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Page 1 of * 21

SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549
 Form 19b-4

File No.* SR - 2012 - * 007

Amendment No. (req. for Amendments *)

Proposed Rule Change by BATS Y-Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☒ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☒ Section 19(b)(3)(B) * ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action * ☐ Date Expires *

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☒ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Proposal to amend the certificate of incorporation of BATS Global Markets, Inc.

Contact Information

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

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

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 03/19/2012

By Anders Franzon
 (Name *)

VP, Associate General Counsel

(Title *)

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

Anders Franzon,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required)

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

Exhibit 1 - Notice of Proposed Rule Change (required)

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

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

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Exhibit Sent As Paper Document

☐

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

☐

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² BATS Y-Exchange, Inc. (the “Exchange” or “BYX”) is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend the certificate of incorporation of BATS Global Markets, Inc. (the “Corporation”). The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.³

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule filing was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on November 10, 2009. Exchange staff will advise the Board of Directors of the Exchange of any action taken pursuant to delegated authority. The board of directors of the Corporation approved the proposed additional amendments to the Corporation’s certificate of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

incorporation on February 29, 2012. No other action is necessary for the filing of this proposal.

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

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

(a) Purpose

On May 13, 2011, the Corporation, the sole stockholder of the Exchange, filed a registration statement on Form S-1 with the Commission seeking to register shares of Class A common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the "IPO"). In connection with its IPO, the Corporation intends to amend and restate its certificate of incorporation (the "New Certificate of Incorporation"). The Exchange previously received Commission approval of certain substantive amendments to the certificate of incorporation of the Corporation that comprise changes included in the New Certificate of Incorporation.⁴ Since that date, the Corporation has determined it to be necessary to further amend its certificate of incorporation to achieve the final, pre-IPO version of the New Certificate of Incorporation. These additional amendments will be achieved through the filing with the State of Delaware of an Amended and Restated Certificate of Incorporation as well as a certificate of amendment to the Amended and Restated Certificate of Incorporation. The additional amendments are described in further detail below.

⁴ See Securities Exchange Act Release No. 65647 (October 27, 2011), 76 FR 67784 (November 2, 2011) (SR-BYX-2011-021).

First, to avoid confusion in the numbering of its certificate of incorporation, rather than re-naming the New Certificate of Incorporation the “Third Amended and Restated Certificate of Incorporation,” the Corporation intends to simply name the New Certificate of Incorporation the “Amended and Restated Certificate of Incorporation.” Accordingly, the Exchange proposes to change certain references throughout the New Certificate of Incorporation to delete all references to the “Second” and “Third” Amended and Restated Certificate of Incorporation.

Second, the Exchange, on behalf of the Corporation, proposes changes to the New Certificate of Incorporation in connection with a 4.75-for-1 reverse stock split (the “Reverse Stock Split”) of the outstanding shares of common stock of the Corporation (“Common Stock”). Accordingly, the number of authorized shares of the Corporation’s, both in the aggregate and as set forth by class, as codified in Section 4.01 of the New Certificate of Incorporation, will be adjusted. The Corporation also plans to adjust the preferred stock of the Corporation consistent with the Reverse Stock Split. In light of the Reverse Stock Split, the proposed amendment also recalculates the share holding threshold below which a holder of Class B shares loses the right to hold Class B shares, resulting in those shares automatically converting into Class A shares, as set forth in Section 4.04(c)(v)(B) of the New Certificate of Incorporation. The par value of the Corporation’s Common Stock will remain \$0.01 per share.

Finally, the Exchange, on behalf of the Corporation, proposes to correct certain cross-referencing errors in Sections 5.01(c) and 5.01(d) of the certificate of incorporation.

The purpose of this rule filing is to permit the Corporation, the sole stockholder of the Exchange, to adopt the New Certificate of Incorporation, as modified by this

proposal. The changes described herein relate to the certificate of incorporation of the Corporation only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and by-laws. The stock in, and voting power of, the Exchange will continue to be directly and solely held solely by the Corporation. The governance of the Exchange will continue under its existing structure, which provides for a ten member board of directors reflecting diverse representation of industry, non-industry and exchange members, currently including (i) the chief executive officer of the Exchange, (ii) two industry directors, (iii) two Exchange member directors, and (iv) five non-industry directors.

(b) Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁵ In particular, the proposal is consistent with Section 6(b)(1) of the Act, because it retains, without modification, the existing limitations on ownership and total voting power that currently exist and that are designed to prevent any stockholder from exercising undue control over the operation of the Exchange and to assure that the Exchange is able to carry out its regulatory obligations under the Act. Under the proposal, the Corporation is making certain administrative and structural changes to the Corporation's certificate of incorporation. These changes, however, do not impact the governance of the Exchange nor do they modify the relative ownership of the shareholders of the Corporation.

⁵ 15 U.S.C. 78f(b).

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

The proposed rule change does not impose any burden on competition.

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

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

6. Extension of Time Period for Commission Action

Not applicable.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act⁶ and paragraph (f)(6) of Rule 19b-4 thereunder.⁷ The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, and (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission.⁸ The proposed changes will allow the Corporation to adopt the New Certificate of Incorporation prior to any IPO of shares of the Corporation. Accordingly, the Exchange

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4.

⁸ 17 CFR 240.19b-4(f)(6)(iii).

has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act⁹ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁰

The Exchange requests that the Commission waive the 30-day operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).¹¹ The Exchange requests this waiver so that the proposal may become operative immediately upon filing. The Corporation's IPO may occur in the near future, and the changes described in this proposal are a critical component of such IPO. Waiver of the operative waiting period will allow the Corporation to promptly move forward with the IPO without delay. As described above, there are no changes to the provisions of the Corporation's certificate of incorporation that impact the ownership or governance of the Exchange. Instead, the amendments reflect additional technical amendments to the New Certificate of Incorporation. Based on the foregoing, the Exchange believes that promptly implementing this change is consistent with the public interest and the protection of investors.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

Not applicable.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

9. Exhibits

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

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Amendment to Certificate of Incorporation of BATS Global Markets, Inc.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____; File No. SR-BYX-2012-007)

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Certificate of Incorporation of BATS Global Markets, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 19, 2012, BATS Y-Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposal to amend the certificate of incorporation of BATS Global Markets, Inc. (the “Corporation”).

The text of the proposed rule change is available at the Exchange’s website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

1. Purpose

On May 13, 2011, the Corporation, the sole stockholder of the Exchange, filed a registration statement on Form S-1 with the Commission seeking to register shares of Class A common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the "IPO"). In connection with its IPO, the Corporation intends to amend and restate its certificate of incorporation (the "New Certificate of Incorporation"). The Exchange previously received Commission approval of certain substantive amendments to the certificate of incorporation of the Corporation that comprise changes included in the New Certificate of Incorporation.³ Since that date, the Corporation has determined it to be necessary to further amend its certificate of incorporation to achieve the final, pre-IPO version of the New Certificate of Incorporation. These additional amendments will be achieved through the filing with the State of Delaware of an Amended and Restated Certificate of Incorporation as well as a certificate of amendment to the Amended and Restated Certificate of Incorporation. The additional amendments are described in further detail below.

First, to avoid confusion in the numbering of its certificate of incorporation, rather than re-naming the New Certificate of Incorporation the "Third Amended and Restated Certificate of Incorporation," the Corporation intends to simply name the New Certificate

³ See Securities Exchange Act Release No. 65647 (October 27, 2011), 76 FR 67784 (November 2, 2011) (SR-BYX-2011-021).

of Incorporation the “Amended and Restated Certificate of Incorporation.” Accordingly, the Exchange proposes to change certain references throughout the New Certificate of Incorporation to delete all references to the “Second” and “Third” Amended and Restated Certificate of Incorporation.

Second, the Exchange, on behalf of the Corporation, proposes changes to the New Certificate of Incorporation in connection with a 4.75-for-1 reverse stock split (the “Reverse Stock Split”) of the outstanding shares of common stock of the Corporation (“Common Stock”). Accordingly, the number of authorized shares of the Corporation’s, both in the aggregate and as set forth by class, as codified in Section 4.01 of the New Certificate of Incorporation, will be adjusted. The Corporation also plans to adjust the preferred stock of the Corporation consistent with the Reverse Stock Split. In light of the Reverse Stock Split, the proposed amendment also recalculates the share holding threshold below which a holder of Class B shares loses the right to hold Class B shares, resulting in those shares automatically converting into Class A shares, as set forth in Section 4.04(c)(v)(B) of the New Certificate of Incorporation. The par value of the Corporation’s Common Stock will remain \$0.01 per share.

Finally, the Exchange, on behalf of the Corporation, proposes to correct certain cross-referencing errors in Sections 5.01(c) and 5.01(d) of the certificate of incorporation.

The purpose of this rule filing is to permit the Corporation, the sole stockholder of the Exchange, to adopt the New Certificate of Incorporation, as modified by this proposal. The changes described herein relate to the certificate of incorporation of the Corporation only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and by-laws. The stock in, and

voting power of, the Exchange will continue to be directly and solely held solely by the Corporation. The governance of the Exchange will continue under its existing structure, which provides for a ten member board of directors reflecting diverse representation of industry, non-industry and exchange members, currently including (i) the chief executive officer of the Exchange, (ii) two industry directors, (iii) two Exchange member directors, and (iv) five non-industry directors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁴ In particular, the proposal is consistent with Section 6(b)(1) of the Act, because it retains, without modification, the existing limitations on ownership and total voting power that currently exist and that are designed to prevent any stockholder from exercising undue control over the operation of the Exchange and to assure that the Exchange is able to carry out its regulatory obligations under the Act. Under the proposal, the Corporation is making certain administrative and structural changes to the Corporation's certificate of incorporation. These changes, however, do not impact the governance of the Exchange nor do they modify the relative ownership of the shareholders of the Corporation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

⁴ 15 U.S.C. 78f(b).

(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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(6)(iii) thereunder.⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BYX-2012-007 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-BYX-2012-007. 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BYX-2012-007 and should be submitted on or before [_____21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Kevin M. O'Neill
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).

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

**[THIRD] AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
BATS GLOBAL MARKETS, INC.**

BATS Global Markets, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

- A. (No changes.)
- B. [The Second Amended and Restated Certificate of Incorporation] An amended and restated certificate of incorporation of the corporation [(the “**Second Restated Certificate**”)] was filed with the Secretary of State on May 4, 2011 (the “**2011 Restated Certificate**”).
- C. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, and with the approval of the corporation’s stockholders having been given by written consent without a meeting in accordance with Section 228 thereof, this [Third] Amended and Restated Certificate of Incorporation restates, integrates and further amends the provisions of the [Second] 2011 Restated Certificate as heretofore amended and supplemented.
- D. The text of this [Third] Amended and Restated Certificate of Incorporation shall read in its entirety as follows:

* * * * *

**ARTICLE 4
CAPITAL STOCK**

Section 4.01. *Authorized Shares.* The total number of shares of stock that the Corporation shall have authority to issue is [614,607,649]152,500,000, consisting of:

[500,000,000]125,000,000 shares of Class A Common Stock, par value \$0.01 per share (the “**Class A Common Stock**”);

[7,684,159]1,750,000 shares of Non-Voting Class A Common Stock, par value \$0.01 per share (the “**Non-Voting Class A Common Stock**”);

[63,630,279]15,000,000 shares of Class B Common Stock, par value \$0.01 per share (the “**Class B Common Stock**”);

[3,293,211]~~750,000~~ shares of Non-Voting Class B Common Stock, par value \$0.01 per share (the “**Non-Voting Class B Common Stock**” and, together with the Class A Common Stock, Non-Voting Class A Common Stock and Class B Common Stock, the “**Common Stock**.”);

[40,000,000]~~10,000,000~~ shares of Preferred Stock, par value \$0.01 per share (the “**Preferred Stock**”).

Section 4.02. *Reclassification*

(a) At the time that this [Third] Amended and Restated Certificate of Incorporation (this “**Certificate of Incorporation**”) becomes effective under Delaware Law (the “**Effective Time**”):

(i) each share of common stock, par value \$0.01 per share, of the Company (“**Old Common Stock**”), which was designated as Voting Common Stock in the [Second] 2011 Restated Certificate and was authorized, issued and outstanding or held as treasury stock immediately prior to the Effective Time shall, automatically and without further action by any stockholder, be reclassified into seven shares of Class A Common Stock and three shares of Class B Common Stock;

(ii) each share of Old Common Stock which was designated as Non-Voting Common Stock in the [Second] 2011 Restated Certificate and was authorized, issued and outstanding immediately prior to the Effective Time shall, automatically and without further action by any stockholder, be reclassified into seven shares of Non-Voting Class A Common Stock and three shares of Non-Voting Class B Common Stock; and

(iii) (No changes.)

(b)-(c) (No changes.)

(d) Effective upon the filing of this certificate of amendment with the Secretary of State, a 4.75-for-1 reverse stock split for each share of Common Stock outstanding or held in treasury immediately prior to such time shall automatically and without any action on the part of the holders thereof occur (the “**Reverse Stock Split**”). The par value of the Common Stock shall remain \$0.01 per share. This conversion shall apply to all shares of Common Stock. No fractional shares of Common Stock shall be issued upon the Reverse Stock Split or otherwise. In lieu of any fractional shares of Common Stock to which the stockholder would otherwise be entitled upon the Reverse Stock Split, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of the Common Stock as determined by the Board of Directors.

(e) All certificates representing shares of Common Stock outstanding

immediately prior to the filing of this certificate of amendment shall immediately after the filing of this certificate of amendment represent instead the number of shares of Common Stock as adjusted to give effect to the Reverse Stock Split as set forth in this Section 4.02.

Section 4.03 *Preferred Stock.*

(No changes.)

Section 4.04 *Common Stock.*

(No changes.)

(a) (No changes.)

(b) *Transfer Restrictions.*

(i)-(iii) (No changes.)

(iv) *Restrictive Legend; Removal of Transfer Restrictions.*

(A) Each share of Class A Common Stock and Non-Voting Class A Common Stock, whether or not Transferred pursuant to Section 4.04(b)(iii), shall be bound by the transfer restrictions set forth in this Section 4.04(b) and shall bear the following legend until the expiration of the Additional Restricted Period, and each share of Class B Common Stock and Non-Voting Class B Common Stock, whether or not Transferred pursuant to Section 4.04(b)(iii), shall be bound by the transfer restrictions set forth in this Section 4.04(b) and shall bear the following legend until the date set forth in Section 4.04(b)(ii), except, in each case, for any share of Common Stock Transferred pursuant to Section 4.04(b)(iii)(A), Section 4.04(b)(iii)(B), Section 4.04(b)(iii)(C) or Section 4.04(b)(iii)(E) (but, with respect to Section 4.04(b)(iii)(B) or Section 4.04(b)(iii)(E), only to the extent approved by the Board of Directors or pursuant to the policies of the Board of Directors as described in such Sections) and any Additional Restricted Period Tradable Shares transferred pursuant to the exception in Section 4.04(b)(i)(B):

THE SHARES OF COMMON STOCK REPRESENTED BY THIS CERTIFICATE, OR ANY BENEFICIAL INTEREST THEREIN, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED TO ANY PERSON EXCEPT IN COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN SECTION 4.04(B) OF THE [THIRD] AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF THIS CORPORATION, AND NO PERSON WHO RECEIVES SUCH SHARES IN CONNECTION WITH A TRANSFER THAT DOES NOT MEET THE REQUIREMENTS PRESCRIBED

IN SUCH SECTION IS ENTITLED TO OWN OR TO BE REGISTERED AS THE RECORD HOLDER OF SUCH SHARES OF COMMON STOCK. EACH HOLDER OF THIS CERTIFICATE, BY ACCEPTING THE SAME, ACCEPTS AND AGREES TO ALL OF THE FOREGOING.

(B)-(C) (No changes.)

(c) *Conversion.*

(i)-(iv) (No changes.)

(v) *Automatic Conversion of Class B Common Stock and Non-Voting Class B Common Stock.*

(A) (No changes.)

(1)-(2) (No changes.)

(B) *Class B Threshold.* Each share of Class B Common Stock that is held at any time by a stockholder who, together with such stockholder's affiliates (as defined in Article 6), owns less than [4,960,491]1,044,313 shares of Common Stock (the "**Class B Threshold**"), shall, automatically and without any further action, be converted into one share of Class A Common Stock, and each share of Non-Voting Class B Common Stock that is held at any time by a stockholder who, together with such stockholder's affiliates, does not meet the Class B Threshold shall, automatically and without any further action, be converted into one share of Non-Voting Class A Common Stock.

(vi)-(ix) (No changes.)

(d) (No changes.)

ARTICLE 5 LIMITATIONS ON OWNERSHIP, TRANSFER & VOTING

(No changes.)

Section 5.01. *Limitations.*

(a)-(b) (No changes.)

(c) Notwithstanding Section 5.01(b)(i) and Section 5.01(b)(ii)(iii) above, in any case where a Person, either alone or together with its Related Persons, would own or vote more than any of the above percentage limitations upon consummation of any proposed sale, assignment or Transfer of the Corporation's capital stock, such sale, assignment or Transfer shall not become effective until the Board of Directors shall have determined, by resolution, that such Person and its

Related Persons are not subject to any applicable “statutory disqualification” (within the meaning of Section 3(a)(39) of the Exchange Act).

(d) Notwithstanding Section 5.01(b)(i) and Section 5.01(b)(ii)(iii) above, and without giving effect to same, any Exchange Member that, either alone or together with its Related Persons, proposes to own, directly or indirectly, of record or beneficially, shares of the capital stock of the Corporation constituting more than twenty percent (20%) of the outstanding shares of any class of capital stock of the Corporation (the Class A Common Stock, the Non-Voting Class A Common Stock, the Class B Common Stock, the Non-Voting Class B Common Stock and any series of Preferred Stock being considered one class of capital stock of the Corporation for this purpose); and any Person that, either alone or together with its Related Persons, proposes to own, directly or indirectly, of record or beneficially, shares of the capital stock of the Corporation constituting more than forty percent (40%) of the outstanding shares of any class of capital stock of the Corporation (the Class A Common Stock, the Non-Voting Class A Common Stock, the Class B Common Stock, the Non-Voting Class B Common Stock and any series of Preferred Stock being considered one class of capital stock of the Corporation for this purpose), or to exercise voting rights, or grant any proxies or consents with respect to shares of the capital stock of the Corporation constituting more than twenty percent (20%) of the voting power of the then issued and outstanding shares of capital stock of the Corporation, shall have delivered to the Board of Directors [of the Corporation] a notice in writing, not less than forty-five (45) days (or any shorter period to which said Board of Directors shall expressly consent), before the proposed ownership of such shares, or the proposed exercise of said voting rights or the granting of said proxies or consents, of its intention to do so.

* * * * *

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Certificate of Incorporation this ____ day of _____, [2011]2012.

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