictions if it makes certain determinations (which will be subject to the same requirements which are currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the current NYSE Euronext Certificate and the ISE Holdings Certificate, as applicable) and resolves to expressly permit the voting and ownership that is subject to such restrictions, and such resolutions have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European Regulators<sup>9</sup> having appropriate jurisdiction and authority.

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<sup>9</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 1.1.

- Jurisdiction. The Holdco Articles will provide that Holdco and its directors, and to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws and the rules or regulations thereunder, arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries. In addition, the Holdco Articles would provide that so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act. The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary. Furthermore, the Holdco Articles would provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco would sign an irrevocable



agreement and consent for the benefit of each U.S. Regulated Subsidiary<sup>10</sup>

that it will comply with these provisions of the Holdco Articles.

- Books and Records. The Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act, and that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and by any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight. In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, Holdco may maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.
- Amendments to Holdco Articles. The Holdco Articles would provide that before any amendment to the Holdco Articles may be effectuated by execution of a notarial deed of amendment, such amendment would need to be submitted to the board of directors of each U.S. Regulated Subsidiary and, if so determined by any such board, would need to be filed with, or filed with

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<sup>10</sup> The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

and approved by, the Commission before such amendment may become effective.

- Additional Matters. The Holdco Articles would include provisions regarding cooperation with the Commission and the U.S. Regulated Subsidiaries, compliance with U.S. federal securities laws, confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function, preservation of the independence of the U.S. Regulated Subsidiaries' self-regulatory function, and directors' consideration of the effect of Holdco's actions on the U.S. Regulated Subsidiaries' ability to carry out their respective responsibilities under the Exchange Act. In addition, the Holdco Articles would provide that Holdco will 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 Holdco to agree and consent in writing to the applicability to them of these provisions of the Holdco Articles with respect to their activities related to any U.S. Regulated Subsidiary. The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with respect to his or her activities related to any U.S. Regulated Subsidiary. Holdco will sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary<sup>11</sup> that it will comply with these provisions of the Holdco Articles.<sup>12</sup>

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<sup>11</sup> The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

In addition, Holdco would adopt a Director Independence Policy in the form attached hereto as Exhibit 5D (the “Holdco Independence Policy”), which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors. The Proposed Rule Change filed by the NYSE in connection with the combination describes the Holdco Independence Policy as it relates to the current Independence Policy of the NYSE Euronext board of directors.<sup>13</sup>

The text of the Proposed Rule Change is available at the Exchange, the Commission’s Public Reference Room, and on the website of the Exchange ([www.directedge.com](http://www.directedge.com)). The text of Exhibits 5A through 5D of the Proposed Rule Change are also available on the Exchange’s website and on the Commission’s website ([www.sec.gov/rules/sro.shtml](http://www.sec.gov/rules/sro.shtml)).

Other than as described herein and set forth in the attached Exhibits 5A through 5D, the Exchange will continue to conduct its regulated activities in the manner currently conducted and will not make any changes to its regulated activities in connection with the Combination. If the Exchange determines to make any such changes, it will seek approval of the Commission.

## **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 has included statements concerning the purpose of, and basis for, the Proposed Rule Change. The text of these

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<sup>12</sup> The Holdco Articles will also set forth certain restrictions and requirements relating to Holdco’s European subsidiaries and applicable European regulatory matters, which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco’s U.S. Regulated Subsidiaries and U.S. regulatory matters.

<sup>13</sup> See File No. SR-NYSE-2011-51.

statements may be examined at 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 aspects of such statements.

**A. Purpose**

The purpose of this rule filing is to adopt the rules necessary to permit Deutsche Börse to effect the Combination and to amend certain provisions of the organizational and other governance documents of Holdco.

**1. Overview of the Combination**

The Exchange is submitting this Proposed Rule Change to the Commission in connection with the Combination of NYSE Euronext and Deutsche Börse. The Combination will create a holding company, Holdco, which will hold the businesses of NYSE Euronext and Deutsche Börse. Following the Combination, each of NYSE Euronext and Deutsche Börse will be a separate subsidiary of Holdco. Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world's financial centers including New York, London, Frankfurt, Paris and Luxembourg. This global presence should facilitate providing world-class services to global and local customers worldwide.

Other than as described herein, Holdco and the Exchange will not make any changes to the regulated activities of the DB Exchanges in connection with the Combination, and, other than as described in the separate proposed rule changes filed by each of the NYSE Exchanges in connection with the Combination, Holdco and the NYSE Exchanges will not make any changes to the regulated activities of the NYSE U.S.

Regulated Subsidiaries in connection with the Combination. If Holdco determines to make any such changes to the regulated activities of any U.S. Regulated Subsidiary, it will seek the approval of the Commission. The Proposed Rule Change, if approved by the Commission, will not be operative until the consummation of the Combination.

The Combination will occur pursuant to the terms of the Business Combination Agreement, dated as of February 15, 2011, as amended by Amendment No. 1 dated as of May 2, 2011 and by Amendment No. 2 dated as of June 16, 2011 (as it may be further amended from time to time, the “Combination Agreement”), by and among NYSE Euronext, Deutsche Börse, Holdco and Pomme Merger Corporation, a Delaware corporation and newly formed wholly owned subsidiary of Holdco (“Merger Sub”). Subject to the terms and conditions set forth in the Combination Agreement and in compliance with applicable law, Holdco has conducted a public exchange offer (the “Exchange Offer”), in which shareholders of Deutsche Börse have been afforded the opportunity to tender each share of Deutsche Börse for one ordinary share of Holdco (each, a “Holdco Share”).

Immediately after the time that Holdco accepts for exchange, and exchanges, the Deutsche Börse shares that are validly tendered and not withdrawn in the Exchange Offer, Merger Sub will merge with and into NYSE Euronext, as a result of which NYSE Euronext will become a wholly owned subsidiary of Holdco (the “Merger”). In the Merger, each outstanding share of NYSE Euronext common stock will be converted into the right to receive 0.47 of a fully paid and non-assessable Holdco Share. NYSE Euronext’s obligation to complete the Merger is subject to the completion of the Exchange Offer and the acquisition by Holdco of all of the Deutsche Börse shares validly

tendered and not withdrawn in the Exchange Offer. The completion of the Exchange Offer (and, therefore, the completion of the Merger) is subject to the satisfaction of a number of conditions, including that Deutsche Börse shares representing at least 75% of the Deutsche Börse shares outstanding, on a fully diluted basis, must be validly tendered and not withdrawn in the Exchange Offer, and that holders of a majority of the outstanding shares of NYSE Euronext shall have adopted the Combination Agreement. Both of these conditions have been satisfied.

Following the completion of the Exchange Offer, and depending on the percentage of Deutsche Börse shares acquired by Holdco in the Exchange Offer, Deutsche Börse and Holdco intend to complete a post-completion reorganization pursuant to which Holdco will enter into a domination agreement or a combination of a domination agreement and a profit and loss transfer agreement, pursuant to which the remaining shareholders of Deutsche Börse will have limited rights, including a limited ability to participate in the profits of Deutsche Börse.

Holdco expects the Combination will create a group that will be both a world leader in derivatives and risk management and the premier global venue for capital raising, with a truly global franchise and presence in many of the world's financial centers including New York, London, Frankfurt, Paris and Luxembourg. This global presence should facilitate providing world-class services to global and local customers worldwide. Following the Combination, Holdco and its subsidiaries (together, the "Holdco Group") expect to serve as a benchmark regulatory model, facilitating transparency and harmonization of capital markets globally, while continuing to operate

all national exchanges under local regulatory frameworks and their respective brand names.

## **2. Overview of the Holdco Group Following the Combination**

Following the Combination, Holdco will be a for-profit, publicly traded corporation formed under the laws of The Netherlands and will act as the holding company for the businesses of NYSE Euronext and Deutsche Börse. Holdco will hold all of the equity interests in NYSE Euronext, which holds (1) 100% of the equity interest of NYSE Group (which, in turn, directly or indirectly holds 100% of the equity interests of the NYSE U.S. Regulated Subsidiaries) and (2) 100% of the equity interest of Euronext N.V. (which, in turn, directly or indirectly holds 100% of the equity interests of trading markets in Belgium, France, the Netherlands, Portugal and the United Kingdom). Holdco will also hold a majority of the equity interests in Deutsche Börse, which indirectly holds 50% of the equity interest of ISE Holdings (which, in turn, holds (1) 100% of the equity interest of ISE and (2) 31.54% of the equity interest of Direct Edge Holdings). Direct Edge Holdings indirectly holds 100% of the equity interest of the Exchange and EDGA. Holdco intends to list its ordinary shares on the New York Stock Exchange, the Frankfurt Stock Exchange and Euronext Paris. The Holdco Group will have dual headquarters in Frankfurt and New York.

After the Combination, NYSE Group will continue to be directly wholly owned by NYSE Euronext and will continue to directly or indirectly own the three NYSE Exchanges—NYSE, NYSE Arca and NYSE Amex—which provide marketplaces where investors buy and sell listed companies' common stock and other securities as well as equity options and securities traded on the basis of unlisted trading privileges. NYSE

Regulation, Inc., an indirect not-for-profit subsidiary of NYSE Group, oversees FINRA's performance of certain market surveillance and enforcement functions for NYSE Euronext's U.S. securities exchanges, enforces listed company compliance with applicable standards, and oversees regulatory policy determinations, rule interpretation and regulation related rule development.

In Europe, NYSE Euronext, Deutsche Börse and their respective subsidiaries own several European exchanges, including trading operations on regulated and non-regulated markets for cash products in Germany, France, Belgium, The Netherlands, and Portugal and derivatives in the United Kingdom and in the five above-mentioned locations. As a result, the activities of the NYSE Euronext and Deutsche Börse European markets are or may be subject to the jurisdiction and authority of a number of European regulators, including the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*), the Hessian Exchange Supervisory Authority, the Dutch Minister of Finance, the French Minister of the Economy, the French Financial Market Authority (*Autorité des Marchés Financiers*), the French Prudential Supervisory Authority (*Autorité de Contrôle Prudentiel*), the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*), the Belgian Financial Services and Markets Authority (*Autorité des Services et Marchés Financiers*), the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários – CMVM*) and the U.K. Financial Services Authority (FSA).

Other than certain modifications described herein, the current corporate structure, governance and self-regulatory independence and separation of the Exchange will be



preserved. Specifically, after the Combination, Direct Edge Holdings' businesses and assets will continue to be structured as follows:

- The Exchange will remain an indirect wholly owned subsidiary of Direct Edge Holdings, with ISE Holdings and Deutsche Börse holding equity interests of 31.54% and 15.77%, respectively.
- The Combination will have no effect on the ability of any party to trade securities on the Exchange, ISE or EDGA.

Similarly, Deutsche Börse and its subsidiaries, and NYSE Euronext and its subsidiaries, will continue to conduct their regulated activities in the same manner as they are currently conducted, with any changes subject to the relevant approvals of their respective European regulators and, in the case of the U.S. Regulated Subsidiaries, with any changes subject to the approval of the Commission.

Holdco acknowledges that to the extent it becomes aware of possible violations of the rules of the Exchange, it will be responsible for referring such possible violations to the Exchange.

### **3. Proposed Approval of Waiver of Voting and Ownership Restrictions of ISE Holdings**

Article FOURTH, Section III of the current ISE Holdings Certificate provides that (1) no person, either alone or together with its "related persons" (as defined in the ISE Holdings Certificate), may be entitled to vote or cause the voting of shares of ISE Holdings at any time, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, to the extent that such shares represent more than 20% of the voting power of the then outstanding votes entitled to be cast on such matter; and (2) no person, either alone or together with its related persons, at any time, directly, indirectly or

pursuant to any voting trust, may enter into any agreement, plan or other arrangement with any other person, either alone or together with its related persons, under circumstances which would result in the voting shares that shall be subject to such agreement, plan or other arrangement not being voted on any matter or matters or the withholding of any proxy relating thereto, where the effect of such agreement, plan or arrangement would be to enable any person, either alone or together with its related persons, to possess more than 20% of the voting power of the then outstanding votes entitled to be cast on any such matter (the “ISE Holdings Voting Restriction”).<sup>14</sup> If any person, either alone or together with its related persons, acquires voting power in excess of the ISE Holdings Voting Restriction, the ISE Holdings board of directors must notify the ISE Trust and such ISE Holdings Voting Restriction shall result in the automatic transfer to the ISE Trust of a majority of the voting shares then outstanding *pro rata* from the holders thereof.

In addition, the ISE Holdings Certificate provides that no person, either alone or together with its related persons, may at any time of record or beneficially own, directly or indirectly, shares of ISE Holdings representing more than 40% of the then outstanding votes entitled to be cast on any matter and no person who is a member of the Exchange, either alone or together with its related person, may at any time of record or beneficially own, directly or indirectly, shares of ISE Holdings representing in the more than 20% of the then outstanding votes entitled to be cast on any matter (the “ISE Holdings

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<sup>14</sup> See Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III.

Ownership Restriction”).<sup>15</sup> If any person, either alone or together with its related persons, owns shares of ISE Holdings in excess of the ISE Holdings Ownership Restriction, then the ISE Holdings board of directors must notify the ISE Trust and such ISE Holdings Ownership Restriction shall result in the automatic transfer to the ISE Trust of a majority of the voting shares then outstanding *pro rata* from the holders thereof.<sup>16</sup>

The ISE Holdings board of directors may waive the ISE Holdings Voting Restriction and the ISE Holdings Ownership Restriction pursuant to an amendment to the ISE Holdings Bylaws adopted by the ISE Holdings board of directors, if in connection with the adoption of such amendment, the board of directors in its sole discretion adopts a resolution stating that it is the determination of the board of directors that such amendment:

- will not impair the ability of ISE Holdings and any of the DB U.S. Regulated Subsidiaries, or facility thereof, to carry out their respective responsibilities under the Exchange Act and the rules and regulations thereunder;
- is otherwise in the best interest of ISE Holdings, its stockholders and the DB U.S. Regulated Subsidiaries;
- will not impair the Commission’s ability to enforce the Exchange Act;
- for so long as ISE Holdings directly or indirectly controls the Exchange, neither such person nor any of its related persons is an ISE Member, EDGA Member or EDGX Member; and

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<sup>15</sup> See Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III.

<sup>16</sup> See Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III.

- neither such person nor any of its related persons is subject to any “statutory disqualification” (as such term is defined in Section 3(a)(39) of the Exchange Act).<sup>17</sup>

Such amendment shall not be effective unless it has been filed with and approved by the Commission under Section 19(b) of the Exchange Act<sup>18</sup> and has become effective thereunder.

In order to allow Holdco to indirectly own 50% of the outstanding common stock of ISE Holdings upon consummation of the Combination, Holdco has delivered written notice to the board of directors of ISE Holdings pursuant to the procedures set forth in the ISE Holdings Certificate requesting approval of its voting and ownership of ISE Holdings shares in excess of the ISE Holdings Voting Restriction and the ISE Holdings Ownership Restriction. Among other things, in this notice, Holdco represented to the board of directors of ISE Holdings that neither it, nor any of its related persons, is (1) an ISE Member; (2) EDGA Member; (3) EDGX Member; or (4) subject to any “statutory disqualification.”

At a meeting duly convened on September 16, 2011, the board of directors of ISE Holdings adopted the ISE Holdings Bylaws Amendment to permit Holdco, either alone or together with its related persons, to exceed the ISE Holdings Ownership Restriction and the ISE Holdings Voting Restriction. In adopting such amendment, the board of directors of ISE Holdings made the necessary determinations set forth above and

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<sup>17</sup> See Amended and Restated Certificate of Incorporation of ISE Holdings, Article FOURTH, Section III, and Amended and Restated Bylaws of ISE Holdings, Article XI.

<sup>18</sup> 15 U.S.C. 78s(b).

approved the submission of this Proposed Rule Change to the Commission. The Exchange will continue to operate and regulate its market and members exactly as it has done prior to the Combination. Except as set forth in this Proposed Rule Change, the Exchange is not proposing any amendments to its trading or regulatory rules.

With respect to the ability of the Commission to enforce the Exchange Act as it applies to the Exchange after the Combination, the Exchange will operate in the same manner following the Combination as it operates today.<sup>19</sup> Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. As described in the following sections of this filing, the Exchange is proposing certain provisions of the Holdco Articles that will create an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary. The ISE Holdings board of directors also determined that ownership of ISE Holdings by Holdco is in the best interests of ISE Holdings, its shareholders and the DB U.S. Regulated Subsidiaries.

In addition, neither Holdco, nor any of its related persons, is (1) an ISE Member; (2) an EDGA Member; (3) an EDGX Member; or (4) subject to any “statutory disqualification.”

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<sup>19</sup> The Exchange has been informed by NYSE Euronext, EDGA and EDGX that the NYSE U.S. Regulated Subsidiaries, EDGA and EDGX, respectively, are also expected to operate in the same manner following the Combination as they operate today. This is addressed in the separate proposed rule change filed by each of the NYSE Exchanges, EDGA and EDGX.

An extract with the relevant provisions of the ISE Holdings Bylaws Amendment is attached as Exhibit 5A to the Proposed Rule Change and can be found on the Exchange's website and the Commission's website.

The Exchange hereby requests that the Commission approve the ISE Holdings Bylaws Amendment and allow Holdco, either alone or with its related persons, to indirectly own 50% of the outstanding common stock of ISE Holdings upon and following the consummation of the Combination.

**4. Proposed Amendments to Ownership and Voting Restrictions After the Combination**

Overview

The Exchange is proposing that, effective as of the completion of the Combination, the Holdco Articles would contain voting and ownership restrictions that restrict any person, either alone or together with its related persons, from having voting control over Holdco shares entitling the holder thereof to cast more than 20% of the votes entitled to be cast on any matter or beneficially owning Holdco shares representing more than 40% of the outstanding votes that may be cast on any matter (except that a 20% ownership restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder, an OTP Firm, an ISE Member, an EDGA Member or an EDGX Member).

In addition, the Exchange is proposing that, effective as of the Combination, the voting and ownership restrictions currently in the Amended and Restated Limited

Liability Company Operating Agreement of Direct Edge Holdings (“Direct Edge Holdings Operating Agreement”) would remain in effect.<sup>20</sup>

Voting and Ownership Restrictions in Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that no person, either alone or together with its related persons, will be entitled to vote or cause the voting of a number of shares of Holdco, in person or by proxy or through any voting agreement or other arrangement, which represent in the aggregate (1) more than 20% of the then outstanding votes entitled to be cast on such matter; or (2) more than 20% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons to refrain from voting shares of Holdco (the “Holdco Voting Restriction”).<sup>21</sup> The Holdco Articles would provide that Holdco will be required to disregard any votes purported to be cast in excess of the Holdco Voting Restriction.

In addition, the Holdco Articles would provide that any person who, either alone or together with its related persons, beneficially owns Holdco shares which represent in the aggregate more than 40% of the outstanding votes entitled to be cast on any matter (except that a 20% restriction would apply to any person who is a NYSE Member, an Amex Member, an ETP Holder, an OTP Holder, an OTP Firm, an ISE Member, an

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<sup>20</sup> The current voting and ownership restrictions contained in the Direct Edge Holdings Operating Agreement and the ISE Holdings Certificate, as well as the related provisions contained in the amended and restated bylaws of U.S. Exchange Holdings and the board resolutions of Deutsche Börse, Eurex Frankfurt AG and other indirect parent entities of the Exchange, would remain in effect. The ISE Trust would also remain unaltered and would continue to have rights to enforce these restrictions.

<sup>21</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 34.1.

EDGA Member or an EDGX Member) (the “Holdco Ownership Restriction”), will be obligated to offer for sale and to transfer a number of Holdco shares necessary so that such person, together with its related persons, beneficially owns a number of Holdco shares that complies with the Holdco Ownership Restriction (the “Holdco Transfer Obligation”).<sup>22</sup> If such person(s) fails to comply with the Holdco Transfer Obligation within two weeks, Holdco will be irrevocably authorized to act on behalf of such person(s) in order to ensure compliance with the Holdco Transfer Obligation.<sup>23</sup>

Furthermore, the Holdco Articles would provide that in the event any person, either alone or together with its related persons, exceeds the Holdco Ownership Restriction (any such person(s), a “Non-Compliant Owner”), the Non-Compliant Owner would cease to have certain rights to the extent that its shareholding exceeds the Holdco Ownership Restriction. Specifically, the Non-Compliant Owner’s rights to vote, to attend general meetings of Holdco shareholders and to receive dividends or other distributions attached to such shares in excess of the Holdco Ownership Restriction would be suspended for so long as the Holdco Ownership Restriction is exceeded.<sup>24</sup>

Pursuant to Section 2:87a of the Dutch Civil Code, the Non-Compliant Owner may request that an independent expert be appointed to determine the value of the Holdco shares, but such expert will have discretion to determine that the value of the shares is

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<sup>22</sup> See Form of Deed of Amendment to Holdco Articles of Association, Articles 35.1 and 35.4.

<sup>23</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 35.7.

<sup>24</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 35.6.



equal to the price received for the shares by the Non-Compliant Owner on any stock exchange where the Holdco shares are listed.<sup>25</sup>

The voting and ownership restrictions will apply to each person unless it (1) delivers to the Holdco board of directors a written notice of its intention to acquire voting power or ownership in excess of the relevant limitation, and such notice is delivered at least 45 days (or such shorter period as the Holdco board or directors expressly consents to) prior to acquiring Holdco shares in excess of the Holdco Voting Restriction or Holdco Ownership Restriction, and (2) obtains a written confirmation from the Holdco board of directors that the board has expressly resolved to permit such voting or ownership, and (3) such resolution has been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and filed with, and approved by, the relevant European regulators having appropriate jurisdiction and authority.<sup>26</sup> The Holdco board of directors may waive the Holdco Voting Restriction and Holdco Ownership Restriction if it makes certain determinations, which will be consistent with the determinations currently required to be made by the board of directors of NYSE Euronext and ISE Holdings in order to waive the voting and ownership restrictions in the NYSE Euronext Certificate and the ISE Holdings Certificate, respectively.<sup>27</sup>

##### **5. Additional Matters to be Addressed in the Holdco Articles**<sup>28</sup>

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<sup>25</sup> See Form of Deed of Amendment to Holdco Articles of Association, Articles 35.5.

<sup>26</sup> See Form of Deed of Amendment to Holdco Articles of Association, Articles 34.2 and 35.2.

<sup>27</sup> See Form of Deed of Amendment to Holdco Articles of Association, Articles 34.3 and 35.3.

<sup>28</sup> The Holdco Articles will set forth certain restrictions and requirements relating to Holdco's European subsidiaries and applicable European regulatory matters,

### Jurisdiction over Individuals

Under the Proposed Rule Change, the Holdco Articles would provide that Holdco and its directors, and to the extent that they are involved in the activities of the U.S. Regulated Subsidiaries, (x) Holdco's officers, and (y) those of its employees whose principal place of business and residence is outside the United States, would be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the Commission for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries.<sup>29</sup> The Holdco Articles would also provide that, with respect to any such suit, action, or proceeding brought by the Commission, Holdco and its directors, officers and employees would (1) be deemed to agree that NYSE Group may serve as U.S. agent for purposes of service of process in such suit, action, or proceeding relating to NYSE Group or any of its subsidiaries, and ISE Holdings may serve as the U.S. agent for proceedings relating to ISE Holdings or any of its subsidiaries; and (2) 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 Commission, that the suit, action, or proceeding is an inconvenient

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which will be substantially consistent with the analogous restrictions and requirements applicable with respect to Holdco's U.S. Regulated Subsidiaries and U.S. regulatory matters.

<sup>29</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(c).

forum or that the venue of the suit, action, or proceeding is improper, or that the subject matter thereof may not be enforced in or by the U.S. federal courts or the Commission.<sup>30</sup>

In addition, the Holdco Articles would provide that, so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the directors, officers and employees of Holdco will be deemed to be directors, officers and employees of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.<sup>31</sup>

The Holdco Articles would provide that Holdco will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to them of these jurisdictional and oversight provisions with respect to their activities related to any U.S. Regulated Subsidiary.<sup>32</sup> The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these jurisdictional and oversight provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.<sup>33</sup> Furthermore, Holdco would sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary<sup>34</sup> that it will comply with these provisions in the Holdco Articles.

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<sup>30</sup> See id.

<sup>31</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

<sup>32</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

<sup>33</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.

<sup>34</sup> The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

The Exchange anticipates that the functions and activities of each U.S. Regulated Subsidiary generally will be carried out by the officers and directors of such U.S. Regulated Subsidiary, each of whom the Commission has direct authority over pursuant Section 19(h)(4) of the Exchange Act.<sup>35</sup>

Access to Books and Records

Under the Proposed Rule Change, the Holdco Articles would provide that for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records and premises of Holdco will be deemed to be the books, records and premises of such U.S. Regulated Subsidiaries for purposes of, and subject to oversight pursuant to, the Exchange Act.<sup>36</sup> In addition, the Holdco Articles would provide that Holdco's books and records will at all times be made available for inspection and copying by the Commission, and any U.S. Regulated Subsidiary to the extent they are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight.<sup>37</sup> In addition, Holdco's books and records related to the U.S. Regulated Subsidiaries will be maintained within the United States, except that to the extent that books and records may relate to both European subsidiaries and U.S. Regulated Subsidiaries, Holdco may

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<sup>35</sup> 15 U.S.C. 78s(h)(4).

<sup>36</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(f).

<sup>37</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(e).

maintain such books and records either in the home jurisdiction of one or more European subsidiaries or in the United States.<sup>38</sup>

Additional Matters

Under the Proposed Rule Change, the Holdco Articles would provide that Holdco will comply with the U.S. federal securities laws and the rules and regulations thereunder, and will cooperate with the Commission and with the U.S. Regulated Subsidiaries pursuant to and to the extent of their respective regulatory authority.<sup>39</sup> In addition, Holdco would be required to take reasonable steps necessary to cause its agents to cooperate with the Commission and, where applicable, the U.S. Regulated Subsidiaries pursuant to their regulatory authority.<sup>40</sup> The Holdco Articles would also provide that, in discharging his or her responsibilities as a member of the Holdco board of directors or as an officer or employee of Holdco, each such director, officer or employee will (a) comply with the U.S. federal securities laws and the rules and regulations thereunder; (b) cooperate with the Commission; and (c) cooperate with the U.S. Regulated Subsidiaries pursuant to and to the extent of their regulatory authority (but this provision will not create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any such matters or to limit his or her consideration to such matters).<sup>41</sup>

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<sup>38</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(g).

<sup>39</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(a).

<sup>40</sup> See id.

<sup>41</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(l).

The Holdco Articles would also provide that all confidential information that comes into the possession of Holdco pertaining to the self-regulatory function of any U.S. Regulated Subsidiary will (a) not be made available to any persons other than to those officers, directors, employees and agents of Holdco that have a reasonable need to know the contents thereof; (b) be retained in confidence by Holdco and the officers, directors, employees and agents of Holdco; and (c) not be used for any commercial purposes.<sup>42</sup> In addition, the Holdco Articles would provide that these obligations regarding such confidential information will not be interpreted so as to limit or impede (i) the rights of the Commission or the relevant U.S. Regulated Subsidiary to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees or agents of Holdco to disclose such confidential information to the Commission or any U.S. Regulated Subsidiary.<sup>43</sup>

Additionally, the Holdco Articles would provide that, for so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, Holdco and its directors, officers and employees will give due regard to the preservation of the independence of the self-regulatory function of such U.S. Regulated Subsidiary and to its obligations to investors and the general public, and will not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of such U.S. Regulated Subsidiary relating to its regulatory responsibilities (including enforcement

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<sup>42</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(h).

<sup>43</sup> See id.

and disciplinary matters) or that would interfere with the ability of such U.S. Regulated Subsidiary to carry out its responsibilities under the Exchange Act.<sup>44</sup>

Finally, the Holdco Articles would provide that each director of Holdco would, in discharging his or her responsibilities, to the fullest extent permitted by applicable law, take into consideration the effect that Holdco's actions would have on the ability of (a) the U.S. Regulated Subsidiaries to carry out their responsibilities under the Exchange Act; and (b) the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to (1) engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group, ISE Holdings and Holdco to prevent fraudulent and manipulative acts and practices in the securities markets; (2) promote just and equitable principles of trade in the securities markets; (3) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (4) remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (5) in general, protect investors and the public interest.<sup>45</sup> This requirement would not, however, create any duty owed by any director, officer or employee of Holdco to any person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to such matters.<sup>46</sup>

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<sup>44</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(i).

<sup>45</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

<sup>46</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(k).

In addition, the Holdco Articles would provide that Holdco will 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 Holdco to agree and consent in writing to the applicability to them of these provisions of the Holdco Articles with respect to their activities related to any U.S. Regulated Subsidiary.<sup>47</sup> The Holdco Articles would also provide that no person may be a director of Holdco unless he or she has agreed and consented in writing to the applicability to him or her of these provisions with respect to his or her activities related to any U.S. Regulated Subsidiary.<sup>48</sup>

Holdco would also sign an irrevocable agreement and consent for the benefit of each U.S. Regulated Subsidiary that it will comply with provisions in the Holdco Articles regarding (1) cooperation with the Commission and such U.S. Regulated Subsidiaries; (2) compliance with U.S. federal securities laws; (3) inspection and copying of Holdco's books, records and premises; (4) Holdco's books, records, premises, officers, directors and employees being deemed to be those of U.S. Regulated Subsidiaries; (5) maintenance of books and records in the United States; (6) confidentiality of information regarding the U.S. Regulated Subsidiaries' self-regulatory function; (7) preservation of the independence of the self-regulatory function of the U.S. Regulated Subsidiaries; and (8) taking reasonable steps to cause Holdco's officers, directors and employees to consent to the applicability to them of the Holdco Articles. The form of Holdco's agreement and consent is attached as Exhibit 5C to this Proposed Rule Change.

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<sup>47</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 3.2(m).

<sup>48</sup> See Form of Deed of Amendment to Holdco Articles of Association, Article 14.11.



### Amendments to the Holdco Articles

Under the Proposed Rule Change, the Holdco Articles would provide that, before any amendment to or repeal of any provision of the Holdco Articles may become effectuated by means of a notarial deed of amendment, the same will be submitted to the board of directors of each U.S. Regulated Subsidiary (or the boards of directors of their successors) and if any or all of such boards of directors determine that the same must be filed with, or filed with and approved by, the Commission before the same may be effective under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same will not be effective until filed with, or filed with and approved by, the Commission, as the case may be. These requirements would also apply to any action by Holdco that would have the effect of amending or repealing any provision of the Holdco Articles.

### Holdco Director Independence Policy

Under the Proposed Rule Change, Holdco would adopt the Holdco Independence Policy in the form attached hereto as Exhibit 5D, which would be substantially similar to the current Independence Policy of the NYSE Euronext board of directors. The Proposed Rule Change filed by the NYSE in connection with the combination describes the Holdco Independence Policy as it relates to the current Independence Policy of the NYSE Euronext board of directors.<sup>49</sup>

## **6. Statutory Basis**

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<sup>49</sup> See File No. SR-NYSE-2011-51.

The Exchange believes that this filing is consistent with Section 6(b)<sup>50</sup> of the Exchange Act in general, and furthers the objectives of Section 6(b)(1)<sup>51</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. With respect to the ability of the Commission to enforce the Exchange Act as it applies to the Exchange after the Combination, the Exchange will operate in the same manner following the Combination as it operates today. Thus, the Commission will continue to have plenary regulatory authority over the Exchange, as is the case currently with the Exchange. The Proposed Rule Change is consistent with and will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to each U.S. Regulated Subsidiary, its direct and indirect parent entities and its directors, officers, employees and agents to the extent they are involved in the activities of such U.S. Regulated Subsidiary.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5)<sup>52</sup> of the Exchange Act because the Proposed Rule Change summarized herein would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged

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<sup>50</sup> 15 U.S.C. 78(f)(b).

<sup>51</sup> 15 U.S.C. 78(f)(b)(1).

<sup>52</sup> 15 U.S.C. 78(f)(b)(5).

in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange does not expect that the Combination will impact the current operations of the Exchange. However, the Exchange believes that by incorporating Holdco's governance documents as part of the proposed rule filing, investors will be better apprised of Holdco's proposed indirect ownership interest in 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 Exchange 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.

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

Within 45 days of the publication date of this notice or within such longer period (1) as the Commission may designate up to 45 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will:

- (a) by order approve such Proposed Rule Change; or

- (b) institute proceedings to determine whether the Proposed Rule Change should be disapproved.

#### **IV. Solicitation of Comments**

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

##### **A. 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 Number SR-EDGX-2011-33 on the subject line.

##### **B. Paper Comments:**

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

All submissions should refer to File Number SR-EDGX-2011-33. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

inspection and copying in the Commission's Public Reference Room, 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EDGX-2011-33 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>53</sup>

Elizabeth M. Murphy

Secretary

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<sup>53</sup> 17 CFR 200.30-3(a)(12).

Exhibit 5A – Second Amended and Restated Bylaws of International Securities Exchange Holdings, Inc.

Underlining indicates additions

[Brackets] indicate deletions

SECOND AMENDED AND RESTATED

BYLAWS

OF

INTERNATIONAL SECURITIES EXCHANGE HOLDINGS, INC.

(Adopted on December 19, 2007; Amended on December 23, 2008  
and [•])

\* \* \* \* \*

## ARTICLE XI

### Waiver Of Limits

\* \* \* \* \*

#### **Section 11.2 Waiver of Ownership Limits and Voting Limits to Permit Business Combination.**

(a) The Board of Directors hereby waives (i) pursuant to Article FOURTH, Section III(a)(i) of the certificate of incorporation of the Corporation dated December 23, 2008, as amended (“2008 Certificate”), the restrictions on ownership of capital stock of the Corporation described in Article FOURTH, Section III(a)(i) of the 2008 Certificate, and (ii) pursuant to Article FOURTH, Section III(b)(i) of the 2008 Certificate, the restrictions on voting rights with respect to the capital stock of the Corporation as described in Article FOURTH, Section III(b)(i) of the 2008 Certificate, in each case solely in order to permit the merger and the other transactions contemplated by that certain Business Combination Agreement, dated as of February 15, 2011, as amended by Amendment No. 1 dated as of May 2, 2011 and by Amendment No. 2 dated as of June 16, 2011, by and among NYSE Euronext, a Delaware corporation, Deutsche Börse, Alpha Beta Netherlands Holding N.V., a public limited liability company organized under the laws of the Netherlands (“Holdco”), and Pomme Merger Corporation, a Delaware corporation and a newly formed, wholly owned subsidiary of Holdco, under which the Corporation will become an indirect subsidiary of Holdco.

(b) In so waiving the applicable Ownership Limits and Voting Limits to allow ownership and voting of the capital stock of the Corporation by Holdco, the Board of Directors has determined, with respect to Holdco, that: (i) such waiver will not impair the ability of the Corporation and each Controlled National Securities Exchange, or facility thereof, to carry out its respective functions and responsibilities under the Exchange Act and the rules promulgated thereunder; (ii) such waiver is otherwise in the best interests of the Corporation, its stockholders, and each Controlled National Securities Exchange, or facility thereof; (iii) such waiver will not impair the ability of the Commission to enforce the Exchange Act; (iv) neither Holdco nor any of its Related Persons are subject to any applicable “statutory disqualification” (within the meaning of Section 3(a)(39) of the Exchange Act); and (v) neither Holdco nor any of its Related Persons is a member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of such Controlled National Securities Exchange.

Exhibit 5B – Text of Proposed Articles of Association of Alpha Beta Netherlands Holding N.V.

All text is new

Alpha Beta Netherlands Holding N.V.

DEED OF AMENDMENT OF ARTICLES OF ASSOCIATION



**NOTE ABOUT TRANSLATION:**

**This document is an English translation of a document prepared in Dutch. In preparing this document, an attempt has been made to translate as literally as possible without jeopardising the overall continuity of the text. Inevitably, however, differences may occur in translation and if they do, the Dutch text will govern by law. The definitions in article 1.1 of this document are listed in the English alphabetical order which may differ from the Dutch alphabetical order.**

**In this translation, Dutch legal concepts are expressed in English terms and not in their original Dutch terms. The concepts concerned may not be identical to concepts described by the English terms as such terms may be understood under the laws of other jurisdictions.**

## DEED OF AMENDMENT OF ARTICLES OF ASSOCIATION

*(Alpha Beta Netherlands Holding N.V.)*

*[(new name: ● N.V.)]*

This ● day of ● two thousand and eleven, there appeared before me, Bartholomeus Johannes Kuck, civil law notary in Amsterdam, the Netherlands:

●.

The person appearing declared the following:

The sole shareholder of **Alpha Beta Netherlands Holding N.V.**, a public company incorporated under the laws of the Netherlands (*naamloze vennootschap*), having its official seat (*statutaire zetel*) in Amsterdam, the Netherlands, and its office at Herengracht 450, 1017 CA Amsterdam, the Netherlands, registered with the Dutch Trade Register of the Chambers of Commerce under number 52019756 (the "**Company**"), resolved on the ● day of ● two thousand and eleven to amend and completely readopt the articles of association of the Company, as well as to authorise the person appearing to have this deed executed. The adoption of such resolutions is evidenced by a [copy of a] written shareholder's resolution attached to this deed (Annex).

The articles of association of the Company were established at the incorporation of the Company, by a deed, executed on the tenth day of February two thousand and eleven before B.J. Kuck, civil law notary in Amsterdam, the Netherlands. The articles of association of the Company have not been amended since.

In implementing the aforementioned resolution, the articles of association of the Company are hereby amended and completely readopted as follows.

**ARTICLES OF ASSOCIATION:**

**CHAPTER I**

**1 Definitions and interpretation**

**1.1** In these articles of association, the following terms shall have the following meanings:

“**Amex Member**” has the meaning attributed thereto in article 34.3(c).

“**Audit, Finance and Risk Committee**” means the Audit, Finance and Risk Committee of the Company as referred to in article 17.7.

“**beneficially owned**” has the meaning attributed thereto in article 34.9.

“**Board**” means the Board of Directors of the Company.

“**Board Committees**” has the meaning attributed thereto in article 17.7.

“**Board Rules**” has the meaning attributed thereto in article 17.6.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Amsterdam, the Netherlands, Frankfurt am Main, Germany, New York, State of New York, United States of America and Paris, France.

“**Closing Date**” means [●].

“**Company**” means the company the internal organisation of which is governed by these articles of association.

“**Company Secretary**” has the meaning attributed thereto in article 14.6.

“**Concentration Limitation**” has the meaning attributed thereto in article 35.1.

“**DCC**” means the Dutch Civil Code.

“**demerger**” has the meaning attributed thereto in article 37.2.

“**Deutsche Börse**” means Deutsche Börse AG.

“**Direct Edge Holdings**” means Direct Edge Holdings, LLC.

“**Director**” means each member of the Board; unless the contrary is apparent, this shall include each Executive Director and each Non-Executive Director.

“**Distributable Equity**” means the part of the Company’s equity which exceeds the aggregate of the issued capital and the reserves which must be maintained pursuant to the laws of the Netherlands.

“**EDGA**” means EDGA Exchange, Inc.

“**EDGA Member**” has the meaning attributed thereto in article 34.3(c).

“**EDGX**” means EDGX Exchange, Inc.

“**EDGX Member**” has the meaning attributed thereto in article 34.3(c).

“**Effective Time**” means [●].

“**ETP Holder**” has the meaning attributed thereto in article 34.3(c).

“**EURIBOR**” means the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period, displayed on the appropriate page of the Reuters screen on the date of the first issue of Preference Shares and at each anniversary of such date, or if that is not a Business Day, the next Business Day. If the agreed page is replaced or service ceases to be available at that date, the Board may specify another page or service displaying the appropriate rate or otherwise determine the appropriate rate.

“**Euronext**” means Euronext N.V.

“**Euronext College of Regulators**” means (i) the Committee of Chairmen of the French Financial Market Authority (*Autorité des Marchés Financiers*), the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*), the Belgian Financial Services and Markets Authority (*Autorité des Services et Marchés Financiers*), the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários - CMVM*), and the U.K. Financial Services Authority (FSA), pursuant to the Memorandum of Understanding dated the twenty-fourth day of June two thousand ten, as it may be amended from time to time, and (ii) a successor body thereto created to include a European Regulator that regulates a European Market Subsidiary.

“**Europe**” shall mean (i) any and all of the jurisdictions in which Euronext, Deutsche Börse or any of their subsidiaries operates a European Regulated Market, (ii) any member state of the European Economic Area, and (iii) Switzerland.

“**European Disqualified Person**” has the meaning attributed thereto in article 34.3(c).

“**European Exchange Regulations**” means (i) any laws providing for the regulation of securities exchanges in Germany, France, the Netherlands, Belgium, Portugal and the United Kingdom and (ii) following the formation or acquisition by Euronext or Deutsche Börse of any European Regulated Market not owned and operated by Euronext or Deutsche Börse as of the Effective Time, any laws providing for the regulation of securities exchanges in the jurisdiction in which such European Regulated Market operates; provided that the jurisdiction in which such European Regulated Market operates is represented in the Euronext College of Regulators and the formation or acquisition of such European Regulated Market shall have been approved by the Board.

“**European Market Subsidiary**” means any “market operator” (as defined by the European Directive on Markets in Financial Instruments 2004/39 EC) that is (i) owned by Euronext or Deutsche Börse as of the Effective Time and continues to be owned directly or indirectly by the Company or (ii) acquired by Euronext or Deutsche Börse after the Effective Time; provided that the jurisdiction in which such European Market Subsidiary operates is represented in the Euronext College of Regulators and, in the case of clause (ii), the acquisition of such entity shall have been approved by the Board.

“**European Market Subsidiary’s Confidential Information**” has the meaning attributed thereto in article 3.2(h).

“**European Regulated Market**” means each “regulated market” (as defined by the

European Directive on Markets in Financial Instruments 2004/39 EC) in Europe that (i) is owned and operated by Euronext or Deutsche Börse and was owned and operated by Euronext or Deutsche Börse as of the Effective Time or (ii) is formed or acquired by Euronext or Deutsche Börse after the Effective Time; provided that the jurisdiction in which such European Regulated Market operates is represented in the Euronext College of Regulators and, in the case of clause (ii), the formation or acquisition of such European Regulated Market shall have been approved by the Board.

**“European Regulator”** means any of the Euronext College of Regulators, the Dutch Minister of Finance, the French Minister of the Economy, the French Financial Market Authority (*Autorité des Marchés Financiers*), the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*), the Belgian Financial Services and Markets Authority (*Autorité des Services et Marchés Financiers*), the French Prudential Supervisory Authority (*Autorité de Contrôle Prudentiel*), the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários - CMVM*), the U.K. Financial Services Authority (FSA), or any other governmental securities regulator in any European country where the Company or any European Market Subsidiary operates a European Regulated Market, in each case only to the extent that it has authority and jurisdiction in the particular context.

**“Exchange Act”** means the U.S. Securities Exchange Act of nineteen hundred and thirty-four, as amended.

**“Executive Director”** means a member of the Board, which member is particularly responsible for the daily affairs of the Company.

**“FPI-Status”** has the meaning attributed thereto in article 14.2.

**“General Meeting”** or **“General Meeting of Shareholders”** means the body of the Company consisting of the person or persons to whom, as a Shareholder or otherwise, voting rights attached to Shares accrue or (as the case may be) a meeting of such persons (or their representatives) and other persons entitled to attend such meetings.

**“Global Executive Committee”** means TopCo Group’s Global Executive Committee as described in the Rules of the Global Executive Committee.

**“Group Chairman”** has the meaning attributed thereto in article 15.1.

**“Group CEO”** has the meaning attributed thereto in article 16.1.

**“Group Vice-Chairman”** has the meaning attributed thereto in article 15.1.

**“Human Resources and Compensation Committee”** means the Human Resources and Compensation Committee of the Company as referred to in article 17.7.

**“in writing”** means transmitted by letter, telecopier or e-mail, or any other electronic means of communication, provided the relevant message is legible and reproducible.

**“Initial Board Term”** has the meaning attributed thereto in article 14.1.

**“Initial CEO Term”** has the meaning attributed thereto in article 16.1.

**“Initial Chairman Term”** has the meaning attributed thereto in article 15.1.

**"Integration Committee"** means the Integreition Committee of the Company as referred to in article 17.7.

**"ISE"** means International Securities Exchange, LLC.

**"ISE Holdings"** means International Securities Exchange Holdings, Inc.

**"ISE Member"** has the meaning attributed thereto in article 34.3(c).

**"Nomination, Governance and Corporate Responsibility Committee"** means the Nomination, Governance and Corporate Responsibility Committee of the Company as referred to in article 17.7.

**"NYSE Arca"** means NYSE Arca, Inc.

**"NYSE Arca Equities"** means NYSE Arca Equities, Inc.

**"NYSE Group"** means NYSE Group, Inc.

**"NYSE Member"** has the meaning attributed thereto in article 34.3(c).

**"Non-Executive Director"** means a member of the Board, which member is particularly responsible for the supervision of the policy of the Executive Directors and the general affairs of the Company.

**"Ordinary Share"** means an ordinary share in the capital of the Company.

**"OTP Holder"** has the meaning attributed thereto in article 34.3(c).

**"OTP Firm"** has the meaning attributed thereto in article 34.3(c).

**"Person"** means any individual, company, association, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity to agency or political subdivision thereof.

**"Preference Share"** means a cumulative preference share in the capital of the Company.

**"Preferred Dividend"** has the meaning attributed thereto in article 24.1.

**"Recalculated Voting Limitation"** has the meaning attributed thereto in article 34.1.

**"record date"** has the meaning attributed thereto in article 28.4.

**"Related Person"** has the meaning attributed thereto in article 34.8.

**"SEC"** means the U.S. Securities and Exchange Commission.

**"Share"** means a share in the capital of the Company. Unless the contrary is apparent, this shall include each Ordinary Share and each Preference Share.

**"Shareholder"** means a holder of one or more Shares. Unless the contrary is apparent, this shall include each holder of Ordinary Shares as well as each holder of Preference Shares. Shareholders shall in any event be deemed to include those Persons who are shareholders under any applicable law pursuant to the Dutch Law of Property Conflict of Laws Act (*Wet conflictenrecht goederenrecht*).

“**Shareholder Concentration Obligations**” has the meaning attributed thereto in article 35.2.

“**Shareholder Voting Obligations**” has the meaning attributed thereto in article 34.2.

“**Strategy Committee**” means the Strategy Committee of the Company as referred to in article 17.7.

“**Subsidiary**” means a subsidiary of the Company as referred to in Section 2:24a of the Dutch Civil Code.

“**Technology Committee**” means the Technology Committee of the Company as referred to in article 17.7.

“**[TopCo] Group**” means the Company together with its Subsidiaries.

“**United States**” or “**U.S.**” means the United States of America.

“**U.S. Disqualified Person**” has the meaning attributed thereto in article 34.3(c).

“**U.S. Regulated Subsidiaries**” means New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., NYSE Arca, L.L.C., NYSE Arca, NYSE Arca Equities, NYSE Amex LLC, ISE, EDGA and EDGX, and such other subsidiaries of the Company which are designated by the Board as a “U.S. Regulated Subsidiary” for purposes of these articles (each a “**U.S. Regulated Subsidiary**”).

“**U.S. Regulated Subsidiary’s Confidential Information**” has the meaning attributed thereto in article 3.2(h).

“**Voting Limitation**” has the meaning attributed thereto in article 34.1.

- 1.2 References to “articles” refer to articles that are part of these articles of association, except where expressly indicated otherwise.

## CHAPTER II

### NAME, OFFICIAL SEAT AND OBJECTS

#### 2 Name, official seat and headquarters

2.1 The Company’s name is:  
**[TopCo] N.V.**

2.2 The Company has its official seat in Amsterdam, the Netherlands.

2.3 The [Topco] Group shall have dual headquarters which shall be located in Frankfurt am Main, Germany, and New York, State of New York, United States of America.

#### 3 Objects

3.1 The objects of the Company are:

- (a) to incorporate, to participate in any way whatsoever in, to manage, to supervise businesses and companies, including without limitation businesses and companies of which the objects are to set up, develop, hold and operate, directly or indirectly, one or more exchanges or markets or other facilities with regard to the listing of, the trade in, the clearing and settlement of transactions in, and the custody of, securities and derivatives;
- (b) to finance and/or acquire businesses and companies;

- (c) to borrow, to lend and to raise funds, including through the issue of bonds, debt instruments or other securities or evidence of indebtedness as well as to enter into agreements in connection with aforementioned activities;
  - (d) to render advice and services to businesses and companies with which the Company forms a group and to third parties;
  - (e) to grant guarantees, to bind the Company and to pledge its assets for obligations of businesses and companies with which it forms a group and on behalf of third parties;
  - (f) to perform any and all activities of an industrial, financial or commercial nature, and to do all that is connected therewith or may be conducive thereto, all to be interpreted in the broadest sense.
- 3.2**
- (a) The Company shall comply with the U.S. federal securities laws and the rules and regulations thereunder and cooperate with the SEC and the U.S. Regulated Subsidiaries pursuant to and to the extent of their respective regulatory authority, and take reasonable steps necessary to cause its agents to cooperate with the SEC and, where applicable, the U.S. Regulated Subsidiaries pursuant to their regulatory authority.
  - (b) The Company shall comply with the European Exchange Regulations and the rules and regulations thereunder and cooperate with the European Regulators pursuant to and to the extent of their respective regulatory authority, and take reasonable steps necessary to cause its agents to cooperate with the European Regulators pursuant to their regulatory authority.
  - (c) The Company and its Directors, and to the extent they are involved in the activities of the U.S. Regulated Subsidiaries, the Company's officers, and those of its employees whose principal place of business and residence is outside of the United States, shall be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the SEC for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws and the rules and regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries (and be deemed to agree that NYSE Group may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding relating to NYSE Group or any of its subsidiaries and ISE Holdings may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding relating to ISE Holdings or any of its subsidiaries), and the Company and each such Director, officer or employee, in the case of any such Director, officer or employee by virtue of his or her 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 SEC, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.
  - (d) The Company and its Directors, and to the extent they are involved in the activities of the European Market Subsidiaries, the Company's officers and employees, shall be deemed to irrevocably submit to the jurisdiction of the



European Regulators and to courts in the capital city of the country of each such regulator for the purposes of any suit, action or proceeding pursuant to the European Exchange Regulations and the rules and regulations thereunder, commenced or initiated by the European Regulators arising out of, or relating to, the activities of the European Market Subsidiaries, and the Company and each such Director, officer or employee, in the case of any such Director, officer or employee by virtue of his or her 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 European Regulators, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or regulator.

- (e) The Company's books and records shall at all times be subject to inspection and copying by (i) the SEC; (ii) each of the European Regulators; (iii) any U.S. Regulated Subsidiary, to the extent that such books and records are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight; and (iv) any European Market Subsidiary, to the extent that such books and records are related to the activities of such European Market Subsidiary or any European Regulated Market over which such European Market Subsidiary has regulatory authority or oversight.
- (f) (i) For so long as the Company directly or indirectly controls any U.S. Regulated Subsidiary, the books, records, premises, officers, Directors and employees of the Company shall be deemed to be the books, records, premises, officers, Directors and employees of such U.S. Regulated Subsidiaries for purposes of and subject to oversight pursuant to the Exchange Act; and (ii) for so long as the Company directly or indirectly controls any European Market Subsidiary, the books, records, premises, officers, Directors and employees of the Company shall be deemed to be the books, records, premises, officers, Directors and employees of such European Market Subsidiaries for purposes of and subject to oversight pursuant to the European Exchange Regulations.
- (g) The Company's books and records related to U.S. Regulated Subsidiaries shall be maintained within the United States, and the Company's books and records related to European Market Subsidiaries shall be maintained within the home jurisdiction of one or more European Market Subsidiaries. If and to the extent that any of the Company's books and records may relate to both European Market Subsidiaries and U.S. Regulated Subsidiaries, the Company shall be entitled to maintain such books and records either in the home jurisdiction of one or more European Market Subsidiaries or in the United States.
- (h) All confidential information that shall come into the possession of the Company pertaining to:
  - (i) the self-regulatory function of any U.S. Regulated Subsidiary, in each case to the extent that such entity continues to be controlled, directly or indirectly, by the Company (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in

the books and records of such U.S. Regulated Subsidiary (the “**U.S. Regulated Subsidiary’s Confidential Information**”); or

- (ii) the self-regulatory function of any European Market Subsidiary under the European Exchange Regulations as operator of a European Regulated Market (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of such European Market Subsidiary (the “**European Market Subsidiary’s Confidential Information**”),

in each case, shall (x) not be made available to any Person (other than as provided in this article 3.2(h)) other than to those officers, Directors, employees and agents of the Company that have a reasonable need to know the contents thereof, (y) be retained in confidence by the Company and the officers, Directors, employees and agents of the Company, and (z) not be used for any commercial purposes.

Notwithstanding the foregoing provisions of this article 3.2, nothing in these articles shall limit or impede (x) the rights of the SEC or any U.S. Regulated Subsidiary to have access to and examine such U.S. Regulated Subsidiary’s Confidential Information pursuant to the U.S. federal securities laws and the rules and regulations thereunder, (y) the rights of the European Regulators or any European Market Subsidiary to have access to and examine such European Market Subsidiary’s Confidential Information pursuant to the European Exchange Regulations, or (z) the ability of any officers, Directors, employees or agents of the Company to disclose (i) the U.S. Regulated Subsidiary’s Confidential Information to the SEC or the U.S. Regulated Subsidiary or (ii) the European Market Subsidiary’s Confidential Information to the European Regulators or the European Market Subsidiary.

- (i) For so long as the Company directly or indirectly controls any U.S. Regulated Subsidiary, the Company, its Directors, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of such U.S. Regulated Subsidiary (to the extent of such U.S. Regulated Subsidiary’s self-regulatory function) and to its obligations to investors and the general public, and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of such U.S. Regulated Subsidiary relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of the U.S. Regulated Subsidiary to carry out its responsibilities under the Exchange Act.
- (j) For so long as the Company directly or indirectly controls any European Market Subsidiary, the Company, its Directors, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of such European Market Subsidiary (to the extent of such European Market Subsidiary’s self-regulatory function) and to its obligations to investors and the general public, and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of such

European Market Subsidiary relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of the European Market Subsidiary to carry out its regulatory responsibilities under the European Exchange Regulations.

- (k) In discharging his or her responsibilities as a member of the Board of Directors, each Director must, to the fullest extent permitted by applicable law, take into consideration the effect that the Company's actions would have on the ability of: (i) any European Market Subsidiary to carry out its responsibilities under the European Exchange Regulations as operators of European Regulated Markets, (ii) the U.S. Regulated Subsidiaries to carry out their responsibilities under the Exchange Act, (iii) the U.S. Regulated Subsidiaries, NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity), ISE Holdings (if and to the extent that ISE Holdings continues to exist as a separate entity) and the Company (i) to engage in conduct that fosters and does not interfere with the ability of the U.S. Regulated Subsidiaries, NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity), ISE Holdings (if and to the extent that ISE Holdings continues to exist as a separate entity) and the Company to prevent fraudulent and manipulative acts and practices in the securities markets; (ii) to promote just and equitable principles of trade in the securities markets; (iii) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, (iv) to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system, and (v) in general, to protect investors and the public interest; provided that nothing in this article 3.2(k) shall create any duty owed by any Director, officer or employee of the Company to any Person to consider, or afford any particular weight to, any of the foregoing matters in this article 3.2(k) or to limit his or her consideration to such matters.
- (l) In discharging his or her responsibilities as a member of the Board or as an officer or employee of the Company, each such Director, officer or employee shall (i) comply with the U.S. federal securities laws and the rules and regulations thereunder, (ii) comply with the European Exchange Regulations and the rules and regulations promulgated thereunder, (iii) cooperate with the SEC, (iv) cooperate with the European Regulators, (v) cooperate with the U.S. Regulated Subsidiaries pursuant to and to the extent of their regulatory authority and (vi) cooperate with the European Market Subsidiaries pursuant to, and to the extent of, their regulatory authority; provided that nothing in this article 3.2(l) shall create any duty owed by any Director, officer or employee of the Company to any Person to consider, or afford any particular weight to, any of the foregoing matters in this article 3.2(l) or to limit his or her consideration to such matters.
- (m) The Company shall take reasonable steps necessary to cause the Company's officers, Directors and employees, prior to accepting a position as an officer, Director or employee, as applicable, of the Company to agree and consent in writing to the applicability to him or her of the requirements in the preceding paragraphs of this article 3.2 with respect to their activities related to any U.S. Regulated Subsidiary or European Market Subsidiary, as applicable.

## CHAPTER III

### AUTHORISED CAPITAL; SHARES; REGISTER OF SHAREHOLDERS

#### **4 Authorised capital**

- 4.1** The authorised capital of the Company is one billion euro (EUR 1,000,000,000).
- 4.2** The authorised capital of the Company is divided into five hundred million (500,000,000) Ordinary Shares with a nominal value of one euro (EUR 1) each, numbered 1 through 500,000,000 and five hundred million (500,000,000) Preference Shares, with a nominal value of one euro (EUR 1) each, numbered P1 through P500,000,000.

#### **5 Shares; register of Shareholders**

- 5.1** All Shares shall be registered and shall be available in the form of an entry in the register of Shareholders. No share certificates shall be issued.
- 5.2** With due observance of the applicable provisions of the laws of the Netherlands in respect of Shares, a register of Shareholders shall be kept by or on behalf of the Company, which register shall be regularly updated and, at the discretion of the Board, may, in whole or in part, be kept in more than one copy and at more than one address. Part of the register of Shareholders may be kept abroad in order to comply with applicable foreign statutory provisions or rules of the New York Stock Exchange, the Frankfurt Stock Exchange, Euronext Paris and any other stock exchange where Shares or depositary receipts of Shares are listed.
- 5.3** The form and contents of the register of Shareholders shall be determined by the Board with due observance of the provisions of articles 5.2 and 5.5.
- 5.4** All entries and notes in the register shall be signed by one or more persons authorised to represent the Company.
- 5.5** Each Shareholder's name, address and such further information as required by the laws of the Netherlands or considered appropriate by the Board, shall be recorded in the register of Shareholders.
- 5.6** Upon his request, a Shareholder shall be provided with written evidence of the contents of the register of Shareholders with regard to the Shares registered in his name free of charge, and the statement so issued may be validly signed on behalf of the Company by a person to be designated for that purpose by the Board. In order to comply with applicable foreign statutory provisions or rules of the New York Stock Exchange, the Frankfurt Stock Exchange, Euronext Paris and any other stock exchange where Shares or depositary receipts of Shares are listed, the Company may allow inspection of the register of Shareholders by, or provide information included in the register of Shareholders to, any applicable supervisory authority.
- 5.7** The provisions of articles 5.5 and 5.6 shall equally apply to persons who hold a pledge on or usufruct in a Share.

## CHAPTER IV

### ISSUANCE OF SHARES

#### **6 Resolution to issue; conditions**

- 6.1** Shares may be issued pursuant to a resolution of the General Meeting, or of another body of the Company designated for that purpose by a resolution of the General Meeting for a fixed period that may not exceed five (5) years. On such designation, the number and

class of Shares which may be issued must be specified. The designation may be extended, from time to time, for a period not exceeding five (5) years. Unless the designation provides otherwise, it may not be withdrawn. A resolution of the General Meeting to issue Shares or to designate another body of the Company as the competent body to issue Shares can only be adopted at the proposal of the Board.

- 6.2** Within eight (8) days after each resolution of the General Meeting to issue Shares or to designate another body of the Company as the competent body to issue Shares, the full wording of the resolution involved shall be deposited at the office of the Dutch Trade Register.
- 6.3** Within eight (8) days after the end of each calendar quarter, each issue of Shares in such calendar quarter shall be notified to the office of the Dutch Trade Register, stating the number of Shares issued.
- 6.4** A resolution to issue Shares shall stipulate the issue price and the other conditions of issue. The issue price shall not be less than par, without prejudice to the provisions laid down in Section 2:80, subsection 2, of the Dutch Civil Code.
- 6.5** If Preference Shares are issued a General Meeting of Shareholders will be convened to be held not later than twenty-four (24) months after the day on which Preference Shares were first issued. At that General Meeting of Shareholders, the repurchase or cancellation of the Preference Shares will be considered. If the General Meeting does not resolve to repurchase or to cancel the Preference Shares, then within each twelve (12) months after the latter General Meeting of Shareholders, a General Meeting will be convened and held to consider the repurchase or cancellation of the Preference Shares, until no Preference Shares will be outstanding.
- The provisions above in this article 6.5 will not apply to Preference Shares issued pursuant to a resolution of the General Meeting.
- 6.6** The provisions of articles 6.1 through 6.3 shall apply by analogy to the granting of rights to subscribe for Shares, but shall not be applicable to the issue of Shares to persons exercising a right to subscribe for Shares previously granted.

## **7 Rights of pre-emption**

- 7.1** Upon issuance of Ordinary Shares, each holder of Ordinary Shares shall have a right of pre-emption in proportion to the aggregate nominal value of his Ordinary Shares, subject to the provisions of articles 7.2, 7.3 and 7.6. Holders of Ordinary Shares shall have a similar right of pre-emption if rights are granted to subscribe for Ordinary Shares.
- 7.2** Holders of Ordinary Shares shall have no right of pre-emption on Ordinary Shares which are issued against non-cash contributions nor on Ordinary Shares which are issued to employees of the Company or of a group company as defined in Section 2:24b of the Dutch Civil Code, nor on Preference Shares which are issued. Holders of Preference Shares shall have no right of pre-emption on Ordinary Shares or Preference Shares which are issued.
- 7.3** Prior to each single issuance of Ordinary Shares, the right of pre-emption may be limited or excluded by a resolution of the General Meeting. The right of pre-emption may also be limited or excluded by the body of the Company designated pursuant to article 6.1 hereof, if, by a resolution of the General Meeting, it was designated and authorised for a fixed period, not exceeding five (5) years, to limit or exclude such right of pre-emption. The designation may be extended, from time to time, for a period not exceeding five years. Unless the designation provides otherwise, it may not be withdrawn. If less than one-half

of the Company's issued capital is present or represented at the meeting, a majority of at least two-thirds of the votes cast shall be required for a resolution of the General Meeting to limit or exclude such right of pre-emption or to make such designation. A resolution of the General Meeting to limit or exclude the right of pre-emption or to designate another body of the Company as the competent body to limit or exclude the right of pre-emption can only be adopted at the proposal of the Board.

- 7.4** Within eight (8) days after each resolution of the General Meeting to designate another body of the Company as the competent body to limit or exclude the right of pre-emption, the full wording of the resolution involved shall be deposited at the office of the Dutch Trade Register.
- 7.5** The Company shall announce any issuance of Ordinary Shares with rights of pre-emption and the period of time within which such rights of pre-emption may be exercised in the Dutch Government Gazette (*Staatscourant*) and in a nationally distributed newspaper, unless the announcement is made to all holders of Ordinary Shares in writing to the address provided by each of them, and furthermore in such other manner as may be required to comply with the rules of the New York Stock Exchange, the Frankfurt Stock Exchange, Euronext Paris and any other stock exchange where Ordinary Shares or depositary receipts of Ordinary Shares are listed. Such rights of pre-emption can be exercised during at least two (2) weeks after the day of notice in the Dutch Government Gazette (*Staatscourant*) or after the dispatch of the announcement to the Shareholders.
- 7.6** Holders of Ordinary Shares shall have no right of pre-emption in respect of Ordinary Shares which are issued to a person exercising a right to subscribe for Ordinary Shares previously granted.

## **8 Payment for Shares**

- 8.1** The full nominal value of each Ordinary Share must be paid upon subscription, and, in addition, if the Ordinary Share is issued at a higher amount, the difference between such amounts. Preference Shares may be issued against partial payment, provided that at least one-fourth of the nominal value must be paid upon the issuance.
- 8.2** Payment for a Share must be made in cash insofar as no non-cash contribution has been agreed upon. Payment in a currency other than euro may only be made with the consent of the Company and with due observance of the provisions of Section 2:93a of the Dutch Civil Code.
- 8.3** Non-cash contributions on Shares are subject to the provisions of Section 2:94b of the Dutch Civil Code.
- 8.4** The Board may at any desired time determine the day on which further payments on non-fully paid-up Preference Shares must be made, and in what amount. The Board shall give the holders of the Preference Shares immediate notice of such resolution; there must be at least thirty (30) days between that notification and the day on which the payment must have occurred.
- 8.5** The Board shall be authorised to perform legal acts relating to non-cash contributions on Shares and other legal acts as referred to in Section 2:94 of the Dutch Civil Code, without prior approval of the General Meeting.

## **CHAPTER V**

### **OWN SHARES; REDUCTION OF THE ISSUED CAPITAL**

**9 Own Shares**

- 9.1** When issuing Shares, the Company may not subscribe for its own Shares.
- 9.2** The Company may acquire fully paid-up Shares or depositary receipts thereof, provided either no valuable consideration is given, or:
- (a) the Distributable Equity is at least equal to the purchase price; and
  - (b) the aggregate nominal value of the Shares or depositary receipts thereof to be acquired, and of the Shares or depositary receipts thereof already held, by the Company and its Subsidiaries, and of the Shares and depositary receipts thereof held in pledge by the Company, does not exceed one-half of the Company's issued capital; and
  - (c) the Board has been authorised by the General Meeting thereto. Such authorisation shall be valid for not more than eighteen (18) months. The General Meeting must specify in the authorisation the number of Shares which may be acquired, the manner in which they may be acquired and the limits within which the price must be set.
- 9.3** The validity of the acquisition shall be decided on the basis of the amount of equity appearing from the last adopted balance sheet, less the aggregate of the acquisition price for Shares or depositary receipts thereof, the amount of loans as referred to in article 10.3 and any distributions of profits or at the expense of reserves to others which have become due by the Company and its Subsidiaries after the balance sheet date. An acquisition in accordance with article 9.2 shall not be permitted, if more than six (6) months have elapsed after the end of a financial year without the annual accounts having been adopted.
- 9.4** The authorisation referred to in article 9.2(c) is not required to the extent the Company acquires its own Shares which are quoted in the listing of any stock exchange in order to transfer them to employees of the Company or of a group company of the Company pursuant to a plan applicable to such employees.
- 9.5** The foregoing provisions of this article 9 shall not apply to Shares or depositary receipts thereof which the Company acquires by universal succession of title.
- 9.6** The acquisition of Shares or depositary receipts thereof by a Subsidiary shall be subject to the provisions of Section 2:98d of the Dutch Civil Code.
- 9.7** Shares or depositary receipts thereof held by the Company may be transferred pursuant to a resolution of the Board.
- 9.8** In the General Meeting, no voting rights may be exercised for any Share held by the Company or a Subsidiary, or for any Share for which the Company or a Subsidiary holds the depositary receipts. However, pledgees and usufructuaries of Shares owned by the Company or a Subsidiary are not excluded from exercising voting rights if the right of pledge or the usufruct was created before the Share was owned by the Company or such Subsidiary. The Company or a Subsidiary may not exercise voting rights for a Share in which it holds a right of pledge or a usufruct.
- 10 Financial assistance**
- 10.1** The Company may not give security, guarantee the price, or in any other way answer to or bind itself, either severally or jointly, for or on behalf of third parties, with a view to a subscription for or an acquisition of Shares or depositary receipts thereof by others. This prohibition also applies to Subsidiaries.

- 10.2** The prohibition of article 10.1 shall not apply to Shares or depositary receipts thereof subscribed or acquired by or for employees of the Company or of a group company as defined in Section 2:24b of the Dutch Civil Code.
- 10.3** The Company and its Subsidiaries may provide loans with a view to the subscription or acquisition by others of Shares or depositary receipts thereof in the Company, but only to the extent permitted under and in compliance with Section 2:98c of the Dutch Civil Code.
- 11 Reduction of the issued capital**
- 11.1** The General Meeting may resolve to reduce the Company's issued capital in accordance with the relevant provisions prescribed by the laws of the Netherlands, provided that such resolution can only be adopted at the proposal of the Board. Such resolution must designate the Shares to which the resolution pertains and must provide for the implementation of the resolution.
- 11.2** A reduction of the Company's issued capital may be effected:
- (a) by cancellation of Shares held by the Company or for which the Company holds the depositary receipts; or
  - (b) by reducing the nominal value of Shares, to be effected by an amendment of these articles of association; or
  - (c) by cancellation of Preference Shares.
- 11.3** If all issued Preference Shares are cancelled, the following shall be paid on each Preference Share:
- (a) as repayment: an amount equal to the nominal amount paid on that Preference Share; and
  - (b) as a distribution at the expense of the Distributable Equity, subject to the provisions of article 24.9:
    - (i) any missing Preferred Dividend in relation to financial years prior to the financial year in which cancellation occurs;
    - (ii) any Preferred Dividend accrued during the financial year in which cancellation occurs but unpaid, to be calculated for this purpose over the period ending on the day of cancellation of the Preference Share.
- 11.4** If less than one-half of the Company's issued capital is present or represented at the meeting, a majority of at least two-thirds of the votes cast shall be required for a resolution of the General Meeting to reduce the Company's issued capital.
- 11.5** A reduction of the nominal value of Shares without repayment must be effected in proportion to all Shares of the same class. This principle may be deviated from with the consent of all Shareholders concerned.
- 11.6** The notice convening a General Meeting of Shareholders, at which a proposal to reduce the Company's issued capital will be made, shall state the purpose of the capital reduction and the manner in which it is to be achieved.
- 11.7** A reduction of the Company's issued capital shall furthermore be subject to the provisions of Sections 2:99 and 2:100 of the Dutch Civil Code.

## **CHAPTER VI**

### **TRANSFER OF SHARES**



## **12 Transfer of Shares**

- 12.1** For as long as Shares or depositary receipts thereof are admitted to the official listing on a regulated stock exchange as referred to in Section 2:86c of the Dutch Civil Code, the transfer of a Share and the creation or transfer of a limited right thereon shall require a private deed to that effect and, except in the event the Company is party to that legal act, an acknowledgement in writing by the Company of the transfer. The acknowledgement shall be given in the private deed, or by a dated statement embodying such acknowledgement on the private deed or on a true copy or extract thereof duly authenticated by a civil law notary or by the transferor. Serving of such private deed, true copy or extract on the Company shall be deemed to be equal to acknowledgement.
- 12.2** If the Shares or the depositary receipts thereof are no longer admitted to an official listing of a regulated stock exchange as referred to in Section 2:86c of the Dutch Civil Code, Section 2:86 of the Dutch Civil Code will apply, as a result of which a transfer of a Share and the creation or transfer of a limited right shall, inter alia, require a notarial deed to that effect.
- 12.3** The acknowledgement of transfer by the Company shall be signed by one or more persons authorised to represent the Company.
- 12.4** The provisions of articles 12.1 and 12.2 shall apply correspondingly to the allotment of Shares by distribution of any community.

## **CHAPTER VII**

### **PLEDGING OF SHARES AND USUFRUCT ON SHARES**

#### **13 Pledging of Shares and usufruct on Shares**

- 13.1** The provisions of article 12 shall apply by analogy to the pledging of Shares and to the creation or transfer of a usufruct on Shares.
- 13.2** Upon the creation of a right of pledge or usufruct on a Share, the voting rights attached to such Share may be assigned to the pledgee or usufructuary, with due observance of the relevant provisions of the laws of the Netherlands. Both the Shareholder without voting rights and the pledgee or usufructuary with voting rights shall have the rights conferred by the laws of the Netherlands upon holders of depositary receipts issued with a company's cooperation for shares in its capital. The pledgee or usufructuary without voting rights shall not have the rights referred to in the preceding sentence.

## **CHAPTER VIII**

### **THE BOARD**

#### **14 Composition; remuneration; eligibility**

- 14.1** Until the end of the annual General Meeting of Shareholders occurring in two thousand and fifteen (the "**Initial Board Term**"), the Board shall consist of seventeen (17) members, constituted as follows: one (1) Executive Director A, being the Group CEO; one (1) Director B, being the Group Chairman; and fifteen (15) Non-Executive Directors, consisting of six (6) Non-Executive Directors A and nine (9) Non-Executive Directors B. Immediately following the expiry of the Initial Board Term, the number of Directors will be decreased and the Board shall consist of twelve (12) members (without designations as either Directors A or Directors B), constituted as follows: one (1) Executive Director, being the Group CEO; one (1) Director, being the Group Chairman; and ten (10) Non-Executive

Directors. Only natural persons can be Directors. To the extent permitted under the laws of the Netherlands and subject to the terms of the articles of association and the Board Rules, and to the extent a Director is not appointed prior to the Closing Date as either an Executive Director or a Non-Executive Director, the Board shall determine whether a Director shall be designated as an Executive Director or as a Non-Executive Director.

**14.2** Each of the Directors shall be appointed by the General Meeting for a term that will expire at the end of the next annual General Meeting of Shareholders or until his or her successor is elected or, if earlier, upon such Director's resignation, removal or death. During the Initial Board Term, each of the Directors (or his or her replacement pursuant to article 14.5) shall be nominated by the Board for re-election to the Board pursuant to a binding nomination at each of the annual General Meetings of Shareholders occurring in two thousand and twelve, two thousand and thirteen and two thousand and fourteen; provided, however, that the Group Chairman and the Group CEO shall each be nominated by the Board pursuant to a binding nomination for re-election to the Board at the annual General Meetings of Shareholders occurring in two thousand and twelve, two thousand and thirteen, two thousand and fourteen and two thousand and fifteen in accordance with articles 15.1 and 16.1. Notwithstanding the foregoing provisions of this article 14.2, in the event that the Board determines prior to the Closing Date that (i) the Company will qualify as a "foreign private issuer" as defined in Rule 3b-4(c) promulgated under the U.S. Securities Exchange Act (such status, "**FPI Status**") and will maintain FPI Status on an ongoing basis following the Closing Date through the end of the Initial Chairman Term, and (ii) the Directors may be appointed by the General Meeting for a term that expires in two thousand and fifteen (or in two thousand and sixteen in the case of the Group Chairman and the Group CEO) and Directors are not otherwise required by applicable law, regulation or stock exchange listing standards to be elected at each annual General Meeting, then the Directors shall be appointed on or prior to the Closing Date by the General Meeting for a term ending at the end of the annual General Meeting of Shareholders occurring in two thousand and fifteen, except that the Group Chairman and the Group CEO shall each initially be appointed on or prior to the Closing Date for a term ending at the end of the annual General Meeting of Shareholders occurring in two thousand and sixteen.

**14.3** Directors shall be appointed by the General Meeting by the vote in favour of at least two-thirds majority of the votes cast, representing more than one-half of the Company's issued share capital or, in the case of any person nominated by the Board for appointment as a Director, by the vote in favour of at least a majority of the votes cast. Notwithstanding the foregoing, the Board may submit a binding nomination in accordance with Section 2:133 of the Dutch Civil Code to nominate persons for appointment as Directors at the General Meeting of Shareholders and, in the event of any such binding nomination, the General Meeting shall appoint Directors solely from such binding nominations; provided, however, that the General Meeting may, by a resolution passed with at least a two-thirds majority of the votes cast, representing more than one-half of the Company's issued capital, resolve that the candidates proposed pursuant to any binding nomination shall not be appointed as Directors, in which case the Board shall have the right to submit a new binding nomination with respect to any Board seats which are to be filled for the appointment of Director(s) at a further General Meeting of Shareholders. A Director may be reappointed with due observance of the previous sentences.

- 14.4** A Director may be suspended or removed by the General Meeting at any time by a resolution passed with at least a two-thirds majority of the votes cast, representing more than one-half of the Company's issued capital. If permitted under the laws of the Netherlands, a Director may also be suspended by the Board. Any suspension may not last longer than three (3) months in the aggregate. If, at the end of that period, no decision has been taken on termination of the suspension, the suspension shall end.
- 14.5** In the event of a Director's resignation, removal or death prior to the end of the Initial Board Term, the Directors A shall make a recommendation to the Nominations, Governance and Corporate Responsibility Committee of a replacement candidate if the vacancy occurs in a Board seat previously held by a Director A, and the Directors B shall make a recommendation to the Nominations, Governance and Corporate Responsibility Committee of a replacement candidate if the vacancy occurs in a Board seat previously held by a Director B. Any person who is elected to the Board to fill a Board seat during the Initial Board Term that was previously held by a Director A or a Director B shall be designated as a Director A or a Director B, respectively, for purposes of article 14.1, but such person shall not constitute a Director A or a Director B (and shall instead have undesignated status) for purposes of article 17.8 unless such person is the Group Chairman or the Group CEO or is recommended by the Directors A (in the case of a vacancy in a Director A seat) or by the Directors B (in the case of a vacancy in a Director B seat) to fill the vacancy on the relevant Board Committee.
- In the event of the resignation, removal or death of the Group Chairman or the Group CEO prior to the end of their respective Initial Chairman Term or Initial CEO Term, the procedure under this article 14.5 shall apply mutatis mutandis, except that the recommendation of the Directors A or the Directors B, as applicable, shall be binding on the Nominations Governance and Corporate Responsibility Committee and on the Board, who shall nominate such nominee for appointment to the Board and shall appoint such nominee as the Group Chairman or the Group CEO, as applicable, concurrently with his or her appointment by the General Meeting until the expiration of the Initial Chairman Term or the Initial CEO Term, as applicable. The particular rights, authorities and responsibilities of the Group Chairman and the Group CEO under these articles of association and the Board Rules will be granted to their respective successors during the Initial Chairman Term or the Initial CEO Term, as applicable.
- 14.6** The Board may appoint a company secretary (the "**Company Secretary**") who shall assist the Board. If a Company Secretary is appointed during the Initial Board Term, the individual with the position of General Corporate Counsel shall be appointed as the Company Secretary. The Company Secretary shall have such powers as are assigned to him, subject to the provisions of these articles of association, by the Board on or after his appointment.
- 14.7** The Company has a policy on the remuneration of the Board. The policy shall be adopted by the General Meeting, upon a proposal of the Human Resources and Compensation Committee of the Board. The policy on remuneration shall, in any case, include the subjects referred to in Sections 2:383c up to and including 2:383e of the Dutch Civil Code, insofar as these relate to the Board.
- 14.8** The Board shall determine, with due observance of the policy referred to in article 14.7, the remuneration and further conditions of employment for each member of the Board.

- 14.9** Proposals concerning plans or arrangements for share awards or share options to Directors shall be submitted by the Board to the General Meeting for its approval. Such proposals must, at a minimum, state the number of shares or share options that may be granted to the Board and the criteria that apply to the granting of such shares or share options or the alteration of such arrangements.
- 14.10** No person that is a U.S. Disqualified Person or a European Disqualified Person, may be a Director or a member of the Global Executive Committee.
- 14.11** No person may be a Director unless he or she has agreed and consented in writing, in form and substance acceptable to the Company, to the applicability to him or her of the requirements set forth in article 3.2 with respect to his or her activities related to any U.S. Regulated Subsidiary and European Market Subsidiary, as applicable.

## **15 Chairman of the Board**

- 15.1** The Board shall appoint one of the Directors to be the Chairman of the Board (the “**Group Chairman**”) for such period as the Board may decide, except that the person who was the Group Chairman as of the Closing Date shall have a term expiring at the end of the next annual General Meeting of Shareholders and shall be re-appointed as Group Chairman by the Board at the annual General Meetings of Shareholders occurring in two thousand and twelve, two thousand and thirteen, two thousand and fourteen and two thousand and fifteen (the total term ending at the end of the annual General Meeting of Shareholders occurring in two thousand and sixteen to be referred to as the “**Initial Chairman Term**”) concurrently with his re-election as a Director at such meetings, subject however to his earlier resignation, removal or death. Notwithstanding the foregoing provisions of this article 15.1, in the event that the Board determines prior to the Closing Date that (i) the Company will have and maintain FPI Status on an ongoing basis following the Closing Date through the end of the Initial Chairman Term, and (ii) the Directors may be appointed by the General Meeting for a term that expires in two thousand and fifteen (or in two thousand and sixteen in the case of the Group Chairman and the Group CEO) and Directors are not otherwise required by applicable law, regulation or stock exchange listing standards to be elected at each annual General Meeting, then the person who was the Group Chairman as of the Closing Date shall be appointed for a period ending at the end of the annual General Meeting of Shareholders occurring in two thousand and sixteen. During the Initial Chairman Term, the Board shall also appoint one of its Directors A as Vice Chairman of the Board (a “**Group Vice Chairman**”). The Group Vice Chairman shall only fulfil the duties of the Group Chairman under article 15.2(a) in case of his absence pursuant to article 15.4 and as specified in article 29.1, but shall have none of the other of the particular powers conferred upon the Group Chairman during the Initial Chairman Term.
- 15.2** During the Initial Chairman Term, the responsibilities and authorities of the Group Chairman shall include:
- (a) leading the meetings of the Board, calling Board meetings and setting the agenda;
  - (b) initiating and developing overall [TopCo] Group strategy (i.e. strategic measures impacting the overall [TopCo] Group and measures requiring decisions on significant investment prioritizations);
  - (c) global relationship management and representation and global political and regulatory representation of the [TopCo] Group; and
  - (d) consultation rights in relation to appointments and removals of members of the

Global Executive Committee selected by the Group CEO.

- 15.3** After the Initial Chairman Term, the Group Chairman shall be a Non-Executive Director and the responsibilities and authorities of the Group Chairman shall consist of the responsibilities and authorities provided for at such time in the Board Rules. The particular responsibilities and authorities granted to the Group Chairman in accordance with article 15.2 will terminate at the end of the Initial Chairman Term.
- 15.4** If no Group Chairman has been appointed or if the Group Chairman is absent or unable to take the chair, a meeting of the Board shall be presided over by the Group Vice-Chairman or, in the event of his absence or inability to take the chair, by a member of the Board designated for such purpose by the meeting to be entrusted with the duties of the Group Chairman at such meeting.
- 15.5** Until the first annual General Meeting of Shareholders occurring after the sixth (6<sup>th</sup>) anniversary of the Closing Date, the Group Chairman shall have his primary office in and perform his [TopCo] Group management tasks primarily out of Frankfurt, Germany, with his secondary office in New York, State of New York, United States of America, and the Group CEO shall have his primary office in and perform his [TopCo] Group management tasks primarily out of New York State of New York, United States of America, with his secondary office in Frankfurt, Germany, or vice-versa with the primary office locations of the Group Chairman and the Group CEO being located in New York, State of New York, United States of America and Frankfurt, Germany, respectively, and their secondary office locations in Frankfurt, Germany and New York, State of New York, United States of America, respectively.
- 16 Group CEO**
- 16.1** The Board shall appoint the Executive Director to be the chief executive officer of the [TopCo] Group (the “**Group CEO**”) for such period as the Board may decide, except that the person who was the Group CEO as of the Closing Date shall have a term expiring at the end of the next annual General Meeting of Shareholders and shall be reappointed as Group CEO by the Board at the annual General Meetings of Shareholders occurring in two thousand and twelve, two thousand and thirteen, two thousand and fourteen and two thousand and fifteen (the total term ending at the end of the annual General Meeting of Shareholders occurring in two thousand and sixteen to be referred to as the “**Initial CEO Term**”), concurrently with his re-election as a Director at such meetings, subject however to his earlier resignation, removal or death. Notwithstanding the foregoing provisions of this article 16.1, in the event that the Board determines prior to the Closing Date that (i) the Company will have and maintain FPI Status on an ongoing basis following the Closing Date through the end of the Initial CEO Term, and (ii) the Directors may be appointed by the General Meeting of Shareholders for a term that expires in two thousand and fifteen (or in two thousand and sixteen in the case of the Group Chairman and the Group CEO) and Directors are not otherwise required by applicable law, regulation or stock exchange listing standards to be elected at each annual General Meeting, then the person who was the Group CEO as of the Closing Date shall be appointed for a period ending at the end of the annual General Meeting of Shareholders occurring in two thousand and sixteen.
- 16.2** During the Initial CEO Term, the Group CEO shall assume the typical roles of a CEO, including the following responsibilities and authorities:
- (a) the management and performance of the [TopCo] Group (including annual budget and business plan);

- (b) initiating and developing business strategy of the [TopCo] Group for the global divisions and regions;
- (c) developing integration policy and parameters to shape the [TopCo] Group, including systems, staffings and locations, for consideration of the Integration Committee, and having responsibility for execution of integration;
- (d) serving as a member of the Strategy Committee; and
- (e) chairing the Global Executive Committee and having the right of selection, appointment and removal of Global Executive Committee members, provided that the Group CEO shall closely consult with the Group Chairman (during the Initial Chairman Term) and the entire Board on any proposed appointments or removals of Global Executive Committee members.

**17 Duties, decision-making process and allocation of duties; committees**

**17.1** Subject to the restrictions imposed by these articles of association, the business and affairs of the Company and [TopCo] Group shall be managed by or under the direction of the Board.

**17.2** The Non-Executive Directors shall supervise the policy and the fulfilment of duties of the Executive Director and the general affairs of the Company, and they shall be further entrusted with such duties as are and shall be determined by or pursuant to these articles of association or as set out in the Board Rules.

**17.3** When making Board resolutions, each Director may cast one vote.

**17.4** To the extent that the law, these articles of association or the Board Rules do not provide otherwise, all resolutions of the Board shall be adopted by a simple majority of the votes cast. The Board can only validly adopt resolutions in a meeting at which at least the majority of its members are present or represented. A member of the Board may authorise another member of the Board to represent him at the Board meeting and vote on his behalf.

**17.5** Resolutions of the Board providing for:

- (a) appointment and removal of the Group Chairman and of the Group CEO in accordance with articles 14.4, 15.1 and 16.1, respectively;
- (b) proposals to change the articles of association;
- (c) transformational M&A deals, which for purposes of this article 17.5(c) shall mean transactions (i) which require approval by the General Meeting pursuant to Section 2:107a of the Dutch Civil Code or (ii) which in view of their size and significance very materially change the business of the [Topco] Group, either in size or direction or geographic presence; and
- (d) major structural changes, which for purposes of this article 17.5(d) shall mean (i) any amendments to articles 2.3, 14.1, 15.5 or 17.7, (ii) changes or enhancements to the responsibilities and authorities of the Group Chairman during the Initial Chairman Term as provided in article 15.2, or changes or enhancements to the responsibilities and authorities of the Group Chairman after the Initial Chairman Term as provided in article 15.3 or (iii) changes or enhancements to the responsibilities and authorities of the Group CEO during the Initial CEO Term as provided in article 16.2,

may only be adopted by a resolution passed with the vote in favour of more than sixty-six percent (66%) of the total number of Directors that would be in office if none of the Board seats would be vacant and all of the Directors would be able to perform their duties.

- 17.6** With due observance of these articles of association, the Board may establish further rules regarding its decision-making process and working methods, its internal organisation, the composition, duties and organisation of committees and any other matters, including matters concerning the Board, the Executive Director, the Non-Executive Directors, the committees established by the Board, the Group Chairman and the Group CEO (the **"Board Rules"**). During the Initial Chairman Term and the Initial CEO Term, the Board Rules may be amended and supplemented by the Board from time to time by a resolution adopted by more than sixty-six percent (66%) of the total number of Directors that would be in office if none of the Board seats would be vacant and all of the Directors would be able to perform their duties, and thereafter they may be amended and supplemented by the Board in accordance with the terms of the Board Rules. In case a change of the Board Rules at the same time would constitute a change to these articles of association, or would conflict with any provision of these articles of association, the change shall become effective only upon a change of these articles of association.
- 17.7** The Board may establish such committees as it may deem necessary, which committees may consist of one or more members of the Board. The Board appoints the members of each committee and determines the tasks of each committee. The Board may, at any time, change the duties and the composition of each committee, provided that during the Initial Board Term, any such changes shall require a resolution passed with the vote in favour of more than sixty-six percent (66%) of the total number of Directors that would be in office if none of the Board seats would be vacant and all of the Directors would be able to perform their duties.
- During the Initial Chairman Term and the Initial CEO Term, the Board shall constitute the following committees (the **"Board Committees"**):
- (a) Audit, Finance and Risk Committee;
  - (b) Nomination, Governance and Corporate Responsibility Committee;
  - (c) Human Resources and Compensation Committee;
  - (d) Strategy Committee;
  - (e) Integration Committee; and
  - (f) Technology Committee.
- 17.8** Each of the aforementioned Board Committees shall, during the Initial Board Term, consist of three (3) Directors B and two (2) Directors A. In the event of a vacancy on any Board Committee during the Initial Board Term, the Directors A shall make a recommendation to the Nominations, Governance and Corporate Responsibility Committee of a replacement candidate if the vacancy occurs in a Board seat previously held by a Director A, and the Directors B shall make a recommendation to the Nominations, Governance and Corporate Responsibility Committee of a replacement candidate if the vacancy occurs in a Board seat previously held by a Director B. A replacement member shall not constitute a Director A or a Director B (and shall instead have undesignated status) for purposes of this article 17.8 unless such person is the Group Chairman or the Group CEO or is recommended by the Directors A (in the case of a vacancy in a Director A seat) or by the Directors B (in the case of a vacancy in a Director B seat) to fill the vacancy on the relevant Board Committee.
- 17.9** During the Initial Chairman Term, the Group Chairman shall chair the Nomination, Governance and Corporate Responsibility Committee and the Strategy Committee and

shall be a member of the Human Resources and Compensation Committee and the Integration Committee.

For the Initial CEO Term, the Group CEO shall chair the Integration Committee and shall be a member of the Strategy Committee.

For the Initial Board Term, the Human Resources and Compensation Committee and the Audit, Finance and Risk Committee shall each be chaired by a Non-Executive Director A, and the Technology Committee shall be chaired by a Non-Executive Director B.

**17.10** Meetings of the Board or any Board committees may be held by means of an assembly of the Directors in person at a formal meeting or by conference call, video conference or by any other means of communication, provided that all Directors participating in such meeting are able to communicate with each other simultaneously. Participation in a meeting held in any of the above ways shall constitute presence at such meeting.

**17.11** Board resolutions and Board committee resolutions may also be adopted outside a formal meeting, in writing, provided that the proposal concerned is submitted in writing to all Directors or members of such Board committee, as applicable, then in office and none of them objects to the proposed manner of adopting resolutions. Adoption of resolutions in writing shall be effected by written statements from all Directors or Board committee members, as applicable, which are then in office.

## **18 Representation; conflict of interest**

**18.1** The Company shall be represented by the Board. The Executive Director shall also be authorised to represent the Company.

**18.2** The Board may appoint persons with general or limited power to represent the Company. Each such person shall be competent to represent the Company, subject to the restrictions imposed on him. The Board shall determine each such person's title.

**18.3** In the event of a conflict of interest between the Company and one or more Directors, the provisions of article 18.1 shall continue to apply unimpaired, unless the General Meeting has designated one or more other persons to represent the Company in the case at hand in the event of such a conflict.

## **19 Approval of Board resolutions**

**19.1** Resolutions of the Board entailing a significant change in the identity or character of the Company or its business are subject to the approval of the General Meeting, including in any case:

- (a) the transfer of all or nearly all of the business of the Company to a third party;
- (b) entering into or termination of long-term co-operations of the Company or a Subsidiary with any other legal entity or company or as fully liable partner in a limited partnership or general partnership, if this co-operation or termination is of major significance for the Company; and
- (c) acquiring or disposing of participating interests in the capital of a company of at least one-third of the sum of the assets as shown on its balance sheet plus explanatory notes or, if the Company prepares a consolidated balance sheet, its consolidated balance sheet plus explanatory notes according to the last adopted annual accounts of the Company, by the Company or a Subsidiary.

**19.2** The absence of approval by the General Meeting of a resolution as referred to in article 19.1 shall not affect the authority of the Board or an Executive Director to represent the Company.



**20 Vacancy or inability to act**

If a seat on the Board is vacant or a Director is unable to perform his duties, the remaining Directors' or Director's duties, rights and abilities shall be unchanged from that which existed prior to such vacancy or inability of a Director to perform duties, provided that if the seat for the Group CEO is vacant or the Group CEO is unable to perform his duties, the Group CEO's duties and responsibilities shall be temporarily fulfilled by the Non-Executive Directors or by a person to be designated for that purpose by the Non-Executive Directors. If all seats on the Board are vacant or all Directors or the sole Director, as the case may be, are unable to perform their duties, the management of the business and affairs of the Company shall be temporarily entrusted to one or more persons designated for that purpose by the General Meeting.

**21 Indemnity**

**21.1** Subject to the provisions of article 21.3, the Company shall indemnify each current and former Director who is conducting a defense against (threatening) claims or who is subject to (threatening) investigations based on acts or failures to act in the exercise of his or her duties or any other duties currently or previously performed by him or her at the Company's request, or who is appearing in other legal proceedings in which he or she is involved as a current or former Director or based on any other duties currently or previously performed by him or her at the Company's request, with the exception of proceedings primarily aimed at pursuing a claim on his or her own behalf (not including any claim for recourse in relation to claims or investigations referred to above in this article 21.1) against all costs and expenses reasonably incurred by him or her and shall pay any damages or fines payable by the (former) Director as a result of an act or failure to act as referred to above in this article 21.1. This indemnification shall also apply to any claims by the Company or by a shareholder of the Company.

**21.2** Costs, damages and fines incurred by the (former) Director as referred to under article 21.1 shall be paid by the Company upon having received a specification of those costs, damages and fines subject to an undertaking in writing by the (former) Director that he or she shall repay any reimbursed amount to the Company if it shall ultimately be determined that he or she is not entitled to indemnification under the provisions of this article 21 or if and to the extent an insurer subsequently also pays out the costs, damages and/ or fines to the (former) Director.

**21.3** There shall be no entitlement to indemnity under this article 21:

- (a) if and to the extent the laws of the Netherlands would not permit such indemnification;
- (b) if and to the extent a competent court has established in a final and conclusive decision that the act or failure to act of the (former) Director may be characterized as wilful (*opzettelijk*), intentionally reckless (*bewust roekeloos*) or seriously culpable (*ernstig verwijtbaar*), unless the laws of the Netherlands provide otherwise or this would, in view of the circumstances of the case, be unacceptable according to standards of reasonableness and fairness; or
- (c) if and to the extent the costs, damages or fines payable by the (former) Director are covered by any liability insurance and the insurer has paid out the costs, damages or fines.

- 21.4** An amendment of this article 21 shall not prejudice any rights of a (former) Director if acquired under this article 21 before such amendment, unless the (former) Director specifically agrees with such amendment. If there is no specific agreement, the obligations of the Company under this article 21 shall apply as if the amendment was not implemented but only insofar as such amendment is a deterioration of the rights of such (former) Director. The indemnity shall also be for the benefit of any heirs of the (former) Director.
- 21.5** The relevant (former) Director shall follow the Company's instructions relating to the manner of his or her defense and consult with the Company in advance about the manner of such defense. The person concerned shall not: (i) acknowledge any personal liability, (ii) waive any defense, or (iii) agree on a settlement, without the Company's prior written consent.
- 21.6** The Company may take out liability insurance for the benefit of the (former) Directors. In case the Company has taken out liability insurance for the benefit of the (former) Director, the (former) Director shall, to the extent reasonable, act in accordance with the provisions of the insurance policy.
- 21.7** Any rights and obligations under this article 21 shall be governed by the laws of the Netherlands. Disputes between the Company and a (former) Director arising in relation to this indemnity shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The arbitral tribunal shall be composed of three (3) arbitrators. The place of arbitration shall be Amsterdam. The procedure shall be conducted in the English language. The arbitral tribunal shall decide in accordance with the rules of law (*naar de regelen des rechts*).
- 21.8** The Board may, by agreement or otherwise, give further implementation to the indemnity.

## **CHAPTER IX**

### **FINANCIAL YEAR AND ANNUAL ACCOUNTS; PROFITS AND DISTRIBUTIONS**

#### **22 Financial year and annual accounts**

- 22.1** The Company's financial year shall be the calendar year.
- 22.2** Annually, not later than four (4) months after the end of the financial year, the Board shall prepare annual accounts, and shall deposit the same for inspection by the Shareholders at the Company's office.
- 22.3** Within the same period, the Board shall also deposit the annual report for inspection by the Shareholders.
- 22.4** The annual accounts shall consist of a balance sheet, a profit and loss account and explanatory notes.
- 22.5** The annual accounts shall be signed by the Directors. If the signature of one or more of them is missing, this shall be stated and reasons for this omission shall be given.
- 22.6** The Company shall appoint an accountant to audit the annual accounts. Such appointment shall be made by the General Meeting. If it does not proceed thereto, then the Board shall be authorised to make such appointment. The appointment may be revoked by the General Meeting as well as, in case the appointment was made by the Board, by the Board. The appointment may be revoked for sound reasons only; such reasons shall not include a difference in opinion with regard to reporting methods or audit activities.

**22.7** The Company shall ensure that the annual accounts and, insofar as required, the annual report and the information to be added by virtue of the laws of the Netherlands are kept at its office as from the day on which notice of the annual General Meeting of Shareholders is given in which the annual accounts and the annual report shall be discussed and in which the adoption of the annual accounts shall be resolved upon. Shareholders may inspect the documents at that place and obtain a copy free of charge.

**22.8** The annual accounts, the annual report, the information to be added by virtue of the laws of the Netherlands and the audit by an accountant, as well as deposition of documents at the Dutch Trade Register, shall furthermore be subject to the provisions of Book 2, Title 9, of the Dutch Civil Code.

### **23 Adoption of the annual accounts and release from liability**

**23.1** The General Meeting shall adopt the annual accounts.

**23.2** At the General Meeting of Shareholders at which it is resolved to adopt the annual accounts, any proposals concerning release of the Executive Directors from liability for the management of the Company or the [Topco] Group or concerning the release of the Non-Executive Directors for their supervision thereof, insofar as the exercise of their duties is reflected in the annual accounts or otherwise disclosed to the General Meeting prior to the adoption of the annual accounts, shall be brought up separately for discussion at such General Meeting of Shareholders or at a subsequent General Meeting of Shareholders.

### **24 Profits and distributions**

**24.1** Out of the profits earned in a financial year, primarily and insofar as possible, a preferred dividend (the "**Preferred Dividend**") is paid on each Preference Share in an amount equal to (i) twelve (12) months EURIBOR, increased by (ii) a premium to be determined by the Board in line with market conditions per the date of the first issue of the Preference Shares with a maximum of five hundred basis points (500 bps), per annum, calculated over:

- (a) the nominal amount paid on a Preference Share; and
- (b) any missing Preferred Dividend, to be calculated for this purpose over the period ending on the day this amount is made payable.

If, in a financial year, no profit is made or the profits are insufficient to allow the distribution provided for in the preceding sentence, the deficit shall be paid at the expense of the profits earned in following financial years or, if possible, at the expense of any freely distributable reserve of the Company.

**24.2** The Board shall, in its sole discretion, determine which part of the profits remaining after application of article 24.1 shall be reserved.

**24.3** The allocation of profits remaining after application of articles 24.1 and 24.2 shall be determined by the General Meeting, provided that no further distributions shall be made on the Preference Shares.

**24.4** Distribution of profits shall be made after adoption of the annual accounts if permissible under the laws of the Netherlands given the contents of the annual accounts.

**24.5** With due observance of the provisions of article 24.1, the Board may resolve to make interim dividend distributions only to the extent that the requirements set forth in article 24.9 are satisfied as apparent from the interim statement of assets and liabilities referred to in article 24.9.

- 24.6** The General Meeting may resolve to make distributions at the expense of any reserve of the Company, provided that such resolution can only be adopted at the proposal of the Board.
- 24.7** Distributions on Shares payable in cash shall be paid in euro, unless the Board determines that payment shall be made in another currency.
- 24.8** Any distribution on Shares may be paid in kind in the form of Shares instead of in cash, provided that this will at all times require the approval of the Board and, if and to the extent the Board is not authorised to issue Shares and to limit or exclude the rights of pre-emption, a resolution of the body of the Company authorised to issue Shares and to limit or exclude the rights of pre-emption.
- 24.9** Distributions on Shares may be made only up to an amount which does not exceed the amount of the Distributable Equity and, if it concerns an interim dividend distribution or distribution at the expense of any reserve of the Company, compliance with this requirement will be evidenced by an interim statement of assets and liabilities as referred to in Section 2:105, subsection 4, of the Dutch Civil Code. The Company shall deposit the statement of assets and liabilities at the office of the Dutch Trade Register within eight (8) days after the day on which the resolution to make the distribution is published.
- 24.10** The date of payment of a distribution on Shares shall be determined by the body of the Company authorised to resolve on such distribution on Shares. A claim of a Shareholder for payment of a distribution on Shares shall be barred after five (5) years have elapsed from the date such payment became due.
- 24.11** No distributions shall be made on Shares held by the Company in its own capital, unless these Shares have been pledged or a usufruct has been created in these Shares and the authority to collect distributions or the right to receive distributions, respectively, accrues to the pledgee or the usufructuary, respectively. For the computation of distributions, the Shares, on which no distributions shall be made pursuant to this article 24.11, shall not be taken into account.

## **CHAPTER X**

### **THE GENERAL MEETING**

#### **25 Annual General Meeting of Shareholders**

- 25.1** The annual General Meeting of Shareholders shall be held within six (6) months after the end of the financial year.
- 25.2** The agenda for this annual General Meeting of Shareholders shall in any case contain the following business to be discussed:
- (a) discussion of the annual report;
  - (b) discussion and adoption of the annual accounts;
  - (c) release from liability of the Executive Director for his or her management during the financial year concerned and of the Non-Executive Directors for their supervision thereon;
  - (d) appointments for any vacancies on the Board; and
  - (e) allocation of profits.

The agenda shall furthermore contain other business presented for discussion by the Board or by Shareholders taking into account the provisions of these articles of association and announced with due observance of the provisions of article 27.

**26 Other General Meetings of Shareholders**

- 26.1** Other General Meetings of Shareholders shall be held as often as the Board or the Group CEO deems necessary, without prejudice to the provisions of this article 26.
- 26.2** Shareholders representing in the aggregate at least one-tenth of the Company's issued capital may request the Board to convene a General Meeting of Shareholders, stating specifically the business to be discussed.
- 26.3** Within three (3) months of it becoming apparent to the Board that the equity of the Company has decreased to an amount equal to or lower than one-half of the paid-up part of the capital, a General Meeting of Shareholders shall be held to discuss any requisite measures.

**27 Notice, agenda and venue of meetings**

- 27.1** Notice of General Meetings of Shareholders shall be given by the Board.
- 27.2** Notice of the meeting shall be given upon a term of at least forty-two (42) days prior to the day of the meeting.
- 27.3** The notice of the meeting shall always contain or be accompanied by the agenda for the meeting or shall mention where such agenda can be obtained, which shall, in any event, be at the offices of the Company in the Netherlands, without prejudice to the statutory provisions regarding reduction of the issued capital and amendment of the articles of association.
- 27.4** Items for which a written request has been filed to discuss at the General Meeting of Shareholders, by one or more holders of Shares, alone or jointly representing at least one-hundredth part of the Company's issued share capital or, according to the applicable official price list of the New York Stock Exchange, the Frankfurt Stock Exchange, Euronext Paris or any other stock exchange where Shares or depositary receipts of Shares are listed, a value of at least fifty million euro (EUR 50,000,000), or such other part of the Company's issued capital as may be required in this respect by the laws of the Netherlands from time to time, shall be included in the notice or announced in the same manner, provided that the Company received the substantiated request or a proposal for a resolution no later than on the sixtieth (60<sup>th</sup>) day before the date of the meeting.
- 27.5** A General Meeting of Shareholders shall be convened by electronic means of communication which is directly and permanently accessible until the meeting and furthermore in such other manner as may be required to comply with any applicable rules of the New York Stock Exchange, the Frankfurt Stock Exchange, Euronext Paris and any other stock exchange where Shares or depositary receipts of Shares are listed.
- 27.6** In addition to the provisions of article 27.5, the notice convening the meeting shall be sent to the addresses of the Shareholders shown in the register of Shareholders. With the consent of a Shareholder or the pledgee or usufructuary with voting rights, the notice of the meeting may also be given by a legible and reproducible message sent through electronic means of communication to the address provided for the purposes hereof by that Shareholder, pledgee or usufructuary to the Company.
- 27.7** General Meetings of Shareholders shall be conducted in the English language and are held in the municipality in which, according to these articles of association, the Company has its official seat, at Schiphol airport (municipality of Haarlemmermeer, the Netherlands), in any of the other territories of the municipality of Haarlemmermeer, the Netherlands, or in any other municipality in the Netherlands. General Meetings of

Shareholders may also be held elsewhere, in which case valid resolutions of the General Meeting may only be adopted if all of the Company's issued capital is present or represented.

**28 Admittance and rights at meetings**

- 28.1** Each Shareholder shall be entitled to attend the General Meetings of Shareholders, to address the meeting and, if the voting rights accrue to him, to exercise his voting rights, provided that the Board has been notified in writing of the intention to attend the meeting. Such notice must be received by the Board not later than on the date specified in the notice of the meeting.
- 28.2** The right to participate in the meeting in accordance with the provisions of article 28.1 may be exercised by a proxy authorised in writing, provided that the power of attorney has been received by the Board not later than on the date specified in the notice of the meeting. The requirement that the proxy must be in writing is complied with if the proxy is recorded electronically. The power of attorney may be provided to the Board by electronic means of communication.
- 28.3** If the voting rights attributable to a Share accrue to the usufructuary or the holder of a right of pledge on Shares, instead of to the holder of Shares, the holder of Shares shall likewise be authorised to attend the General Meeting of Shareholders and to address such meeting, provided that the Board has been notified of the intention to attend the meeting in accordance with the provisions of article 28.1. The provisions of article 28.2 shall apply correspondingly.
- 28.4** The persons who on the twenty-eighth (28<sup>th</sup>) day before the day of the relevant General Meeting of Shareholders (the “**record date**”) are entitled to participate in and exercise voting rights at a General Meeting of Shareholders and have their names recorded as such in a register designated by the Board for that purpose, will be considered entitled to participate in and exercise voting rights at the relevant General Meeting of Shareholders in respect of the Shares held by them at that time, irrespective of who is entitled to the underlying Shares or depositary receipts of Shares at the actual time of the relevant General Meeting of Shareholders.
- 28.5** The Board may determine that the rights in respect of attending meetings referred to in article 28.1 may be exercised by electronic means of communication, either in person or by a proxy authorised in writing. In order to do so, a person entitled to attend the meeting must, through the electronic means of communication, be identifiable, be able to directly observe the proceedings at the meeting, be able to participate in the discussions and, if the voting rights accrue to him, be able to exercise his voting rights. The Board may attach conditions to the use of the electronic means of communication, which conditions shall be announced with the notice of the meeting.
- 28.6** At a meeting, each person present with voting rights, or his proxy authorised in writing, must sign the attendance list. The chairman of the meeting may decide that the attendance list must also be signed by other persons present at the meeting. The names of the persons who participate in the meeting pursuant to article 28.5 shall be added to the attendance list.
- 28.7** The Directors shall, as such, have the right to give advice in the General Meetings of Shareholders.
- 28.8** The chairman of the meeting shall decide on the admittance of other persons to the meeting.

**29 Chairman and secretary of the meeting**

**29.1** General Meetings of Shareholders shall be presided over by the Group Chairman or, in the event of his absence, the Group Vice-Chairman or such other Director as may be appointed by the Group Chairman or, failing such appointment, by majority vote of the Directors present at the meeting.

**29.2** If the chairman of the meeting has not been appointed in accordance with the provisions of article 29.1, the General Meeting itself shall appoint a chairman of the meeting. Until that moment, a member of the Board appointed for that purpose by the Board shall act as chairman of the meeting.

**29.3** The chairman of the meeting shall appoint a secretary for the meeting.

**30 Minutes; recording of Shareholders' resolutions**

**30.1** The secretary of a General Meeting of Shareholders shall keep minutes of the proceedings at the meeting. The minutes shall be adopted by the chairman and the secretary of the meeting and as evidence thereof shall be signed by them.

**30.2** The chairman of the meeting or those who convened the meeting may determine that a notarial record must be prepared of the proceedings at the meeting. The notarial record shall be co-signed by the chairman of the meeting.

**30.3** The Board shall keep record of all resolutions adopted by the General Meeting. If the Board is not present or represented at a meeting, the chairman of the meeting shall ensure that the Board is provided with a transcript of the resolutions adopted, as soon as possible after the meeting. The records shall be deposited at the Company's office for inspection by the Shareholders. On application, each of them shall be provided with a copy of or an extract from the records at not more than cost price.

**31 Adoption of resolutions in a meeting**

**31.1** Each Share confers the right to cast one vote.

**31.2** To the extent that the laws of the Netherlands or these articles of association do not provide otherwise, all resolutions of the General Meeting shall be adopted by a simple majority of the votes cast, without a quorum being required. In the event that a quorum is required pursuant to the laws of the Netherlands or these articles of association, Shares held in excess of the Voting Limitation shall not be counted as present at the General Meeting of Shareholders and shall not be counted as outstanding Shares of the Company for purposes of determining whether there is a quorum, unless and only to the extent that the Voting Limitation has ceased to apply pursuant to article 34.2.

**31.3** If there is a tie in voting, the proposal shall be deemed to have been rejected, without prejudice to the provisions of article 32.3.

**31.4** If the formalities for convening and holding of General Meetings of Shareholders, as prescribed by the laws of the Netherlands or these articles of association, have not been complied with, valid resolutions of the General Meeting may only be adopted in a meeting, if in such meeting all of the Company's issued capital is present or represented and such resolutions are carried by unanimous vote.

**31.5** When determining how many votes are cast by Shareholders, how many Shareholders are present or represented, or what portion of the Company's issued capital is present or represented, no account shall be taken of Shares for which no vote can be cast pursuant to the laws of the Netherlands or these articles of association.

**32 Voting**

- 32.1** All voting shall take place orally. The chairman is, however, entitled to decide that votes be cast by a secret ballot. Any vote on a person at a General Meeting of Shareholders can only be made if the name of that person has been placed on the agenda for that meeting at the time the notice for that meeting is given. If it concerns the holding of a vote on persons, anyone present at the meeting with voting rights may demand a vote by a secret ballot. Votes by secret ballot shall be cast by means of secret, unsigned ballot papers.
- 32.2** Blank and invalid votes shall not be counted as votes.
- 32.3** If a majority of the votes cast is not obtained in an election of persons, a second free vote shall be taken. If a majority is not obtained again, further votes shall be taken until either one person obtains a majority of the votes cast or the election is between two persons only, both of whom receive an equal number of votes. In the event of such further elections (not including the second free vote), each election shall be between the candidates in the preceding election, with the exclusion of the person who received the smallest number of votes in such preceding election. If in the preceding election more than one person has received the smallest number of votes, it shall be decided which candidate should not participate in the new election by randomly choosing a name. If votes are equal in an election between two persons, it shall be decided who is elected by randomly choosing a name.
- 32.4** Resolutions may be adopted by acclamation if none of the persons with voting rights present or represented at the meeting objects.
- 32.5** The Board may decide that each person entitled to vote is authorised to vote by electronic means of communication, either in person or by proxy. In such case, it shall be required that the person entitled to vote can be identified through the electronic means of communication and can take knowledge of the discussions at the meeting directly. The Board may attach conditions to the use of the electronic means of communication, which conditions will be announced when convening the meeting and will be published on the Company's website.
- 32.6** The chairman's decision at the meeting on the result of a vote shall be final and conclusive. However, if the correctness of such decision is challenged immediately after it is pronounced, a new vote shall be taken if either the majority of the persons with voting rights present or represented at the meeting or, where the original vote was not taken by roll call or in writing, any person with voting rights present or represented at the meeting, so demands. The legal consequences of the original vote shall be made null and void by the new vote.

**33 Meetings of holders of Preference Shares**

- 33.1** Meetings of holders of Preference Shares are held as frequently as a resolution is required by the meeting in question and as frequently as is deemed desirable by the Board, or by one or more holder(s) of Preference Shares.
- 33.2** The provisions of articles 25 through 32 apply mutatis mutandis, provided that (i) the convocation shall be made no later than on the eighth (8<sup>th</sup>) day preceding the meeting, (ii) in deviation from the provisions of article 29, the meeting of holders of Preference Shares shall appoint its own chairman and (iii) the convocation will be made by means of a notice of the meeting at the addresses of the holders of Preference Shares listed in the shareholders' register or to the extent the holder of Preference Shares consents thereto,



he/she may be notified by a legible message sent electronically to the address that he/she has given to the Company for this purpose.

## CHAPTER XI

### LIMITATIONS ON VOTING AND OWNERSHIP

#### 34 Voting limitation

**34.1** Notwithstanding any other provision of these articles of association and unless and until such Person has complied in full with all Shareholder Voting Obligations, (i) no Person, either alone or together with its Related Persons, as of any record date for the determination of Shareholders entitled to vote on any matter, shall be entitled to vote or cause the voting of Shares beneficially owned by such Person or its Related Persons, in person or by proxy or through any voting agreement or other arrangement, to the extent such Shares entitle the holder(s) thereof to cast more than twenty percent (20%) of all votes that may be cast on such matter, without giving effect to this article 34 (such threshold being hereinafter referred to as the **"Voting Limitation"**) and the Company shall disregard any such votes purported to be cast in excess of the Voting Limitation and (ii) if any Person, either alone or together with its Related Persons, is a party to any agreement, plan or other arrangement relating to Shares entitling the holder thereof to vote on any matter with any other Person, either alone or together with its Related Persons, under circumstances that would result in Shares that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any Person, but for this article 34, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of Shares entitling the holder(s) thereof to cast votes that would exceed twenty percent (20%) of all votes that may be cast on any matter (assuming that all Shares that are subject to such agreement, plan or other arrangement will not entitle the holder(s) thereof to cast votes on such matter) (the **"Recalculated Voting Limitation"**), then the Person, either alone or together with its Related Persons, shall not be entitled to vote or cause the voting of Shares beneficially owned by such Person, either alone or together with its Related Persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such Shares represent in the aggregate more than the Recalculated Voting Limitation, and the Company shall disregard any such votes purported to be cast in excess of the Recalculated Voting Limitation.

**34.2** The Voting Limitation and the Recalculated Voting Limitation, as applicable, shall apply to each Person unless and until it has complied in full with each of the following obligations (jointly the **"Shareholder Voting Obligations"**):

- (a) such Person shall have delivered to the Board a notice in writing, not less than forty-five (45) days (or such shorter period as the Board shall expressly consent to) prior to any vote, of such Person's intention, either alone or together with its Related Persons, to vote or cause the voting of Shares beneficially owned by such Person or its Related Persons, in person or by proxy or through any voting agreement or other arrangement, in excess of the Voting Limitation or the Recalculated Voting Limitation, as applicable; and
- (b) such Person shall have obtained a written confirmation from the Board that (i) the Board has resolved to expressly permit such voting, (ii) such resolution has been

filed with, and approved by, the SEC under Section 19(b) of the Exchange Act, and has become effective thereunder and (iii) such resolution has been filed with, and to the extent required, approved by, each European Regulator having appropriate jurisdiction and authority.

**34.3** Subject to its fiduciary obligations under applicable law, the Board shall not adopt any resolution pursuant to article 34.2(b), unless the Board shall have determined that:

- (a) the exercise of such voting rights or the entering into of such agreement, plan or other arrangement, as applicable, by such Person, either alone or together with its Related Persons, (i) will not impair the ability of any U.S. Regulated Subsidiary, the Company, NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity) or ISE Holdings (if and to the extent that ISE Holdings continues to exist as a separate entity) to discharge their respective responsibilities under the Exchange Act and the rules and regulations thereunder, (ii) will not impair the ability of any European Market Subsidiary, the Company or Euronext (if and to the extent that Euronext continues to exist as a separate entity) to discharge their respective responsibilities under the European Exchange Regulations and (iii) is otherwise in the best interests of (w) the Company, (x) its Shareholders, (y) the U.S. Regulated Subsidiaries and (z) the European Market Subsidiaries;
- (b) the exercise of such voting rights or the entering into of such agreement, plan or other arrangement, as applicable, by such Person, either alone or together with its Related Persons, will not impair (i) the SEC's ability to enforce the Exchange Act or (ii) the European Regulators' ability to enforce the European Exchange Regulations;
- (c) in the case of a resolution to approve the exercise of voting rights in excess of twenty percent (20%) of all votes that may be cast on such matter, (i) neither such Person nor any of its Related Persons (x) is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act) (any such person subject to statutory disqualification being referred to in these articles of association as a "**U.S. Disqualified Person**") or (y) has been determined by a European Regulator to be in violation of laws or regulations adopted in accordance with the European Directive on Markets in Financial Instruments applicable to any European Market Subsidiary requiring such person to act fairly, honestly and professionally (any such person, failing to meet such standard being referred to in these articles of association as a "**European Disqualified Person**"), (ii) for so long as the Company directly or indirectly controls NYSE Arca or NYSE Arca Equities or any facility of NYSE Arca, neither such Person nor any of its Related Persons is an ETP Holder (as defined in the NYSE Arca Equities rules of NYSE Arca, as such rules may be in effect from time to time) of NYSE Arca Equities (an "**ETP Holder**") (any such Person that is a Related Person of an ETP Holder shall hereinafter also be deemed to be an ETP Holder for purposes of these articles of association, as the context may require) or an OTP Holder or OTP Firm (each as defined in the rules of NYSE Arca, as such rules may be in effect from time to time) of NYSE Arca (an "**OTP Holder**" or "**OTP Firm**", as appropriate) (any such Person that is a Related Person of an OTP Holder or OTP Firm shall hereinafter also be deemed to be an OTP Holder or OTP Firm, as

- appropriate, for purposes of these articles of association, as the context may require), (iii) for so long as the Company directly or indirectly controls New York Stock Exchange LLC or NYSE Market, Inc., neither such Person nor any of its Related Persons is a “member” or “member organization” (as defined in the rules of New York Stock Exchange LLC, as such rules may be in effect from time to time) (an “**NYSE Member**”) (any such Person that is a Related Person of such member or member organization shall hereinafter also be deemed to be a NYSE Member for purposes of these articles of association, as the context may require), (iv) for so long as the Company directly or indirectly controls NYSE Amex LLC (or its successor), neither such Person nor any of its Related Persons is a “member,” as defined in Sections 3(a)(3)(A)(i), 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Exchange Act, of NYSE Amex LLC (or its successor) (an “**Amex Member**”), (v) for so long as the Company directly or indirectly controls ISE, neither such Person nor any of its Related Persons is a “Member” (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of ISE (an “**ISE Member**”), (vi) for so long as the Company directly or indirectly controls EDGA, neither such Person nor any of its Related Persons is an “Member” of EDGA (as such term is defined in the rules of EDGA) (an “**EDGA Member**”), and (vii) for so long as the Company directly or indirectly controls EDGX, neither such Person nor any of its Related Persons is a “Member” of EDGX (as such term is defined in the rules of EDGX) (an “**EDGX Member**”) (any Person that is a Related Person of a NYSE Member, Amex Member, ISE Member, EDGA Member or EDGX Member shall hereinafter also be deemed to be a NYSE Member, Amex Member, ISE Member, EDGA Member or EDGX Member, as applicable, for purposes of these articles of association, as the context may require); and
- (d) in the case of a resolution to approve the entering into of an agreement, plan or other arrangement under circumstances that would result in Shares that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any Person, but for this article 34, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of Shares entitling the holder(s) thereof to cast votes that would exceed twenty percent (20%) of all votes that may be cast on such matter (assuming that all Shares that are subject to such agreement, plan or other arrangement will not entitle the holder(s) thereof to cast votes on such matter), (i) neither such Person nor any of its Related Persons is (x) a U.S. Disqualified Person or (y) a European Disqualified Person, (ii) for so long as the Company directly or indirectly controls NYSE Arca or NYSE Arca Equities or any facility of NYSE Arca, neither such Person nor any of its Related Persons is an ETP Holder, OTP Holder or an OTP Firm, (iii) for so long as the Company directly or indirectly controls New York Stock Exchange LLC or NYSE Market, Inc., neither such Person nor any of its Related Persons is a NYSE Member, (iv) for so long as the Company directly or indirectly controls NYSE Amex LLC, neither such Person nor any of its Related Persons is, with respect to NYSE Amex LLC, an Amex Member, (v) for so long as the Company directly or indirectly controls ISE, neither such Person nor any of its Related Persons is an ISE Member, (vi) for so long as

the Company directly or indirectly controls EDGA, neither such Person nor any of its Related Persons is an EDGA Member, and (vii) for so long as the Company directly or indirectly controls EDGX, neither such Person nor any of its Related Persons is an EDGX Member.

- 34.4** In making such determinations, the Board may impose such conditions and restrictions on such Person and its Related Persons owning any Shares entitling the holder(s) thereof to cast votes on any matter as the Board may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of (i) the Exchange Act, (ii) the European Exchange Regulations and (iii) the governance of the Company.
- 34.5** If and to the extent that Shares beneficially owned by any Person or its Related Persons are held of record by any other Person, this article 34 shall likewise be enforced against such record holder by limiting the votes entitled to be cast by such record holder in a manner that will accomplish the Voting Limitation and the Recalculated Voting Limitation applicable to such Person and its Related Persons.
- 34.6** This article 34 shall not apply to (i) any solicitation of any revocable proxy from any Shareholder by or on behalf of the Company or by any officer or Director of the Company acting on behalf of the Company or (ii) any solicitation of any revocable proxy from any Shareholder by any other Shareholder that is conducted pursuant to, and in accordance with, Regulation 14A promulgated pursuant to the Exchange Act (other than a solicitation pursuant to Rule 14a-2(b)(2) promulgated under the Exchange Act, with respect to which this article 34 shall apply).
- 34.7** For purposes of this article 34, no Person shall be deemed to have any agreement, arrangement or understanding to act together with respect to Shares solely because such Person or any of such Person's Related Persons has or shares the power to vote or direct the voting of such Shares as a result of (i) any solicitation of any revocable proxy from any Shareholder by or on behalf of the Company or by any officer or Director of the Company acting on behalf of the Company or (ii) any solicitation of any revocable proxy from any Shareholder by any other Shareholder that is conducted pursuant to, and in accordance with, Regulation 14A promulgated pursuant to the Exchange Act (other than a solicitation pursuant to Rule 14a-2(b)(2) promulgated under the Exchange Act, with respect to which this article 34 shall apply), except if such power (or the arrangements relating thereto) is then reportable under Item 6 of Schedule 13D under the Exchange Act (or any similar provision of a comparable or successor report).
- 34.8** In these articles of association, the term "**Related Persons**" shall mean with respect to any Person:
- (a) any "affiliate" of such Person (as such term is defined in Rule 12b-2 under the Exchange Act);
  - (b) any other Person(s) with which such first Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Shares;
  - (c) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b-7 under the Exchange Act) or Director of such Person and, in the case of a Person that is a partnership or a limited liability company, any general partner, managing member or manager of such Person, as applicable;

- (d) in the case of a Person that is a “member organization” (as defined in the rules of New York Stock Exchange LLC, as such rules may be in effect from time to time), any NYSE Member that is associated with such Person (as determined using the definition of “person associated with a member” as defined under Section 3(a)(21) of the Exchange Act);
- (e) in the case of a Person that is an OTP Firm, any OTP Holder that is associated with such Person (as determined using the definition of “person associated with a member” as defined under Section 3(a)(21) of the Exchange Act);
- (f) in the case of a Person that is a natural person, any relative or spouse of such natural Person, or any relative of such spouse who has the same home as such natural Person or who is a Director or officer of the Company or any of its parents or subsidiaries;
- (g) in the case of a Person that is an executive officer (as defined under Rule 3b-7 under the Exchange Act), or a Director of a company, corporation or similar entity, such company, corporation or entity, as applicable;
- (h) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable;
- (i) in the case of a Person that is a NYSE Member, the “member organization” (as defined in the rules of New York Stock Exchange LLC, as such rules may be in effect from time to time) with which such Person is associated (as determined using the definition of “person associated with a member” as defined under Section 3(a)(21) of the Exchange Act);
- (j) in the case of a Person that is an OTP Holder, the OTP Firm with which such Person is associated (as determined using the definition of “person associated with a member” as defined under Section 3(a)(21) of the Exchange Act);
- (k) in the case of a Person that is a “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) of NYSE Amex LLC, the “member” (as defined in Sections 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Exchange Act) with which such Person is associated (as determined using the definition of “person associated with a member” as defined under Section 3(a)(21) of the Exchange Act);
- (l) in the case of any Person that is a “member” (as defined in Sections 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Exchange Act) of NYSE Amex LLC, any “member” (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) that is associated with such Person (as determined using the definition of “person associated with a member” as defined under Section 3(a)(21) of the Exchange Act);
- (m) in the case of any Person that is an ISE Member, any broker or dealer with which such Person is associated;
- (n) in the case of any Person that is an EDGA Member, the “person associated with a Member” or “associated person of a Member” (as defined in the rules of EDGA Exchange, Inc.); and
- (o) in the case of any Person that is an EDGX Member, the “person associated with a Member” or “associated person of a Member” (as defined in the rules of EDGX Exchange, Inc).

**34.9** In these articles of association, the term "beneficially owned", including all derivative or similar words, shall have the meaning set forth in Rules 13d-3 and 13d-5 under the Exchange Act.

**35 Ownership Concentration Limitation**

**35.1** Except as otherwise provided in this article 35, any Person who, either alone or together with its Related Persons, shall at any time beneficially own Shares entitling the holder(s) thereof to cast votes representing in the aggregate more than forty percent (40%) of all votes that may be cast on any matter (or, if such Person, either alone or together with its Related Persons, is a NYSE Member, an Amex Member, an ETP Holder of NYSE Arca Equities or an OTP Holder or OTP Firm of NYSE Arca, an ISE Member, an EDGA Member or an EDGX Member, twenty percent (20%) of all votes that may be cast on any matter) (the "**Concentration Limitation**"), shall be obligated to offer for sale and to transfer Shares in accordance with this article 35.

**35.2** The Concentration Limitation shall apply to each Person unless and until it has complied in full with each of the following obligations (jointly the "**Shareholder Concentration Obligations**"):

- (a) such Person shall have delivered to the Board a notice in writing, not less than forty-five (45) days (or such shorter period as the Board shall expressly consent to) prior to the acquisition of any Shares that would cause such Person (either alone or together with its Related Persons) to exceed the Concentration Limitation, of such Person's intention to acquire such ownership; and
- (b) such Person shall have obtained a written confirmation from the Board that (i) the Board has resolved to expressly permit such ownership, (ii) such resolution has been filed with, and approved by, the SEC under Section 19(b) of the Exchange Act and has become effective thereunder and (iii) such resolution has been filed with, and to the extent required, approved by, each European Regulator having appropriate jurisdiction and authority.

**35.3** Subject to its fiduciary obligations under applicable law, the Board shall not adopt any resolution pursuant to article 35.2(b) unless the Board shall have determined that:

- (a) such acquisition of beneficial ownership by such Person, either alone or together with its Related Persons, (i) will not impair the ability of any U.S. Regulated Subsidiary, the Company, NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity) or ISE Holdings (if and to the extent that ISE Holdings continues to exist as a separate entity) to discharge their respective responsibilities under the Exchange Act and the rules and regulations thereunder, (ii) will not impair the ability of any European Market Subsidiary, the Company or Euronext (if and to the extent that Euronext continues to exist as a separate entity) to discharge their respective responsibilities under the European Exchange Regulations and (iii) is otherwise in the best interests of (w) the Company, (x) its Shareholders, (y) the U.S. Regulated Subsidiaries and (z) the European Market Subsidiaries;
- (b) such acquisition of beneficial ownership by such Person, either alone or together with its Related Persons, will not impair (i) the SEC's ability to enforce the Exchange Act or (ii) the European Regulators' ability to enforce the European Exchange Regulations. In making such determinations, the Board may impose such conditions and restrictions on such Person and its Related Persons owning

any Shares entitling the holder(s) thereof to vote on any matter as the Board may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of (x) the Exchange Act, (y) the European Exchange Regulations and (z) the governance of the Company;

- (c) neither such Person nor any of its Related Persons is (i) a U.S. Disqualified Person or (ii) a European Disqualified Person;
- (d) for so long as the Company directly or indirectly controls NYSE Arca or NYSE Arca Equities or any facility of NYSE Arca, neither such Person nor any of its Related Persons is an ETP Holder or an OTP Holder or OTP Firm;
- (e) for so long as the Company directly or indirectly controls New York Stock Exchange LLC or NYSE Market, Inc., neither such Person nor any of its Related Persons is a NYSE Member;
- (f) for so long as the Company directly or indirectly controls NYSE Amex LLC, neither such Person nor any of its Related Persons is an AMEX Member;
- (g) for so long as the Company directly or indirectly controls ISE, neither such Person nor any of its Related Persons is an ISE Member;
- (h) for so long as the Company directly or indirectly controls EDGA, neither such Person nor any of its Related Persons is an EDGA Member; and
- (i) for so long as the Company directly or indirectly controls EDGX, neither such Person nor any of its Related Persons is an EDGX Member.

**35.4** Unless the conditions specified in article 35.2 are met, if any Person, either alone or together with its Related Persons, at any time beneficially owns Shares entitling the holder(s) thereof to cast votes on any matter in excess of the Concentration Limitation, such Person and its Related Persons who are Shareholders shall be obligated to offer for sale and to transfer that number of Shares necessary so that such Person, together with its Related Persons, shall beneficially own a number of Shares entitling the holder(s) thereof to cast votes on any matter which is in the aggregate no more than the Concentration Limitation. Such Person may sell and transfer the relevant Shares on any stock exchange where Shares are listed or in any other manner as such Person may elect.

**35.5** If any Person who is obligated to offer for sale and to transfer Shares pursuant to article 35.4 requests within two weeks after having become so obligated, that the value of the relevant Shares be determined by an independent expert, (i) such Person will be obligated to sell the relevant Shares on any stock exchange where Shares are listed, and (ii) the value of such shares shall be determined by an independent expert to be appointed by such Person and the Company jointly. If such Person and the Company should fail to reach agreement within five (5) Business Days after the request of such Person to appoint an independent expert, either party may institute proceedings requesting the cantonal sector of the Court (*sector kanton van de rechtbank*) in Amsterdam to appoint an independent expert. For the purposes of this provision, it shall be sufficient if the independent expert determines that the value of the Shares offered for sale and (to be) transferred by such Person shall be equal to the price (to be) received for such Shares by such Person on any stock exchange where Shares are listed. The expenses incurred in connection with the appointment and/or remuneration of the independent expert shall be for the account of the Person obligated to offer for sale and to transfer Shares pursuant to article 35.4.

- 35.6** To the extent that a Person, either alone or together with its Related Persons, shall at any time beneficially own Shares entitling the holder(s) thereof to cast votes on any matter in excess of the Concentration Limitation, unless and until a Person has complied in full with all Shareholder Concentration Obligations, such Person shall not be entitled to exercise the rights to vote, to attend General Meetings of Shareholders and to receive dividends or other distributions attached to such Shares which are owned beneficially in excess of the Concentration Limitation and such rights shall be suspended for so long as the Concentration Limitation is so exceeded.
- 35.7** If and to the extent that any Person fails to comply within two (2) weeks with its obligations pursuant to article 35.4 after having become so obligated, the Company shall be irrevocably authorized to comply on his behalf with such obligations.
- 35.8** Nothing in this article 35 shall preclude the settlement of transactions entered into through the facilities of New York Stock Exchange LLC or Deutsche Börse; provided, however, that, if any transfer or other transaction shall cause any Person, either alone or together with its Related Persons, at any time to beneficially own Shares entitling the holder(s) thereof to cast votes on any matter in excess of the Concentration Limitation, such Person and its Related Persons who are Shareholders shall be obligated to offer for sale and to transfer Shares as specified in article 35.4.
- 35.9** The Board shall have the right to require any Person and its Related Persons that the Board reasonably believes (i) to be subject to the Voting Limitation or the Recalculated Voting Limitation, (ii) to beneficially own Shares entitling the holder(s) thereof to cast votes on any matter in excess of the Concentration Limitation, or (iii) to beneficially own an aggregate of five percent (5%) or more of the then issued and outstanding Shares entitling the holder(s) thereof to cast votes on any matter, which ownership such Person, either alone or together with its Related Persons, has not reported to the Company, to provide to the Company, upon the Board's request, complete information as to all Shares beneficially owned by such Person and its Related Persons and any other factual matter relating to the applicability or effect of articles 34 and 35 as may reasonably be requested of such Person and its Related Persons. Any constructions, applications or determinations made by the Board pursuant to articles 34 and 35 in good faith and on the basis of such information and assistance as was then reasonably available for such purpose shall be conclusive and binding upon the Company and its Directors, officers and Shareholders.

## **CHAPTER XII**

### **AMENDMENT OF THE ARTICLES OF ASSOCIATION; CHANGE OF CORPORATE FORM; STATUTORY MERGER AND STATUTORY DEMERGER; DISSOLUTION AND LIQUIDATION**

#### **36 Amendment of the articles of association; change of corporate form**

- 36.1** The General Meeting may resolve to amend these articles of association by a resolution passed with at least a two-thirds majority of the votes cast, without a quorum being required, provided that such resolution can only be adopted at the proposal of the Board. When a proposal to amend these articles of association is to be made to the General Meeting, the notice convening the General Meeting of Shareholders must state so and a copy of the proposal, including the verbatim text thereof, shall be deposited and kept available at the Company's office for inspection by the Shareholders, until the conclusion of the meeting. From the day of deposit until the day of the meeting, a Shareholder shall,



on application, be provided with a copy of the proposal free of charge. An amendment of these articles of association shall be laid down in a notarial deed.

- 36.2** For so long as the Company shall control, directly or indirectly, any U.S. Regulated Subsidiary, before any amendment of any provision of these articles of association – whether or not as part of a statutory merger or statutory demerger – shall be effectuated by execution of a notarial deed of amendment of the articles of association, such amendment shall be submitted to the board of directors of such U.S. Regulated Subsidiaries and if any or all of such boards of directors shall determine that such amendment must be filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment may be effectuated, then such amendment shall not be effectuated until filed with or filed with and approved by the SEC.
- 36.3** For so long as the Company shall control, directly or indirectly, any European Market Subsidiary, before any amendment of any provision of these articles of association – whether or not as part of a statutory merger or statutory demerger – shall be effectuated by execution of a notarial deed of amendment of the articles of association, such amendment shall be submitted to the board of directors of such European Market Subsidiaries and if any or all of such boards of directors shall determine that such amendment must be filed with or filed with and approved by a European Regulator under European Exchange Regulations before such amendment may be effectuated, then such amendment shall not be effectuated until filed with or filed with and approved by the relevant European Regulators.
- 36.4** The Company may change its corporate form into a different legal form. A change of the corporate form shall require a resolution to change the corporate form adopted by the General Meeting by a resolution passed with at least a nine-tenths majority of the votes cast, without a quorum being required, and a resolution to amend these articles of association, subject to the provisions of articles 36.1 and 36.2, provided that such resolutions can only be adopted at the proposal of the Board. A change of the corporate form shall furthermore be subject to the relevant provisions of Book 2 of the Dutch Civil Code. A change of the corporate form shall not terminate the existence of the legal entity.
- 37 Statutory merger and statutory demerger**
- 37.1** The Company may enter into a statutory merger with one or more other legal entities. A resolution to effect a merger may only be adopted on the basis of a merger proposal prepared by the (management) boards of the merging legal entities. The resolution to effect a merger shall be adopted by the General Meeting by a resolution passed with at least a two-thirds majority of the votes cast, without a quorum being required, provided that such resolution can only be adopted at the proposal of the Board. However, in the cases referred to in Section 2:331 of the Dutch Civil Code, the resolution to effect a merger may be adopted by the Board.
- 37.2** The Company may be a party to a statutory demerger. The term “demerger” shall include both split-up and spin-off. A resolution to effect a demerger may only be adopted on the basis of a demerger proposal to be prepared by the management boards of the parties to the demerger. The resolution to effect a demerger shall be adopted by the General Meeting by a resolution passed with at least a two-thirds majority of the votes cast, without a quorum being required, provided that such resolution can only be adopted at the

proposal of the Board. However, in the cases referred to in Section 2:334ff of the Dutch Civil Code, the resolution to effect a demerger may be adopted by the Board.

**37.3** Statutory mergers and statutory demergers shall furthermore be subject to the relevant provisions of Book 2, Title 7, of the Dutch Civil Code.

### **38 Dissolution and liquidation**

**38.1** The Company may be dissolved pursuant to a resolution to that effect by the General Meeting by a resolution passed with at least a two-thirds majority of the votes cast, without a quorum being required, provided that such resolution can only be adopted at the proposal of the Board. When a proposal to dissolve the Company is to be made to the General Meeting, this must be stated in the notice convening the General Meeting of Shareholders.

**38.2** If the Company is dissolved pursuant to a resolution of the General Meeting, the Group CEO shall become the liquidator of the dissolved Company's assets, unless the General Meeting resolves to appoint one or more other persons as liquidator(s), and the Non-Executive Directors shall be charged with the supervision thereof.

**38.3** During liquidation, the provisions of these articles of association shall remain in force to the extent possible.

**38.4** From the balance remaining after payment of the debts of the dissolved Company shall first, insofar as possible, be paid on each Preference Share:

- (a) an amount equal to the nominal value of a Preference Share;
- (b) any missing Preferred Dividend in relation to financial years prior to the financial year in which such payment is made payable; and
- (c) any Preferred Dividend accrued during the financial year in which liquidation occurs but unpaid, to be calculated for this purpose over the period ending on the day on which such payment is made payable.

**38.5** The balance remaining after application of article 38.4 shall be transferred to the holders of Ordinary Shares in proportion to the aggregate nominal value of the Ordinary Shares held by each.

**38.6** After the end of the liquidation, the books, records and other data carriers of the dissolved Company shall remain in the custody of the person designated for that purpose by the General Meeting, and in the absence thereof the person designated for that purpose by the liquidators, for a period as prescribed by the laws of the Netherlands.

**38.7** In addition, the liquidation shall be subject to the relevant provisions of Book 2, Title 1, of the Dutch Civil Code.

**Finally, the person appearing has declared:**

### **Conversion of shares**

Upon the foregoing amendment of the articles of association taking effect, the shares in the capital of the Company in issue immediately prior thereto, being forty-five thousand (45,000) D shares, with a nominal value of one euro (EUR 1) each, numbered D1 through D45,000, shall be converted into ● shares, with a nominal value of one euro (EUR 1) each.

### **Issued capital**

Upon the foregoing amendment of the articles of association taking effect and immediately following the foregoing conversion of shares, the issued capital of the Company amounts to ● euro (EUR ●), divided into ● (●) shares, with a nominal value of one euro (EUR 1) each,

numbered ● through ●.

**[Dividend reserve and share premium reserve**

Upon the foregoing amendment of the articles of association taking effect, the amount (if any) of the dividend reserve and of the share premium reserve maintained in the books of the Company for the D shares, shall be added to the dividend reserve and the share premium reserve maintained in the books of the Company for the ● shares.]

**Close**

The person appearing is known to me, civil law notary.

This deed was executed in Amsterdam, the Netherlands, on the date first above written. Before reading out, a concise summary and an explanation of the contents of this deed were given to the person appearing. The person appearing then declared that [he] / [she] had taken note of and agreed to the contents of this deed and did not want the complete deed to be read to [him] / [her]. Thereupon, after limited reading, this deed was signed by the person appearing and by me, civil law notary.

Exhibit 5C – Text of Proposed Agreement and Consent to be entered into by Alpha Beta Netherlands Holding N.V. and certain subsidiaries of NYSE Euronext

All text is new

**AGREEMENT AND CONSENT**

This agreement and consent (this “Agreement”) is entered into as of [ ], 2011, by and among Alpha Beta Netherlands Holding N.V. (“Holdco”), New York Stock Exchange, LLC, NYSE Arca, Inc., NYSE Amex LLC, NYSE Market, Inc., NYSE Regulation, Inc., NYSE Arca L.L.C., NYSE Arca Equities, Inc., International Securities Exchange, LLC, EDGA Exchange, Inc. and EDGX Exchange, Inc. (each, excluding Holdco, a “U.S. Regulated Subsidiary”).

WHEREAS, on February 15, 2011, Holdco entered into a business combination agreement (the “BCA”) with NYSE Euronext, Deutsche Börse AG and Pomme Merger Corporation, pursuant to which NYSE Euronext and Deutsche Börse AG agreed to combine their respective businesses (including their interests in the U.S. Regulated Subsidiaries) under Holdco;

WHEREAS, in connection with the consummation of the exchange offer and the merger contemplated by the BCA, New York Stock Exchange, LLC, NYSE Arca, Inc., NYSE Amex LLC, International Securities Exchange, LLC, EDGA Exchange, Inc. and EDGX Exchange, Inc. have filed proposed rule changes (the “Proposed Rule Changes”) with the SEC pursuant to Section 19(b)(1) of the U.S. Securities Exchange Act of 1934, as amended, and Rule 19b04 thereunder; and

WHEREAS, Holdco and the U.S. have proposed to enter into this Agreement to address certain matters set forth in the Proposed Rule Changes.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties hereby acknowledge and agree as follows:

Section 1. Capitalized terms used but not defined in this Agreement shall have the meanings given to them in the Articles of Association of Holdco, as they may be in effect from time to time (the “Articles”).

Section 2. To the fullest extent permitted by applicable law, Holdco hereby agrees and undertakes as follows:

- (a) Holdco shall comply with the U.S. federal securities laws and the rules and regulations thereunder and cooperate with the SEC and the U.S. Regulated Subsidiaries pursuant to and to the extent of their respective regulatory authority, and take reasonable steps necessary to cause its agents to cooperate with the SEC and, where applicable, the U.S. Regulated Subsidiary pursuant to their regulatory authority.
- (b) Holdco shall comply with the European Exchange Regulations and the rules and regulations thereunder and cooperate with the European Regulators pursuant to and to the extent of their respective regulatory authority, and take reasonable steps necessary to cause its agents to cooperate with the European Regulators pursuant to their regulatory authority.

- (c) Holdco shall be deemed to irrevocably submit, and Holdco hereby irrevocably submits, to the jurisdiction of the U.S. federal courts and the SEC for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws and the rules and regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of the U.S. Regulated Subsidiaries (and be deemed to agree, and Holdco hereby agrees, that NYSE Group may serve as its U.S. agent for purposes of service of process in such suit, action or proceeding relating to NYSE Group or any of its subsidiaries and ISE Holdings may serve as its U.S. agent for purposes of service of process in such suit, action or proceeding relating to ISE Holdings or any of its subsidiaries), and Holdco shall be deemed to waive, and agree (and Holdco hereby so waives and agrees) not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it is not personally subject to the jurisdiction of the SEC, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.
- (d) Holdco shall be deemed to irrevocably submit, and Holdco hereby irrevocably submits, to the jurisdiction of the European Regulators and to courts in the capital city of the country of each such regulator for the purposes of any suit, action or proceeding pursuant to the European Exchange Regulations and the rules and regulations thereunder, commenced or initiated by the European Regulators arising out of, or relating to, the activities of the European Market Subsidiaries, and Holdco shall be deemed to waive, and agree (and Holdco hereby so waives and agrees) not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it is not personally subject to the jurisdiction of the European Regulators, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or regulator.
- (e) Holdco's books and records shall at all times be subject to inspection and copying by (i) the SEC; (ii) each of the European Regulators; (iii) any U.S. Regulated Subsidiary, to the extent that such books and records are related to the activities of such U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight; and (iv) any European Market Subsidiary, to the extent that such books and records are related to the activities of such European Market Subsidiary or any European Regulated Market over which such European Market Subsidiary has regulatory authority or oversight.
- (f) (i) For so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, the books, records, premises, officers, directors and employees of Holdco shall be deemed to be the books, records, premises, officers, directors and employees of such U.S. Regulated Subsidiaries for purposes of and subject to oversight pursuant to the Exchange Act; and (ii) for so long as Holdco directly or indirectly controls any European Market Subsidiary, the books, records, premises, officers, directors and employees of Holdco shall be deemed to be the books, records, premises, officers, directors and employees of such European Market Subsidiaries for purposes of and subject to oversight pursuant to the European

## Exchange Regulations.

- (g) The Company's books and records related to U.S. Regulated Subsidiaries shall be maintained within the United States, and the Company's books and records related to European Market Subsidiaries shall be maintained within the home jurisdiction of one or more European Market Subsidiaries. If and to the extent that any of Holdco's books and records may relate to both European Market Subsidiaries and U.S. Regulated Subsidiaries, Holdco shall be entitled to maintain such books and records either in the home jurisdiction of one or more European Market Subsidiaries or in the United States.
- (h) All confidential information that shall come into the possession of Holdco pertaining to:
- (i) the self-regulatory function of any U.S. Regulated Subsidiary, in each case to the extent that such entity continues to be controlled, directly or indirectly, by Holdco (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of such U.S. Regulated Subsidiary; or
  - (ii) the self-regulatory function of any European Market Subsidiary under the European Exchange Regulations as operator of a European Regulated Market (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of such European Market Subsidiary,

in each case, shall (x) not be made available to any Person (other than as provided in this Section 2(h)) other than to those officers, directors, employees and agents of Holdco that have a reasonable need to know the contents thereof, (y) be retained in confidence by Holdco and the officers, directors, employees and agents of Holdco, and (z) not be used for any commercial purposes.

Notwithstanding the foregoing provisions of this Section 2, nothing in this Agreement shall limit or impede (x) the rights of the SEC or any U.S. Regulated Subsidiary to have access to and examine such U.S. Regulated Subsidiary's Confidential Information pursuant to the U.S. federal securities laws and the rules and regulations thereunder, (y) the rights of the European Regulators or any European Market Subsidiary to have access to and examine such European Market Subsidiary's Confidential Information pursuant to the European Exchange Regulations, or (z) the ability of any officers, directors, employees or agents of Holdco to disclose (1) the U.S. Regulated Subsidiary's Confidential Information to the SEC or the U.S. Regulated Subsidiary or (2) the European Market Subsidiary's Confidential Information to the European Regulators or the European Market Subsidiary.

- (i) For so long as Holdco directly or indirectly controls any U.S. Regulated Subsidiary, Holdco shall give due regard to the preservation of the independence of the self-regulatory function of such U.S. Regulated Subsidiary (to the extent of such U.S. Regulated Subsidiary's self-regulatory function) and to its obligations to investors and the general public, and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors or

managers of such U.S. Regulated Subsidiary relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of the U.S. Regulated Subsidiary to carry out its responsibilities under the Exchange Act.

- (j) For so long as Holdco directly or indirectly controls any European Market Subsidiary, Holdco shall give due regard to the preservation of the independence of the self-regulatory function of such European Market Subsidiary (to the extent of such European Market Subsidiary's self-regulatory function) and to its obligations to investors and the general public, and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of such European Market Subsidiary relating to its regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of the European Market Subsidiary to carry out its responsibilities under the European Exchange Regulations.
- (k) Holdco shall take reasonable steps necessary to cause Holdco's officers, directors and employees, prior to accepting a position as an officer, director or employee, as applicable, of Holdco to agree and consent in writing to the applicability to him or her of the requirements in clause 3.2 of the Articles with respect to their activities related to any U.S. Regulated Subsidiary or European Market Subsidiary, as applicable.

Section 3. This Agreement may only be amended in writing with the mutual consent of each of the parties hereto; provided that Section 2 of this Agreement shall automatically be amended or modified to reflect amendments which are properly made to clause 3.2 of the Articles.

Section 4. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by any of the parties hereto without the prior written consent of the other party hereto. If any provision of this Agreement is held to be invalid or unenforceable, then so far as it is invalid or unenforceable it has no effect and is deemed not to be included in this Agreement. This shall not invalidate any of the remaining provisions of this Agreement.

Section 5. This Agreement is not intended to, and does not, confer upon any person or entity, other than the parties who are signatories hereto, any rights or remedies hereunder. No Holdco shareholder, employee, former employee, beneficiary, customer, creditor, community, regulatory authority or member thereof shall have any rights against Holdco or any director, officer or employee of Holdco under this Agreement.

Section 6. This Agreement shall be governed by and construed in accordance with the laws of the Netherlands.

*[Signature page follows]*

IN WITNESS WHEREOF, this Agreement and Consent has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

Alpha Beta Netherlands Holding N.V.

By: \_\_\_\_\_

Acknowledged and accepted:

New York Stock Exchange, LLC

By: \_\_\_\_\_

NYSE Arca, Inc.

By: \_\_\_\_\_

NYSE Amex LLC

By: \_\_\_\_\_

NYSE Market, Inc.

By: \_\_\_\_\_

NYSE Regulation, Inc.

By: \_\_\_\_\_

NYSE Arca L.L.C.

By: \_\_\_\_\_

NYSE Arca Equities, Inc.

By: \_\_\_\_\_

International Securities Exchange, LLC



By: \_\_\_\_\_

EDGA Exchange, Inc.

By: \_\_\_\_\_

EDGX Exchange, Inc.

By: \_\_\_\_\_

Exhibit 5D – Text of Proposed Director Independence Policy of Alpha Beta Netherlands Holding N.V.

All text is new

**INDEPENDENCE POLICY OF THE  
BOARD OF DIRECTORS OF  
ALPHA BETA NETHERLANDS HOLDING N.V.**

**Purpose**

The purpose of this Policy is to set forth the independence requirements that shall apply to the members of the Board of Directors (the “Board”) of Alpha Beta Netherlands Holding N.V. (the “Company”).

**Independence Requirements**

1. At least a majority of the Directors shall be independent within the meaning of this Policy. In addition, all non-executive Directors shall be independent within the meaning of the Dutch Corporate Governance Code (the “Code”), as amended from time to time, except as permitted in accordance with the Code. A list of the Directors shall be maintained on the Company’s web site.
2. A Director shall be independent only if the Board determines that the Director does not have any material relationships with the Company and its subsidiaries and otherwise satisfies the independence criteria of the Code. When assessing a Director’s relationships and interests, the Board shall consider the issue not merely from the standpoint of the Director, but also from the standpoint of persons or organizations with which the Director is affiliated<sup>1</sup> or associated.
3. In making independence determinations, the Board shall consider the special responsibilities of a Director in light of the fact that the Company controls entities that are U.S. self-regulatory organizations and U.S. national securities exchanges subject to the supervision of the U.S. Securities and Exchange Commission, and entities that are European securities exchanges subject to the supervision of the College of Euronext Regulators and its respective members, including the French Financial Markets Authority (Autorité des Marchés Financiers), the Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten), the Belgian Financial Services and Markets Authority (Autorité des Services et Marchés Financiers/Autoriteit Financiële Diensten en Markten), the Portuguese Securities Market Commission (Comissão do Mercado de Valores

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<sup>1</sup> An “affiliate” of, or a person “affiliated” with, a specific person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Mobiliários – CMVM), and the U.K. Financial Services Authority (FSA), as well as other European regulatory authorities including the German Federal Financial Supervisory Authority (BaFin), the Hessian Exchange Supervisory Authority, the Dutch Minister of Finance, the French Minister of the Economy and the French Prudential Supervisory Authority (Autorité de Contrôle Prudentiel), in each case only to the extent that it has authority and jurisdiction in the particular context.

4. The Board shall make an independence determination with respect to each Director required to be independent hereunder upon the Director's nomination or appointment to the Board and thereafter at such times as the Board considers advisable in light of the Director's circumstances and any changes to this Policy, but in any event not less frequently than annually.

5. It shall be the responsibility of each Director to inform the Chairman of the Board and the Chairman of the Nominating, Governance and Corporate Responsibility Committee promptly and otherwise as requested of the existence of such relationships and interests which might reasonably be considered to bear on the Director's independence.

6. Any Director required to be independent hereunder whom the Board otherwise determines not to be independent under this Policy shall be deemed to have tendered his or her resignation for consideration by the Board, and such resignation shall not be effective unless and until accepted by the Board.

### **Independence Qualifications**

1. In making an independence determination with respect to any Director or Director candidate, the Board shall consider the independence criteria of the Code, as well as the standards below with respect to relationships or interests of the Director or Director candidate with or in:

(a) the Company and its subsidiaries;

(b) "members" (as defined in Section 3(a)(A)(3)(i) of the Securities Exchange Act of 1934, as amended) of New York Stock Exchange LLC, NYSE Arca, Inc. and NYSE Amex LLC (collectively, "Members"), "allied members" (as defined in paragraph (c) of Rule 2 of New York Stock Exchange LLC and Rule 23 of NYSE Amex LLC) and "allied persons" (as defined in Rule 1.1(b) of NYSE Arca, Inc. and Rule 1.1(c) of NYSE Arca Equities, Inc.); and

(c) "members" (as defined in Section 3(a)(A)(3)(ii), 3(a)(A)(3)(iii) and 3(a)(A)(3)(iv) of the Securities Exchange Act of 1934, as amended) of New York Stock Exchange LLC, NYSE Arca, Inc. and NYSE Amex LLC (collectively, "Member Organizations").

The standards relating to category (a) are the same as those that New York Stock Exchange LLC applies to its own listed companies. The standards relating to categories

(b) and (c) stem from the differing regulatory responsibilities and roles that New York Stock Exchange LLC, and NYSE Arca, Inc. and NYSE Amex LLC exercise in overseeing the organizations and companies included in those categories.

2. The term “approved person” used herein has the meanings set forth in the Rules of New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Arca Equities, Inc. and NYSE Amex LLC.

3. The term “immediate family member” with respect to any Director has the meaning set forth in the NYSE Listed Company Manual.

4. The term “U.S. Listed Company” means a company (other than a Member Organization) whose securities are listed on New York Stock Exchange LLC, on NYSE Arca, Inc. or on NYSE Amex LLC.

5. All references to New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Area Equities, Inc. and NYSE Amex LLC shall mean each of those entities or its successor.

6. Without limitation to the criteria set out in the Code, the following independence criteria shall apply:

### **Independence from the Company and its Subsidiaries**

A Director is not independent if the Director or an immediate family member of the Director has or had a relationship or interest with or in the Company or its subsidiaries that, if such relationship or interest existed with respect to a U.S. Listed Company on the New York Stock Exchange LLC, would preclude a Director of the U.S. Listed Company from being considered an independent Director of the U.S. Listed Company pursuant to Section 303A.02(a) or (b) of the NYSE Listed Company Manual.<sup>2</sup>

### **Members, Allied Members, Allied Persons and Approved Persons**

A Director is not independent if he or she is, or within the last year was, or has an immediate family member who is, or within the last year was a Member, allied member or allied person or approved person (in each case as defined above).

### **Member Organizations**

A Director is not independent if the Director (a) is, or within the last year was, employed by a Member Organization, (b) has an immediate family member who is, or within the last year was, an executive officer of a Member Organization, (c) has within the last year received from any Member Organization more than \$100,000 per year in direct compensation, or received from Member Organizations in the aggregate an amount of direct compensation which in any one year is more than 10 percent of the Director’s

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<sup>2</sup> The relevant sections of the NYSE Listed Company Manual and commentary are available on the website at [www.nyse.com/pdfs/finalcorpgovrules.pdf](http://www.nyse.com/pdfs/finalcorpgovrules.pdf).

annual gross income for such year, excluding in each case Director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), or (d) is affiliated, directly or indirectly, with a Member Organization; provided, however, that a director of an affiliate of a Member Organization shall not per se fail to be independent. A director of an affiliate of a Member Organization, however, cannot qualify as an independent director of New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc. or NYSE Amex LLC.

**Disclosure of Charitable Relationships**

The Company shall make disclosure of any charitable relationship that a U.S. Listed Company would be required to disclose pursuant to NYSE Listed Company Manual Section 303A.02(b)(v) and commentary. Gifts by the Company shall not favor charities on which any Director serves as an executive officer or member of the board of trustees or directors or comparable governing body.