

Required fields are shown with yellow backgrounds and asterisks.

Filing by BATS Exchange
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) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description

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

BATS Exchange, Inc. proposal to amend the Certificate of Incorporation and Bylaws of the Exchange's Ultimate Parent Company, 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 action.

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

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.

(Title *)

Date	02/09/2016	SVP, Associate General Counsel
By	Anders Franzon	
	(Name *)	

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 EFFF website.

Form 19b-4 Information *

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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 *

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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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, security-based swap submission, or advance notice 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 Exchange, Inc. (the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend the certificate of incorporation and bylaws of the Exchange’s ultimate parent company, BATS Global Markets, Inc. (the “Corporation”).

(a) The text of the proposed amended certificate of incorporation and the text of the proposed amended bylaws of the Corporation are attached as Exhibit 5A and 5B, respectively. 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 Board of Directors of the Exchange approved this proposed rule filing on January 26, 2016. The board of directors of the Corporation approved the amendment to its certificate of incorporation and bylaws on January 19, 2016. No other action is necessary for the filing of the rule proposal.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Eric Swanson
EVP, General Counsel
(913) 815-7000

Anders Franzon
SVP, Associate General Counsel
(913) 815-7154

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

(a) Purpose

On December 16, 2015, the Corporation, the ultimate parent company of the Exchange, filed a registration statement on Form S-1 with the Commission seeking to register shares of 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 (i) amend and restate its current certificate of incorporation (the "Current Certificate of Incorporation") and adopt these changes as its Amended and Restated Certificate of Incorporation (the "New Certificate of Incorporation"), and (ii) amend and restate its current bylaws (the "Current Bylaws") and adopt these changes as its Amended and Restated Bylaws (the "New Bylaws"). It is anticipated that the New Certificate of Incorporation and the New Bylaws will become effective (the "Effective Date") the moment before the closing of the IPO.

The amendments to the Current Certificate of Incorporation include, among other things, (i) increasing the total number of authorized shares of capital stock of the Corporation, (ii) effecting a conversion and elimination of one class of non-voting common stock and reclassifying the remaining class of non-voting common stock, (iii) establishing a classified board structure, (iv) prohibiting cumulative voting in the election of directors, (v) eliminating the process for action by written consent of stockholders, (vi) revising certain requirements for approval of future amendments to the New Certificate

of Incorporation, and (vii) and changing the name of the Corporation from “BATS Global Markets, Inc.” to “Bats Global Markets, Inc.”

The amendments to the Current Bylaws include, among other things, (i) revising the procedures for stockholder proposals and nomination of directors, (ii) revising the authority to call special meetings of the stockholders, (iii) eliminating the process for action by written consent of stockholders, (iv) establishing a classified board structure, (v) revising the requirements for removal of directors, (vi) removing duplicative provisions relating to the indemnification of officers and directors that are contained in the Current Certificate of Incorporation (and are proposed to be maintained in the New Certificate of Incorporation), (vii) revising certain requirements for approval of future amendments to the New Bylaws, (viii) eliminating the authority to make loans to corporate officers, and (ix) changes to reflect the change of the Corporation’s name. The amendments to the Corporation’s Current Certificate of Incorporation and Current Bylaws are intended primarily to reflect (i) the adoption of provisions more customary for publicly-owned companies, (ii) changes to the Corporation’s capital structure, specifically with respect to non-voting common stock, and (iii) stylistic and other non-substantive changes.³

The purpose of this rule filing is to submit for Commission approval the New Certificate of Incorporation and the New Bylaws. The changes described herein relate to

³ Certain of the amendments proposed to be adopted in the New Certificate of Incorporation and New Bylaws were previously approved by the Commission in 2011 as part of proposed amendments to the certificate of incorporation and bylaws of the Exchange’s ultimate parent company at the time. See Securities Exchange Act Release No. 65646 (October 27, 2011), 76 FR 67783 (November 2, 2011) (SR-BATS-2011-033); Securities Exchange Act Release No. 65728 (November 10, 2011), 76 FR 71411 (November 17, 2011) (SR-BATS-2011-035). Although approved, these amendments were not ultimately implemented.

the certificate of incorporation and bylaws 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 bylaws. The stock in, and voting power of, the Exchange will continue to be directly and solely held by BATS Global Markets Holdings, Inc., an intermediate holding company wholly-owned by the Corporation.

The Corporation was originally formed as BATS Global Markets Holdings, Inc. on August 22, 2013 as a new ultimate holding company for the Exchange as a result of a business combination involving the holding company of the Exchange at the time and Direct Edge Holdings LLC.⁴

1. The New Certificate of Incorporation
 - a. Capital Stock; Voting Rights

The current capital structure of the Corporation is comprised of 75 million authorized shares of Common Stock, consisting of 55 million shares of Voting Common Stock, 10 million shares of Class A Non-Voting Common Stock and 10 million shares of Class B Non-Voting Common Stock. Article Fourth(a)(i) of the New Certificate of Incorporation would revise this capital structure such that there would be 150 million

⁴ In connection with the Corporation's combination with Direct Edge Holdings LLC, the existing holding company for the Exchange, BATS Global Markets, Inc., changed its name to BATS Global Markets Holdings, Inc., and became an intermediate holding company between the Exchange and BATS Global Markets, Inc. The ownership structure of the Exchange at the time of the business combination and the Current Certificate of Incorporation and Current Bylaws of the Corporation are further described in the Commission's order approving the Exchange's proposed rule changes in connection with the Corporation's business combination with Direct Edge Holdings LLC. See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

total authorized shares of capital stock, consisting of 125 million shares designated as Voting Common Stock and a single class of 10 million shares designated as Non-Voting Common Stock (together with Voting Common Stock, “Common Stock”), as well as 15 million shares of Preferred Stock.

The Corporation’s existing Class A Non-Voting Common Stock is currently held by International Securities Exchange Holdings, Inc. (“ISE Holdings”). Pursuant to the Investor Rights Agreement dated January 31, 2014, among the Corporation and its stockholders signatory thereto (the “Investor Rights Agreement”), and the Current Certificate of Incorporation, ISE Holdings’ shares of Class A Non-Voting Common Stock may convert into Voting Common Stock (i) automatically with respect to any shares transferred to persons other than related persons of ISE Holdings; (ii) upon the termination of the Investor Rights Agreement, with such agreement (other than with respect to registration rights) terminating upon the IPO; or (iii) automatically with respect to any shares of Class A Non-Voting Common Stock sold by ISE Holdings in any public offering of the stock of the Corporation. In addition, ISE Holdings’ shares of Class A Non-Voting Common Stock may convert into Voting Stock at the option of ISE Holdings, provided that ISE Holdings furnishes to the Corporation a written notice stating that ISE Holdings desires to convert a stated number of shares of Class A Non-Voting Common Stock and the certificates representing such shares.⁵

As a result of these conversion rights, the Corporation expects the Class A Non-Voting Common Stock to convert into Voting Common Stock at the time of the IPO. To

⁵ See Current Certificate of Incorporation, Art. Fourth, para. (c); Investor Rights Agreement, Section 2.2(j).

effect this conversion, Article Fourth(b)(i) of the New Certificate of Incorporation states that, at the time that the New Certificate of Incorporation becomes effective (the “Effective Time”),⁶ each authorized, issued and outstanding share of Class A Non-Voting Common Stock shall be automatically converted into one share of Voting Common Stock. To simplify the capital structure of the Corporation, Article Fourth(b)(ii) would reclassify each authorized, issued and outstanding share of Class B Non-Voting Common Stock into one share of Non-Voting Common Stock.⁷

Pursuant to Article Fourth(c) of the New Certificate of Incorporation, as proposed to be adopted, all voting power will be vested in Voting Common Stock (except with regard to certain matters relating to the rights of holders of Preferred Stock described below). Specifically, each holder of Voting Common Stock will be entitled to one vote for each share of Voting Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote. Shares of Non-Voting Common Stock are non-voting, except with regard to certain matters that would adversely affect their respective rights as described in the proposed amendments to Article Fourth(c)(ii) of the New Certificate of Incorporation.

Pursuant to Article Fourth(d) of the New Certificate of Incorporation, Non-Voting Common Stock will generally have the conversion features that previously

⁶ It is anticipated that the Effective Time will coincide with the date of the closing of the IPO and will occur immediately prior thereto.

⁷ The Exchange understands that the existing Class B Non-Voting Common Stock is, and the Non-Voting Common Stock upon conversion will be, held by certain persons subject to restrictions under the Bank Holding Company Act of 1956 on the extent to which they are permitted to own voting stock of the Corporation or certain types of non-voting stock convertible into voting stock of the Corporation.

applied to Class B Non-Voting Common Stock under the Current Certificate of Incorporation. Non-Voting Common Stock will be convertible into Voting Common Stock, on a one-to-one basis, following a “Qualified Transfer,” as defined in Article Fourth(d)(i).⁸ Voting Common Stock will not be convertible into Non-Voting Common Stock.

Except for voting rights and certain conversion features, as described above, Non-Voting Common Stock and Voting Common Stock will generally rank equally and have identical rights and privileges. Because the IPO is expected to be a widely distributed public offering registered pursuant to the Securities Act of 1933 (15 U.S.C. 77a.), the Corporation expects it to be a “Qualified Transfer,” for purposes of the conversion feature of the Non-Voting Common Stock,⁹ such that any shares of Non-Voting Common

⁸ A “Qualified Transfer” is defined as a sale or other transfer of Non-Voting Common Stock by a holder of such shares: (A) in a widely distributed public offering registered pursuant to the Securities Act of 1933 (15 U.S.C. 77a.); (B) in a private sale or transfer in which the relevant transferee (together with its Affiliates, as defined below, and other transferees acting in concert with it) acquires no more than two percent of any class of voting shares (as defined in 12 CFR 225.2(q)(3) and determined by giving effect to any such permitted conversion of transferred shares of Non-Voting Common Stock upon such transfer pursuant to Article Fourth of the New Certificate of Incorporation); (C) to a transferee that (together with its Affiliates and other transferees acting in concert with it) owns or controls more than 50 percent of any class of voting shares (as defined in 12 CFR 225.2(q)(3)) of the Corporation without regard to any transfer of shares from the transferring holder of shares of Non-Voting Common Stock; or (D) to the Corporation. As used above, the term “Affiliate” means, with respect to any person, any other person directly or indirectly controlling, controlled by or under common control with such person, and “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) has the meaning set forth in 12 CFR 225.2(e)(1).

⁹ See New Certificate of Incorporation, Art. Fourth(d)(i).

Stock sold in the IPO would convert to Voting Common Stock. As a result, purchasers of the Corporation's common stock in the IPO will receive only Voting Common Stock.

Proposed Article Fourth(a)(i) of the New Certificate of Incorporation would increase the Corporation's authorized shares in order to accommodate the reclassification of Class A Non-Voting Common Stock and Class B Non-Voting Common Stock discussed above, while providing sufficient additional authorized shares for future issuances, such as, for example, grants of equity to employees pursuant to a compensation plan.

b. Board of Directors

Article Sixth of the New Certificate of Incorporation would amend certain provisions relating to the Corporation's board of directors to add further specificity and detail, and effect a number of changes to the board of directors of the Corporation.

Article Sixth(a) of the New Certificate of Incorporation would explicitly specify that the business and affairs of the Corporation shall be managed by or under the board of directors and empower the board of the directors to do all such acts and things as may be exercised or done by the Corporation. This provision is intended to restate the power of the Corporation's board in accordance with the General Corporation Law of the State of Delaware, as amended ("Delaware Law").¹⁰

Article Sixth(c) of the New Certificate of Incorporation would establish a "staggered" or classified board structure in which the directors would be divided into three classes of equal size, to the extent possible. Only one class of directors would be

¹⁰ See Delaware Law Section 141(a).

elected each year, and once elected, directors would serve a three-year term. Directors initially designated as Class I directors would serve for a term ending on the date of the 2017 annual meeting of stockholders, directors initially designated as Class II directors would serve for a term ending on the date of the 2018 annual meeting of stockholders, and directors initially designated as Class III directors would serve for a term ending on the date of the 2019 annual meeting of stockholders. The names and addresses of each of the directors initially classified as Class I, Class II and Class III directors are set forth in Article Sixth(c)(ii) of the New Certificate of Incorporation. The Exchange believes that such a classified board structure is common for publicly-held companies, as it has the effect of making hostile takeover attempts more difficult.

Pursuant to Article Sixth(d) of the New Certificate of Incorporation, cumulative voting in the election of directors will be prohibited. If the Corporation were to permit cumulative voting, stockholders would be entitled to as many votes as are equal to the number of voting shares it holds, multiplied by the number of director seats up for election to the board of directors, and such stockholder may allocate all of its votes to one or more directorial candidates, as the stockholder desires. In contrast, in “regular” or “statutory” voting (i.e., when cumulative voting is prohibited), stockholders may not vote more than one vote per share to any single director nominee. The Exchange believes that cumulative voting is inappropriate for the ultimate parent company of a national securities exchange, as it would increase the likelihood that a stockholder or group of stockholders holding only a minority of voting shares would be able to exert an outsized influence in the election of directors of the Corporation, relative to its stockholdings in the Corporation. As a result, cumulative voting could undermine the limitations on

concentrations of ownership or voting included in both the Current Certificate of Incorporation and New Certificate of Incorporation.¹¹

c. Transfer, Ownership and Voting Restrictions

The transfer, ownership and voting restrictions set forth in Article Fifth of the Corporation's Current Certificate of Incorporation would be retained in the New Certificate of Incorporation. Article Fifth of the Corporation's Current Certificate of Incorporation provides that for so long as the Corporation controls, directly or indirectly, a national securities exchange, subject to certain exceptions, (i) no person, either alone or together with its "Related Persons" (as defined therein), may own, directly or indirectly, of record or beneficially, shares constituting more than 40 percent of any class of the Corporation's capital stock, (ii) no member of such a national securities exchange, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than 20 percent of any class of the Corporation's capital stock, and (iii) no person, either alone or together with its Related Persons, at any time, may, directly, indirectly or pursuant to any of various arrangements, vote or cause the voting of shares or give any consent or proxy with respect to shares representing more than 20 percent of the voting power of the Corporation's then issued and outstanding capital stock.

In the case of shares of the Corporation purportedly transferred in violation of the limitations contained in Article Fifth, in addition to other remedies provided under

¹¹ See Current Certificate of Incorporation, Art. Fifth; New Certificate of Incorporation, Art. Fifth.

Article Fifth(d),¹² Article Fifth(e) of the Current Certificate of Incorporation provides that the Corporation may redeem the shares sold, transferred, assigned, pledged, or owned in violation of Article Fifth for a price equal to the fair market value of those shares.

These limitations and remedies are designed to prevent any stockholder from exercising undue influence over the Corporation's national securities exchange subsidiaries. As a result, these limitations and remedies would be retained in the New Certificate of Incorporation. However, in the case of the redemption of shares purportedly transferred in violation of Article Fifth, the Current Certificate of Incorporation does not specify the manner of determining the fair market value. In order to enhance this remedy and provide clarity in the event that it is necessary to enforce it, Article Fifth(e) of the New Certificate of Incorporation is proposed to be amended to provide that the fair market value would be determined as the volume-weighted average price per share of the Common Stock during the five business days immediately preceding the date of the redemption.

d. Future Amendments to the Certificate of Incorporation

Article Twelfth of the Current Certificate of Incorporation requires that any proposed amendment to the Current Certificate of Incorporation be approved by the board of directors of the Corporation, submitted to the Board of Directors of the Exchange and filed with, or filed with and approved by, the Commission, if required under Section 19 of the Act. Provided that these conditions are satisfied, the Current

¹² Article Fifth(d) of the Current Certificate of Incorporation provides that purported transfers that would result in a violation of the ownership limitations are not recognized by the Corporation to the extent of any ownership in excess of the limitation.

Certificate of Incorporation can be amended in any manner permitted by Delaware Law, which today generally allows for the amendment of a certificate of incorporation by the affirmative vote of the majority of the outstanding stock entitled to vote thereon.

Pursuant to proposed Article Fourteenth(a) of the New Certificate of Incorporation, certain provisions of the New Certificate of Incorporation would only be able to be amended upon the affirmative vote of not less than $66\frac{2}{3}$ percent of the total voting power of the Corporation's outstanding securities entitled to vote generally in the election of directors, voting together as a single class. These provisions include Article Fourth(c) and (d), relating to voting rights and conversion of Non-Voting Common Stock, and Articles Fifth through Thirteenth, relating to limitations on transfer, ownership and voting, board of directors, duration of the Corporation, adopting, amending or repealing bylaws, indemnification and limitation of director liability, meetings of stockholders, forum selection, compromise or other arrangement, Section 203 opt-in (discussed below), and amendments to the certificate of incorporation, respectively.

The purpose of this supermajority requirement, which the Exchange believes is common among public companies, is to deter actions being taken that the Corporation believes may be detrimental to the Corporation, including any actions that could detrimentally affect the Corporation's ability to comply with its unique responsibilities under the Act as the ultimate parent of four registered national securities exchanges. The purpose for limiting the application of the supermajority voting requirement to certain specified provisions of the certificate of incorporation is to focus such requirement on the most critical provisions of the certificate of incorporation.

e. Other Amendments

The New Certificate of Incorporation will amend and restate various other provisions of the Current Certificate of Incorporation in a manner that the Exchange believes are intended to reflect provisions that are more customary for publicly-owned companies organized under Delaware Law. In particular:

- *Preferred Stock.* Pursuant to proposed Article Fourth(a) of the New Certificate of Incorporation, the Corporation will have the authority to issue 15 million shares of Preferred Stock, par value \$0.01 per share (the “Preferred Stock”), which the Corporation’s board of directors may, by resolution from time to time, issue in one or more classes or series by filing a certificate of designation pursuant to Delaware Law, fixing the terms and conditions of such class or series of Preferred Stock. The Preferred Stock may be used by the Corporation to raise capital or to act as a safety mechanism for unwanted takeovers. Pursuant to Article Sixth(f) of the New Certificate of Incorporation, should the Corporation issue Preferred Stock and the holders of Preferred Stock have the right to vote separately or as a class to elect directors, the features of such directorships shall be governed by the terms of the resolution adopted by the board of directors, rather than the features otherwise applicable under Article Sixth.
- *Stockholder Meetings.* Article Tenth of the Current Certificate of Incorporation permits action to be taken by the stockholders of the Corporation, without a meeting, by written consent as permitted by Delaware Law. The New Certificate of Incorporation would amend Article Tenth to provide that any action required or permitted to be taken at any meeting of the stockholders may be taken only upon the vote of stockholders at a meeting of the stockholders in accordance with

Delaware Law and the New Certificate of Incorporation, and may not be taken by written consent without a meeting, subject to the rights of the holders of any class or series of Preferred Stock then outstanding. Proposed Article Tenth(a) would establish a requirement for the Corporation to hold annual meetings of stockholders for director elections and other business, while Proposed Article Tenth(b) would permit special meetings to be called only upon a resolution of a majority of the board of directors (except that when holders of Preferred Stock have the right to elect directors, such holders may call a special meeting). Provisions providing for annual meetings and special meetings are currently contained only in the Current Bylaws.¹³

- *Forum Selection.* The New Certificate of Incorporation would add a new Article Eleventh, designating the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain actions or proceedings, such as derivative actions brought on behalf of the Corporation or actions asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or to its stockholders. Among other things, this provision prevents similar actions from being brought in multiple jurisdictions and helps ensure that any litigation will be handled by the court that is most experienced in applying Delaware Law. Article Eleventh also provides that any person or entity acquiring an interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to this exclusive forum provision.

¹³ Current Bylaws, Sections 2.02 and 2.03.

- *Section 203.* The New Certificate of Incorporation would add Article Thirteenth, providing that the Corporation will be governed by Section 203 of Delaware Law. In general, Section 203 prohibits a publicly-held Delaware corporation from engaging in a business combination with anyone who owns at least 15 percent of its common stock. This prohibition lasts for a period of three years after that person has acquired the 15 percent ownership. The corporation may, however, engage in a business combination if it is approved by its board of directors before the person acquires the 15 percent ownership or later by its board of directors and two-thirds of the stockholders of the public corporation. The restrictions contained in Section 203 do not apply if, among other things, the corporation's certificate of incorporation contains a provision expressly electing not to be governed by Section 203. Unless opted-out, Section 203 provides Delaware corporations with a defense to unwanted corporate takeovers.

The New Certificate of Incorporation also removes various references to the Investor Rights Agreement, as the provisions of that agreement, other than certain registration rights, is expected to terminate upon the occurrence of the IPO.¹⁴ The New Certificate of Incorporation additionally makes various non-substantive, stylistic changes throughout. For example, the New Certificate of Incorporation would amend the name of the Corporation from “BATS Global Markets, Inc.” to “Bats Global Markets, Inc.”

¹⁴ See Investor Rights Agreement, Section 10 (providing that the rights and obligations of each stockholder party to the agreement shall terminate, to the extent not previously terminated, upon the occurrence of “Qualified Public Offering,” as defined therein, except that certain registration rights shall survive such termination).

2. The New Bylaws

a. Registered Office

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

b. Annual Meeting of Stockholders

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

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

stockholder's notice must be delivered to the Corporation no earlier than the ninetieth day or later than the sixtieth day prior to the first anniversary of the preceding year's annual meeting. The New Bylaws modify the acceptable time period so that the stockholder's notice must be delivered to the Corporation no earlier than the one hundred and fiftieth day or later than the one hundred and twentieth day prior to the first anniversary of the preceding year's annual meeting. In the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty days, the New Bylaws generally require that the stockholder's notice be delivered no earlier than the one hundred and twentieth day or later than the seventieth day prior to such annual meeting.

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

proxies from stockholders in support of the proposal, and (vi) provide such other information relating to any proposed item of business as the Corporation may reasonably require to determine whether such proposed item of business is a proper matter for stockholder action.

Section 2.02(c) of the Current Bylaws specifies the procedures for stockholders to properly nominate persons for the board of directors, including that the stockholder provide timely notice to the Corporation. In addition to the requirements contained in the Current Bylaws, Section 2.02(c) of the New Bylaws would require that the stockholder's notice (i) disclose all agreements, arrangements or understandings (including derivative positions) to create or mitigate loss or manage the risk or benefit of share price changes, or increase or decrease the voting power of the stockholder, beneficial owner or any such nominee with respect to the securities of the Corporation, (ii) provide a representation that such stockholder is a stockholder entitled to vote at such meeting and intends to appear in person or by proxy at the meeting and to bring such nomination or other business before the meeting, and (iii) provide a representation as to whether the stockholder or any beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation needed to elect each such nominee, or otherwise solicit proxies from stockholders in support of the nomination.

The additional disclosure requirements being added to Sections 2.02(b) and 2.02(c) are intended to assure that stockholders asked to vote on a stockholder proposal or stockholder nominee are more fully informed in their voting and are able to consider any

proposals or nominations along with the interests of those stockholders or the beneficial owners on whose behalf such proposal or nomination is being made.

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

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

New Section 2.02(f) of the New Bylaws would note that, notwithstanding anything to the contrary in the New Bylaws, the notice requirements with respect to business proposals or nominations would be deemed satisfied if the stockholder submitted a proposal in compliance with Rule 14a-8 of the Act¹⁵ and the proposal has been included in a proxy statement prepared by the Corporation to solicit proxies of the meeting of stockholders. This provision would assure that, in addition to proposals that

¹⁵ 17 CFR 240.14a-8.

meet the requirements of Section 2.02(b) of the New Bylaws, the Corporation would comply with the provisions of the Act and the rules promulgated thereunder with respect to the inclusion of stockholder proposals in its proxy statement.

c. Special Meetings of Stockholders

Section 2.03 of the Current Bylaws permits a special meeting of the stockholders to be called by any of (i) the chairman of the board of directors, (ii) the chief executive officer, (iii) the board of directors pursuant to a resolution passed by a majority of the board, or (iv) the stockholders entitled to vote at least 10 percent of the votes at the meeting. The New Bylaws would amend Section 2.03, consistent with Article Tenth(b) of the New Certificate of Incorporation, to only permit a special meeting of the stockholders to be called by the board of directors pursuant to a resolution adopted by the majority of the board. Additionally, whenever any holders of Preferred Stock have the right to elect directors pursuant to the New Certificate of Incorporation, such holders may call, pursuant to the terms of a resolution adopted by the board, a special meeting of the holders of such Preferred Stock. These amendments are designed to prevent any stockholder from exercising undue control over the operation of the Exchange by circumventing the board of directors of the Corporation through a special meeting of the stockholders.

d. Quorum; Vote Requirements

Section 2.05 of the Current Bylaws describe the quorum and voting requirements for the transaction of business at all meetings of stockholders of the Corporation. As the New Charter establishes two classes of stock, voting common stock and non-voting common stock, the New Bylaws would amend Section 2.05 to clarify that a

majority of the voting power (the Voting Common Stock) is generally required for a quorum for the transaction of business, rather than a majority of all outstanding shares. The New Bylaws would also amend Section 2.05 to conform to Section 216 of Delaware Law to track the requirement of a majority of votes “present in person or represented by proxy” for a quorum where a separate vote by class or classes or series is required. In addition, Section 2.05 of the New Bylaws would also be amended to clarify that abstentions and broker non-votes shall not be counted as votes cast. Under Delaware Law, abstentions and broker non-votes are not shares authorized to vote and are not considered votes cast on any matter.¹⁶ This amendment conforms the provisions of Section 2.05 to Delaware Law and is intended to eliminate ambiguity in the counting of abstentions and broker non-votes.

e. Adjournment of Meetings

Section 2.06 of the Current Bylaws outlines certain requirements relating to the adjournment of stockholder meetings, including that any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the voting power of the shares casting votes, excluding abstentions. The New Bylaws would amend Section 2.06 such that only the chairman of the meeting or the board of directors would be permitted to adjourn a stockholder meeting. The authority to adjourn a stockholder meeting resting solely with the board of directors or the chairman is common among publicly-held companies. Furthermore, this amendment would provide the Corporation with flexibility to postpone

¹⁶ See, e.g., Berlin v. Emerald Partners, 552 A.2d 482 (Del. 1988).

a stockholder vote if it determines necessary and would prevent stockholders from adjourning a meeting if the board of directors and chairman desire to continue with the meeting.

f. Voting Rights

Section 2.07 of the Current Bylaws describes the rights of stockholders of the Corporation to vote their shares at a meeting of stockholders. The New Bylaws would amend Section 2.07 to further clarify that any share of stock of the Corporation held by the Corporation shall have no voting rights, except when such shares are held in a fiduciary capacity. The Current Bylaws do not address voting rights with respect to shares of stock of the Corporation held by the Corporation. This amendment is consistent with Delaware Law and removes ambiguity as to the voting rights of shares of stock of the Corporation held by the Corporation.¹⁷

g. Action Without a Meeting

Section 2.10(a) of the Current Bylaws permits certain actions to be taken by written consent of stockholders if signed by the holders of outstanding stock representing not less than the number of votes necessary to authorize or take such action at a meeting where all shares entitled to vote were present and voted. However, Section 2.10(c) of the Current Bylaws provides that no action by written consent may be taken following an initial public offering of the common stock of the Corporation. The New Bylaws would amend Section 2.10 to prohibit at all times actions taken by written consent of stockholders without a meeting, subject to the rights of any holders of Preferred Stock.

¹⁷ See Delaware Law Section 160(c).

This change is consistent with proposed changes contained in Article Tenth(c) of the New Certificate of Incorporation and would simplify Section 2.10 of the New Bylaws, given that the New Bylaws would become effective the moment before the closing of the IPO.

h. Number of Directors and Classified Board Structure

Section 3.01 of the Current Bylaws stipulates that the board of directors of the Corporation shall consist of 15 members, or such other number of members as determined from time to time by resolution of the board of directors. Under the New Bylaws, Section 3.01 would be amended to state that the board of directors shall consist of one or more directors, with the exact number of directors to be determined by resolution adopted by the majority of the board of directors. In addition, Section 3.01 of the New Bylaws would, consistent with proposed Article Sixth(c) of the New Certificate of Incorporation, establish a classified board structure in which the directors would be divided into three classes of equal size, to the extent possible. Only one class of directors would be elected each year, and once elected, directors would serve a three-year term. The Exchange believes that such a classified board structure is common for publicly-held companies, as it has the effect of making hostile takeover attempts more difficult.

i. Vacancies and Resignation

Section 3.03 of the Current Bylaws provides that vacancies on the board of directors resulting from death, resignation, removal or other causes, and any newly created directorships resulting from any increase in the number of directors, shall be filled by a majority vote of the directors then in office, even if less than a quorum, unless the board of directors determines by resolution that any such vacancies or newly created

directorships should be filled by stockholders. Once elected, the director would hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified.

Section 3.03 of the New Bylaws would adopt a substantially similar approach.

Specifically, it would provide that vacancies or new directorships shall, except as otherwise required by law, be filled solely by a majority of the directors then in office (although less than a quorum) or by the sole remaining director, and each director so elected shall hold office for a term that shall coincide with the term of the class to which such director shall have been elected. The New Bylaws would also amend Section 3.03 to provide that if there are no directors in office, then an election of directors may be held in accordance with Delaware Law.

Section 3.04 of the Current Bylaws addresses the resignation of directors. For example, Section 3.04 provides that when one or more directors resign from the board of directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective. This provision would be retained in the New Bylaws, but it would be moved to Section 3.03. In addition, as is effectively the case under Section 3.04 of the Current Bylaws, Section 3.03 of the New Bylaws would provide that any director so chosen shall hold office as provided in the filling of other vacancies.

j. Removal of Directors

Section 3.05 of the Current Bylaws provides that the board of directors or any director may be removed, with or without cause, by the affirmative vote of at least $66\frac{2}{3}$

percent of the voting power of all then-outstanding shares of voting stock of the Corporation. The New Bylaws would amend Section 3.05 to provide that directors may only be removed for cause with the affirmative vote of a simple majority of the holders of voting power of all then-outstanding securities of the Corporation generally entitled to vote in the election of directors, voting together as a single class.

The purpose of this amendment is to align the Corporation's requirements for removal of directors with Section 141(k)(1) of Delaware Law, which generally provides that, in the case of a corporation with a classified board, a simple majority of stockholders may remove any director, but only for cause, unless the certificate of incorporation provides otherwise.

k. Committees of Directors

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

assure that the full board of directors considers and passes upon these significant corporate decisions.

Section 3.10(c) of the Current Bylaws describes the requirements for committee meetings. The New Bylaws would amend Section 3.10(c) to require that each committee keep regular minutes of its meetings and report the same to the board of directors of the Corporation when required. This amendment is being made to assure that matters addressed during committee meetings are recorded in the corporate records of the Corporation and are available to be communicated to the full board of directors of the Corporation.

l. Preferred Stock Directors

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

m. Officers

Section 4.01 of the Current Bylaws provides that the officers of the Corporation shall include, if and when designated by the board of directors, the chairman of the board

of directors, the chief executive officer, the president, one or more vice presidents and certain other employees. The New Bylaws would amend Section 4.01 to remove the chairman of the board of directors from the list of potential officers of the Corporation. Similarly, the New Bylaws would also remove Section 4.02(b) of the Current Bylaws, which describes the duties of the chairman of the board of directors. These changes would be made to reflect the fact that the chairman of the board of directors does not serve in an officer role in the Corporation.

n. Form of Stock Certificates

The New Bylaws would amend Section 6.01 of the Current Bylaws to state that the shares of the Corporation shall be represented by certificates, unless the board of directors provides by resolution that some or all of any class or series of stock be uncertificated. Except as otherwise provided by law, holders of certificated and uncertificated shares of the same class and series would have identical rights and obligations. Pursuant to Section 6.03(d) of the New Bylaws, the board will also have the power to make rules for issuance, transfer and registration of certificated or uncertificated shares, and the issuance of new certificates in lieu of those lost or destroyed. The New Bylaws further amend Section 6.01 to provide that the Corporation will not have the power to issue a certificate in bearer form. These amendments are intended to align the bylaws of the Corporation with standard provisions for Delaware public companies.

o. Fixing Record Dates

Section 6.04 of the Current Bylaws provides the procedures for fixing a record date for determining the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof. In general, a determination of stockholders of

record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting. However, Section 6.04(a) of the Current Bylaws also permits the board of directors to fix a new record date for the adjourned meeting. The New Bylaws would amend Section 6.04(a) to clarify that the board of directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting in its discretion or as required by Delaware Law. In such case, the board of directors would be permitted to fix the same date or an earlier date as the record date for stockholders entitled to notice of such adjourned meeting. The New Bylaws would also remove Section 6.04(b) of the Current Bylaws, which relates to the fixing of a record date for determining the stockholders entitled to consent to corporate action in writing without a meeting. This provision would be removed because the New Bylaws would remove the ability of stockholders to authorize or take corporate action by written consent.

p. Indemnification

Article X of the Current Bylaws contains certain provisions for the indemnification of directors, officers, employees and certain other agents of the Corporation. The New Bylaws will eliminate such provisions in their entirety. These provisions are being eliminated because provisions regarding indemnification are already contained in Article Ninth of the Current Certificate of Incorporation and will remain in Article Ninth of the New Certificate of Incorporation.

q. Notices

Article XI of the Current Bylaws contains provisions governing the delivery of notices to stockholders and directors. Section 11.01(b) of the Current Bylaws, for example, states that notices to directors may be given through U.S. mail, facsimile, telex

or telegram, except that such notice, other than one which is delivered personally, must be sent to such address as such director shall have filed in writing with the secretary of the Corporation, or, in the absence of such filing, to the last known post office address of such director. The corresponding section of the New Bylaws, Section 10.01(b), would be revised to additionally permit notice to directors to be given through electronic mail, in addition to the other forms of delivery currently permitted. The Exchange believes that it has become customary to deliver business communications through electronic mail. The remainder of the notice provisions would not be substantively amended in the New Bylaws.

r. Future Bylaws Amendments

Article Eighth of the Current Certificate of Incorporation (as proposed to be maintained in the New Certificate of Incorporation) provides that the bylaws may be adopted, amended or repealed by the board of directors or by action of the stockholders, in accordance with the procedures set out in the bylaws. Article XII of the Current Bylaws permits the bylaws to be amended or repealed *only* by action of the stockholders holding 70 percent of the shares entitled to vote. Article XI of the New Bylaws would amend Article XII to provide that the bylaws may be altered, adopted, amended or repealed *either* by a majority of the board of directors, or by the stockholders with the affirmative vote of not less than $66\frac{2}{3}$ of the total voting power then entitled to vote at a meeting of stockholders, unless a higher percentage is required under the New Certificate of Incorporation. The New Certificate of Incorporation does not include a higher percentage, so the threshold set forth in the New Bylaws would govern. The Current Bylaws require a vote of at least 70 percent of the total stockholder voting power in order

to maintain consistency with the threshold that was separately agreed to in the Investor Rights Agreement.¹⁸ As noted above, the Investor Rights Agreement is expected to terminate upon the IPO, except with respect to certain registration rights provisions, so the 70 percent threshold is no longer contractually necessary to maintain.¹⁹ The requirement to obtain 70 percent stockholder approval for any amendments to the Corporation's bylaws was practical while the Corporation was closely-held. However, the Exchange believes that it is customary for amendments to a publicly-held corporation's bylaws to be predominantly a matter for the corporation's board of directors, both as a matter of convenience, and to make unwanted corporate takeovers more difficult. As a result, the New Bylaws require that, should the stockholders wish to amend the Corporation's bylaws, a supermajority of 66²/₃ percent would be required. The threshold reduction from 70 percent to 66²/₃ is intended to be consistent with other publicly-held companies.

In addition to the board of directors and stockholder approval requirements, Article XI of the New Bylaws would maintain the provisions contained in Article XII of the Current Bylaws requiring that, for so long as the Corporation will control a national securities exchange registered with the Commission under Section 6 of the Act, before any amendment to the New Bylaws may become effective, the amendment must be

¹⁸ See Investor Rights Agreement, Section 4.3(d).

¹⁹ See supra note 14 and accompanying text.

submitted to the board of directors of such exchange, and if required by Section 19 of the Act,²⁰ filed with or filed with and approved by the Commission.

s. Loans to Officers

Article XIII of the Current Bylaws authorizes the Corporation to lend money to or guarantee obligations of any officer of the company under certain circumstances. In order to comply with Section 13(k)(1) of the Act,²¹ which will apply to the Corporation after the IPO, the New Bylaws eliminate this authority.

t. Other Amendments

The New Bylaws also remove references to the Investor Rights Agreement, as the provisions of that agreement, other than certain registration rights, is expected to terminate upon the occurrence of the IPO.²² In addition, the New Bylaws make various non-substantive, stylistic changes throughout. For example, as with the New Certificate of Incorporation, the New Bylaws would reflect a change in the name of the Corporation from “BATS Global Markets, Inc.” to “Bats Global Markets, Inc.”

(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)(1) of the Act, 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 Act and to comply, and to enforce compliance by its members and

²⁰ 15 U.S.C. 78s.

²¹ 15 U.S.C. 78m(k)(1).

²² See supra note 14 and accompanying text.

persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.²³ In particular, the New Certificate of Incorporation is consistent with Section 6(b)(1) of the Act because it would retain the limitations on ownership and total voting power that currently exist and would adopt super-majority requirements for certain amendments to the New Certificate of Incorporation. These provisions would help prevent any stockholder, including any member of the Exchange along with its Related Persons, from exercising undue control over the operation of the Exchange. In addition, Sections 2.03 and 2.10(c) of the New Bylaws would prohibit the ability of the stockholders to call a special meeting of the stockholders and to act by written consent. Therefore, as with the New Certificate of Incorporation, the New Bylaws would help prevent any stockholder from exercising undue control over the operation of the Exchange and assure that the Exchange is able to carry out its regulatory obligations under the Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange believes that the proposed rule change would enhance competition. The other major operators of registered national securities exchanges are currently public companies, with the access to the public markets that this facilitates. The amendments to the Corporation's certificate of incorporation and bylaws will facilitate the Corporation's IPO, facilitating capital formation and allowing the Corporation to

²³ 15 U.S.C. 78f(b).

better compete with other public companies operating national securities exchanges and other markets.

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

The Exchange has not solicited or received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action.

Not applicable.

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

Not applicable.

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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act.

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act.

Not Applicable.

11. Exhibits

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

Exhibits 1A – 4: Not applicable.

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

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____; File No. SR-BATS-2016-10)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposal to Amend the Certificate of Incorporation and Bylaws of the Exchange's Ultimate Parent Company, 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 _____, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to amend the certificate of incorporation and bylaws of the Exchange's ultimate parent company, BATS Global Markets, Inc. (the "Corporation").

The text of the proposed rule change is available at the Exchange's website at 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 December 16, 2015, the Corporation, the ultimate parent company of the Exchange, filed a registration statement on Form S-1 with the Commission seeking to register shares of 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 (i) amend and restate its current certificate of incorporation (the "Current Certificate of Incorporation") and adopt these changes as its Amended and Restated Certificate of Incorporation (the "New Certificate of Incorporation"), and (ii) amend and restate its current bylaws (the "Current Bylaws") and adopt these changes as its Amended and Restated Bylaws (the "New Bylaws"). It is anticipated that the New Certificate of Incorporation and the New Bylaws will become effective (the "Effective Date") the moment before the closing of the IPO.

The amendments to the Current Certificate of Incorporation include, among other things, (i) increasing the total number of authorized shares of capital stock of the Corporation, (ii) effecting a conversion and elimination of one class of non-voting common stock and reclassifying the remaining class of non-voting common stock, (iii)

establishing a classified board structure, (iv) prohibiting cumulative voting in the election of directors, (v) eliminating the process for action by written consent of stockholders, (vi) revising certain requirements for approval of future amendments to the New Certificate of Incorporation, and (vii) and changing the name of the Corporation from “BATS Global Markets, Inc.” to “Bats Global Markets, Inc.”

The amendments to the Current Bylaws include, among other things, (i) revising the procedures for stockholder proposals and nomination of directors, (ii) revising the authority to call special meetings of the stockholders, (iii) eliminating the process for action by written consent of stockholders, (iv) establishing a classified board structure, (v) revising the requirements for removal of directors, (vi) removing duplicative provisions relating to the indemnification of officers and directors that are contained in the Current Certificate of Incorporation (and are proposed to be maintained in the New Certificate of Incorporation), (vii) revising certain requirements for approval of future amendments to the New Bylaws, (viii) eliminating the authority to make loans to corporate officers, and (ix) changes to reflect the change of the Corporation’s name. The amendments to the Corporation’s Current Certificate of Incorporation and Current Bylaws are intended primarily to reflect (i) the adoption of provisions more customary for publicly-owned companies, (ii) changes to the Corporation’s capital structure, specifically with respect to non-voting common stock, and (iii) stylistic and other non-substantive changes.³

³ Certain of the amendments proposed to be adopted in the New Certificate of Incorporation and New Bylaws were previously approved by the Commission in 2011 as part of proposed amendments to the certificate of incorporation and

The purpose of this rule filing is to submit for Commission approval the New Certificate of Incorporation and the New Bylaws. The changes described herein relate to the certificate of incorporation and bylaws 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 bylaws. The stock in, and voting power of, the Exchange will continue to be directly and solely held by BATS Global Markets Holdings, Inc., an intermediate holding company wholly-owned by the Corporation.

The Corporation was originally formed as BATS Global Markets Holdings, Inc. on August 22, 2013 as a new ultimate holding company for the Exchange as a result of a business combination involving the holding company of the Exchange at the time and Direct Edge Holdings LLC.⁴

1. The New Certificate of Incorporation
 - a. Capital Stock; Voting Rights

bylaws of the Exchange's ultimate parent company at the time. See Securities Exchange Act Release No. 65646 (October 27, 2011), 76 FR 67783 (November 2, 2011) (SR-BATS-2011-033); Securities Exchange Act Release No. 65728 (November 10, 2011), 76 FR 71411 (November 17, 2011) (SR-BATS-2011-035). Although approved, these amendments were not ultimately implemented.

⁴ In connection with the Corporation's combination with Direct Edge Holdings LLC, the existing holding company for the Exchange, BATS Global Markets, Inc., changed its name to BATS Global Markets Holdings, Inc., and became an intermediate holding company between the Exchange and BATS Global Markets, Inc. The ownership structure of the Exchange at the time of the business combination and the Current Certificate of Incorporation and Current Bylaws of the Corporation are further described in the Commission's order approving the Exchange's proposed rule changes in connection with the Corporation's business combination with Direct Edge Holdings LLC. See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

The current capital structure of the Corporation is comprised of 75 million authorized shares of Common Stock, consisting of 55 million shares of Voting Common Stock, 10 million shares of Class A Non-Voting Common Stock and 10 million shares of Class B Non-Voting Common Stock. Article Fourth(a)(i) of the New Certificate of Incorporation would revise this capital structure such that there would be 150 million total authorized shares of capital stock, consisting of 125 million shares designated as Voting Common Stock and a single class of 10 million shares designated as Non-Voting Common Stock (together with Voting Common Stock, “Common Stock”), as well as 15 million shares of Preferred Stock.

The Corporation’s existing Class A Non-Voting Common Stock is currently held by International Securities Exchange Holdings, Inc. (“ISE Holdings”). Pursuant to the Investor Rights Agreement dated January 31, 2014, among the Corporation and its stockholders signatory thereto (the “Investor Rights Agreement”), and the Current Certificate of Incorporation, ISE Holdings’ shares of Class A Non-Voting Common Stock may convert into Voting Common Stock (i) automatically with respect to any shares transferred to persons other than related persons of ISE Holdings; (ii) upon the termination of the Investor Rights Agreement, with such agreement (other than with respect to registration rights) terminating upon the IPO; or (iii) automatically with respect to any shares of Class A Non-Voting Common Stock sold by ISE Holdings in any public offering of the stock of the Corporation. In addition, ISE Holdings’ shares of Class A Non-Voting Common Stock may convert into Voting Stock at the option of ISE Holdings, provided that ISE Holdings furnishes to the Corporation a written notice

stating that ISE Holdings desires to convert a stated number of shares of Class A Non-Voting Common Stock and the certificates representing such shares.⁵

As a result of these conversion rights, the Corporation expects the Class A Non-Voting Common Stock to convert into Voting Common Stock at the time of the IPO. To effect this conversion, Article Fourth(b)(i) of the New Certificate of Incorporation states that, at the time that the New Certificate of Incorporation becomes effective (the “Effective Time”),⁶ each authorized, issued and outstanding share of Class A Non-Voting Common Stock shall be automatically converted into one share of Voting Common Stock. To simplify the capital structure of the Corporation, Article Fourth(b)(ii) would reclassify each authorized, issued and outstanding share of Class B Non-Voting Common Stock into one share of Non-Voting Common Stock.⁷

Pursuant to Article Fourth(c) of the New Certificate of Incorporation, as proposed to be adopted, all voting power will be vested in Voting Common Stock (except with regard to certain matters relating to the rights of holders of Preferred Stock described below). Specifically, each holder of Voting Common Stock will be entitled to one vote for each share of Voting Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote. Shares of Non-Voting Common Stock

⁵ See Current Certificate of Incorporation, Art. Fourth, para. (c); Investor Rights Agreement, Section 2.2(j).

⁶ It is anticipated that the Effective Time will coincide with the date of the closing of the IPO and will occur immediately prior thereto.

⁷ The Exchange understands that the existing Class B Non-Voting Common Stock is, and the Non-Voting Common Stock upon conversion will be, held by certain persons subject to restrictions under the Bank Holding Company Act of 1956 on the extent to which they are permitted to own voting stock of the Corporation or certain types of non-voting stock convertible into voting stock of the Corporation.

are non-voting, except with regard to certain matters that would adversely affect their respective rights as described in the proposed amendments to Article Fourth(c)(ii) of the New Certificate of Incorporation.

Pursuant to Article Fourth(d) of the New Certificate of Incorporation, Non-Voting Common Stock will generally have the conversion features that previously applied to Class B Non-Voting Common Stock under the Current Certificate of Incorporation. Non-Voting Common Stock will be convertible into Voting Common Stock, on a one-to-one basis, following a “Qualified Transfer,” as defined in Article Fourth(d)(i).⁸ Voting Common Stock will not be convertible into Non-Voting Common Stock.

Except for voting rights and certain conversion features, as described above, Non-Voting Common Stock and Voting Common Stock will generally rank equally and have

⁸ A “Qualified Transfer” is defined as a sale or other transfer of Non-Voting Common Stock by a holder of such shares: (A) in a widely distributed public offering registered pursuant to the Securities Act of 1933 (15 U.S.C. 77a.); (B) in a private sale or transfer in which the relevant transferee (together with its Affiliates, as defined below, and other transferees acting in concert with it) acquires no more than two percent of any class of voting shares (as defined in 12 CFR 225.2(q)(3) and determined by giving effect to any such permitted conversion of transferred shares of Non-Voting Common Stock upon such transfer pursuant to Article Fourth of the New Certificate of Incorporation); (C) to a transferee that (together with its Affiliates and other transferees acting in concert with it) owns or controls more than 50 percent of any class of voting shares (as defined in 12 CFR 225.2(q)(3)) of the Corporation without regard to any transfer of shares from the transferring holder of shares of Non-Voting Common Stock; or (D) to the Corporation. As used above, the term “Affiliate” means, with respect to any person, any other person directly or indirectly controlling, controlled by or under common control with such person, and “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) has the meaning set forth in 12 CFR 225.2(e)(1).

identical rights and privileges. Because the IPO is expected to be a widely distributed public offering registered pursuant to the Securities Act of 1933 (15 U.S.C. 77a.), the Corporation expects it to be a “Qualified Transfer,” for purposes of the conversion feature of the Non-Voting Common Stock,⁹ such that any shares of Non-Voting Common Stock sold in the IPO would convert to Voting Common Stock. As a result, purchasers of the Corporation’s common stock in the IPO will receive only Voting Common Stock.

Proposed Article Fourth(a)(i) of the New Certificate of Incorporation would increase the Corporation’s authorized shares in order to accommodate the reclassification of Class A Non-Voting Common Stock and Class B Non-Voting Common Stock discussed above, while providing sufficient additional authorized shares for future issuances, such as, for example, grants of equity to employees pursuant to a compensation plan.

b. Board of Directors

Article Sixth of the New Certificate of Incorporation would amend certain provisions relating to the Corporation’s board of directors to add further specificity and detail, and effect a number of changes to the board of directors of the Corporation.

Article Sixth(a) of the New Certificate of Incorporation would explicitly specify that the business and affairs of the Corporation shall be managed by or under the board of directors and empower the board of the directors to do all such acts and things as may be exercised or done by the Corporation. This provision is intended to restate the power of

⁹ See New Certificate of Incorporation, Art. Fourth(d)(i).

the Corporation's board in accordance with the General Corporation Law of the State of Delaware, as amended ("Delaware Law").¹⁰

Article Sixth(c) of the New Certificate of Incorporation would establish a "staggered" or classified board structure in which the directors would be divided into three classes of equal size, to the extent possible. Only one class of directors would be elected each year, and once elected, directors would serve a three-year term. Directors initially designated as Class I directors would serve for a term ending on the date of the 2017 annual meeting of stockholders, directors initially designated as Class II directors would serve for a term ending on the date of the 2018 annual meeting of stockholders, and directors initially designated as Class III directors would serve for a term ending on the date of the 2019 annual meeting of stockholders. The names and addresses of each of the directors initially classified as Class I, Class II and Class III directors are set forth in Article Sixth(c)(ii) of the New Certificate of Incorporation. The Exchange believes that such a classified board structure is common for publicly-held companies, as it has the effect of making hostile takeover attempts more difficult.

Pursuant to Article Sixth(d) of the New Certificate of Incorporation, cumulative voting in the election of directors will be prohibited. If the Corporation were to permit cumulative voting, stockholders would be entitled to as many votes as are equal to the number of voting shares it holds, multiplied by the number of director seats up for election to the board of directors, and such stockholder may allocate all of its votes to one or more directorial candidates, as the stockholder desires. In contrast, in "regular" or

¹⁰ See Delaware Law Section 141(a).

“statutory” voting (i.e., when cumulative voting is prohibited), stockholders may not vote more than one vote per share to any single director nominee. The Exchange believes that cumulative voting is inappropriate for the ultimate parent company of a national securities exchange, as it would increase the likelihood that a stockholder or group of stockholders holding only a minority of voting shares would be able to exert an outsized influence in the election of directors of the Corporation, relative to its stockholdings in the Corporation. As a result, cumulative voting could undermine the limitations on concentrations of ownership or voting included in both the Current Certificate of Incorporation and New Certificate of Incorporation.¹¹

c. Transfer, Ownership and Voting Restrictions

The transfer, ownership and voting restrictions set forth in Article Fifth of the Corporation’s Current Certificate of Incorporation would be retained in the New Certificate of Incorporation. Article Fifth of the Corporation’s Current Certificate of Incorporation provides that for so long as the Corporation controls, directly or indirectly, a national securities exchange, subject to certain exceptions, (i) no person, either alone or together with its “Related Persons” (as defined therein), may own, directly or indirectly, of record or beneficially, shares constituting more than 40 percent of any class of the Corporation’s capital stock, (ii) no member of such a national securities exchange, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than 20 percent of any class of the Corporation’s capital stock, and (iii) no person, either alone or together with its Related Persons, at any

¹¹ See Current Certificate of Incorporation, Art. Fifth; New Certificate of Incorporation, Art. Fifth.

time, may, directly, indirectly or pursuant to any of various arrangements, vote or cause the voting of shares or give any consent or proxy with respect to shares representing more than 20 percent of the voting power of the Corporation's then issued and outstanding capital stock.

In the case of shares of the Corporation purportedly transferred in violation of the limitations contained in Article Fifth, in addition to other remedies provided under Article Fifth(d),¹² Article Fifth(e) of the Current Certificate of Incorporation provides that the Corporation may redeem the shares sold, transferred, assigned, pledged, or owned in violation of Article Fifth for a price equal to the fair market value of those shares.

These limitations and remedies are designed to prevent any stockholder from exercising undue influence over the Corporation's national securities exchange subsidiaries. As a result, these limitations and remedies would be retained in the New Certificate of Incorporation. However, in the case of the redemption of shares purportedly transferred in violation of Article Fifth, the Current Certificate of Incorporation does not specify the manner of determining the fair market value. In order to enhance this remedy and provide clarity in the event that it is necessary to enforce it, Article Fifth(e) of the New Certificate of Incorporation is proposed to be amended to provide that the fair market value would be determined as the volume-weighted average price per share of the Common Stock during the five business days immediately preceding the date of the redemption.

¹² Article Fifth(d) of the Current Certificate of Incorporation provides that purported transfers that would result in a violation of the ownership limitations are not recognized by the Corporation to the extent of any ownership in excess of the limitation.

d. Future Amendments to the Certificate of Incorporation

Article Twelfth of the Current Certificate of Incorporation requires that any proposed amendment to the Current Certificate of Incorporation be approved by the board of directors of the Corporation, submitted to the Board of Directors of the Exchange and filed with, or filed with and approved by, the Commission, if required under Section 19 of the Act. Provided that these conditions are satisfied, the Current Certificate of Incorporation can be amended in any manner permitted by Delaware Law, which today generally allows for the amendment of a certificate of incorporation by the affirmative vote of the majority of the outstanding stock entitled to vote thereon. Pursuant to proposed Article Fourteenth(a) of the New Certificate of Incorporation, certain provisions of the New Certificate of Incorporation would only be able to be amended upon the affirmative vote of not less than $66\frac{2}{3}$ percent of the total voting power of the Corporation's outstanding securities entitled to vote generally in the election of directors, voting together as a single class. These provisions include Article Fourth(c) and (d), relating to voting rights and conversion of Non-Voting Common Stock, and Articles Fifth through Thirteenth, relating to limitations on transfer, ownership and voting, board of directors, duration of the Corporation, adopting, amending or repealing bylaws, indemnification and limitation of director liability, meetings of stockholders, forum selection, compromise or other arrangement, Section 203 opt-in (discussed below), and amendments to the certificate of incorporation, respectively.

The purpose of this supermajority requirement, which the Exchange believes is common among public companies, is to deter actions being taken that the Corporation believes may be detrimental to the Corporation, including any actions that could

detrimentally affect the Corporation's ability to comply with its unique responsibilities under the Act as the ultimate parent of four registered national securities exchanges. The purpose for limiting the application of the supermajority voting requirement to certain specified provisions of the certificate of incorporation is to focus such requirement on the most critical provisions of the certificate of incorporation.

e. Other Amendments

The New Certificate of Incorporation will amend and restate various other provisions of the Current Certificate of Incorporation in a manner that the Exchange believes are intended to reflect provisions that are more customary for publicly-owned companies organized under Delaware Law. In particular:

- *Preferred Stock.* Pursuant to proposed Article Fourth(a) of the New Certificate of Incorporation, the Corporation will have the authority to issue 15 million shares of Preferred Stock, par value \$0.01 per share (the "Preferred Stock"), which the Corporation's board of directors may, by resolution from time to time, issue in one or more classes or series by filing a certificate of designation pursuant to Delaware Law, fixing the terms and conditions of such class or series of Preferred Stock. The Preferred Stock may be used by the Corporation to raise capital or to act as a safety mechanism for unwanted takeovers. Pursuant to Article Sixth(f) of the New Certificate of Incorporation, should the Corporation issue Preferred Stock and the holders of Preferred Stock have the right to vote separately or as a class to elect directors, the features of such directorships shall be governed by the terms of the resolution adopted by the board of directors, rather than the features otherwise applicable under Article Sixth.

- *Stockholder Meetings.* Article Tenth of the Current Certificate of Incorporation permits action to be taken by the stockholders of the Corporation, without a meeting, by written consent as permitted by Delaware Law. The New Certificate of Incorporation would amend Article Tenth to provide that any action required or permitted to be taken at any meeting of the stockholders may be taken only upon the vote of stockholders at a meeting of the stockholders in accordance with Delaware Law and the New Certificate of Incorporation, and may not be taken by written consent without a meeting, subject to the rights of the holders of any class or series of Preferred Stock then outstanding. Proposed Article Tenth(a) would establish a requirement for the Corporation to hold annual meetings of stockholders for director elections and other business, while Proposed Article Tenth(b) would permit special meetings to be called only upon a resolution of a majority of the board of directors (except that when holders of Preferred Stock have the right to elect directors, such holders may call a special meeting). Provisions providing for annual meetings and special meetings are currently contained only in the Current Bylaws.¹³
- *Forum Selection.* The New Certificate of Incorporation would add a new Article Eleventh, designating the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain actions or proceedings, such as derivative actions brought on behalf of the Corporation or actions asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation

¹³ Current Bylaws, Sections 2.02 and 2.03.

to the Corporation or to its stockholders. Among other things, this provision prevents similar actions from being brought in multiple jurisdictions and helps ensure that any litigation will be handled by the court that is most experienced in applying Delaware Law. Article Eleventh also provides that any person or entity acquiring an interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to this exclusive forum provision.

- *Section 203.* The New Certificate of Incorporation would add Article Thirteenth, providing that the Corporation will be governed by Section 203 of Delaware Law. In general, Section 203 prohibits a publicly-held Delaware corporation from engaging in a business combination with anyone who owns at least 15 percent of its common stock. This prohibition lasts for a period of three years after that person has acquired the 15 percent ownership. The corporation may, however, engage in a business combination if it is approved by its board of directors before the person acquires the 15 percent ownership or later by its board of directors and two-thirds of the stockholders of the public corporation. The restrictions contained in Section 203 do not apply if, among other things, the corporation's certificate of incorporation contains a provision expressly electing not to be governed by Section 203. Unless opted-out, Section 203 provides Delaware corporations with a defense to unwanted corporate takeovers.

The New Certificate of Incorporation also removes various references to the Investor Rights Agreement, as the provisions of that agreement, other than certain

registration rights, is expected to terminate upon the occurrence of the IPO.¹⁴ The New Certificate of Incorporation additionally makes various non-substantive, stylistic changes throughout. For example, the New Certificate of Incorporation would amend the name of the Corporation from “BATS Global Markets, Inc.” to “Bats Global Markets, Inc.”

2. The New Bylaws

a. Registered Office

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

b. Annual Meeting of Stockholders

Section 2.02(a) of the Current Bylaws requires that an annual meeting of stockholders for the purpose of election of directors and for such other business as may

¹⁴ See Investor Rights Agreement, Section 10 (providing that the rights and obligations of each stockholder party to the agreement shall terminate, to the extent not previously terminated, upon the occurrence of “Qualified Public Offering,” as defined therein, except that certain registration rights shall survive such termination).

lawfully come before the meeting occur on the third Tuesday of January, or such other time as the board of directors may designate. The New Bylaws remove the reference to the third Tuesday of January from Section 2.02(a) and authorize the board of directors to determine the place, date and time of the annual meeting.

Section 2.02(b) of the Current Bylaws specifies the procedures for stockholders to properly bring matters before the annual meeting, including specifying that stockholders provide timely notice to the Corporation of the business desired to be brought before the meeting. To be considered timely, Section 2.02(b) of the Current Bylaws states that the stockholder's notice must be delivered to the Corporation no earlier than the ninetieth day or later than the sixtieth day prior to the first anniversary of the preceding year's annual meeting. The New Bylaws modify the acceptable time period so that the stockholder's notice must be delivered to the Corporation no earlier than the one hundred and fiftieth day or later than the one hundred and twentieth day prior to the first anniversary of the preceding year's annual meeting. In the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty days, the New Bylaws generally require that the stockholder's notice be delivered no earlier than the one hundred and twentieth day or later than the seventieth day prior to such annual meeting.

Section 2.02(b) of the Current Bylaws specifies what must be contained in the stockholder's notice. In addition to the requirements contained in the Current Bylaws, Section 2.02(b) of the New Bylaws would require that the stockholder's notice (i) disclose the text of the proposal, (ii) disclose the beneficial owner on whose behalf the proposal is being made, (iii) disclose all arrangements or understandings between the

stockholder and any other person pursuant to which the proposal is being made, (iv) disclose all agreements, arrangements or understandings (including derivative positions) to create or mitigate loss or manage the risk or benefit of share price changes, or increase or decrease the voting power of the stockholder or any beneficial owner with respect to the securities of the Corporation, (v) provide a representation as to whether the stockholder or any beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation needed to approve or adopt the proposal, or otherwise solicit proxies from stockholders in support of the proposal, and (vi) provide such other information relating to any proposed item of business as the Corporation may reasonably require to determine whether such proposed item of business is a proper matter for stockholder action.

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

stockholder or any beneficial owner intends, or is part of a group that intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation needed to elect each such nominee, or otherwise solicit proxies from stockholders in support of the nomination.

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

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

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

New Section 2.02(f) of the New Bylaws would note that, notwithstanding anything to the contrary in the New Bylaws, the notice requirements with respect to business proposals or nominations would be deemed satisfied if the stockholder submitted a proposal in compliance with Rule 14a-8 of the Act¹⁵ and the proposal has been included in a proxy statement prepared by the Corporation to solicit proxies of the meeting of stockholders. This provision would assure that, in addition to proposals that meet the requirements of Section 2.02(b) of the New Bylaws, the Corporation would comply with the provisions of the Act and the rules promulgated thereunder with respect to the inclusion of stockholder proposals in its proxy statement.

c. Special Meetings of Stockholders

Section 2.03 of the Current Bylaws permits a special meeting of the stockholders to be called by any of (i) the chairman of the board of directors, (ii) the chief executive officer, (iii) the board of directors pursuant to a resolution passed by a majority of the board, or (iv) the stockholders entitled to vote at least 10 percent of the votes at the meeting. The New Bylaws would amend Section 2.03, consistent with Article Tenth(b) of the New Certificate of Incorporation, to only permit a special meeting of the stockholders to be called by the board of directors pursuant to a resolution adopted by the majority of the board. Additionally, whenever any holders of Preferred Stock have the right to elect directors pursuant to the New Certificate of Incorporation, such holders may call, pursuant to the terms of a resolution adopted by the board, a special meeting of the holders of such Preferred Stock. These amendments are designed to prevent any

¹⁵ 17 CFR 240.14a-8.

stockholder from exercising undue control over the operation of the Exchange by circumventing the board of directors of the Corporation through a special meeting of the stockholders.

d. Quorum; Vote Requirements

Section 2.05 of the Current Bylaws describe the quorum and voting requirements for the transaction of business at all meetings of stockholders of the Corporation. As the New Charter establishes two classes of stock, voting common stock and non-voting common stock, the New Bylaws would amend Section 2.05 to clarify that a majority of the voting power (the Voting Common Stock) is generally required for a quorum for the transaction of business, rather than a majority of all outstanding shares. The New Bylaws would also amend Section 2.05 to conform to Section 216 of Delaware Law to track the requirement of a majority of votes “present in person or represented by proxy” for a quorum where a separate vote by class or classes or series is required. In addition, Section 2.05 of the New Bylaws would also be amended to clarify that abstentions and broker non-votes shall not be counted as votes cast. Under Delaware Law, abstentions and broker non-votes are not shares authorized to vote and are not considered votes cast on any matter.¹⁶ This amendment conforms the provisions of Section 2.05 to Delaware Law and is intended to eliminate ambiguity in the counting of abstentions and broker non-votes.

e. Adjournment of Meetings

¹⁶ See, e.g., Berlin v. Emerald Partners, 552 A.2d 482 (Del. 1988).

Section 2.06 of the Current Bylaws outlines certain requirements relating to the adjournment of stockholder meetings, including that any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the voting power of the shares casting votes, excluding abstentions. The New Bylaws would amend Section 2.06 such that only the chairman of the meeting or the board of directors would be permitted to adjourn a stockholder meeting. The authority to adjourn a stockholder meeting resting solely with the board of directors or the chairman is common among publicly-held companies. Furthermore, this amendment would provide the Corporation with flexibility to postpone a stockholder vote if it determines necessary and would prevent stockholders from adjourning a meeting if the board of directors and chairman desire to continue with the meeting.

f. Voting Rights

Section 2.07 of the Current Bylaws describes the rights of stockholders of the Corporation to vote their shares at a meeting of stockholders. The New Bylaws would amend Section 2.07 to further clarify that any share of stock of the Corporation held by the Corporation shall have no voting rights, except when such shares are held in a fiduciary capacity. The Current Bylaws do not address voting rights with respect to shares of stock of the Corporation held by the Corporation. This amendment is consistent with Delaware Law and removes ambiguity as to the voting rights of shares of stock of the Corporation held by the Corporation.¹⁷

¹⁷

See Delaware Law Section 160(c).

g. Action Without a Meeting

Section 2.10(a) of the Current Bylaws permits certain actions to be taken by written consent of stockholders if signed by the holders of outstanding stock representing not less than the number of votes necessary to authorize or take such action at a meeting where all shares entitled to vote were present and voted. However, Section 2.10(c) of the Current Bylaws provides that no action by written consent may be taken following an initial public offering of the common stock of the Corporation. The New Bylaws would amend Section 2.10 to prohibit at all times actions taken by written consent of stockholders without a meeting, subject to the rights of any holders of Preferred Stock. This change is consistent with proposed changes contained in Article Tenth(c) of the New Certificate of Incorporation and would simplify Section 2.10 of the New Bylaws, given that the New Bylaws would become effective the moment before the closing of the IPO.

h. Number of Directors and Classified Board Structure

Section 3.01 of the Current Bylaws stipulates that the board of directors of the Corporation shall consist of 15 members, or such other number of members as determined from time to time by resolution of the board of directors. Under the New Bylaws, Section 3.01 would be amended to state that the board of directors shall consist of one or more directors, with the exact number of directors to be determined by resolution adopted by the majority of the board of directors. In addition, Section 3.01 of the New Bylaws would, consistent with proposed Article Sixth(c) of the New Certificate of Incorporation, establish a classified board structure in which the directors would be divided into three classes of equal size, to the extent possible. Only one class of directors

would be elected each year, and once elected, directors would serve a three-year term.

The Exchange believes that such a classified board structure is common for publicly-held companies, as it has the effect of making hostile takeover attempts more difficult.

i. Vacancies and Resignation

Section 3.03 of the Current Bylaws provides that vacancies on the board of directors resulting from death, resignation, removal or other causes, and any newly created directorships resulting from any increase in the number of directors, shall be filled by a majority vote of the directors then in office, even if less than a quorum, unless the board of directors determines by resolution that any such vacancies or newly created directorships should be filled by stockholders. Once elected, the director would hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified.

Section 3.03 of the New Bylaws would adopt a substantially similar approach.

Specifically, it would provide that vacancies or new directorships shall, except as otherwise required by law, be filled solely by a majority of the directors then in office (although less than a quorum) or by the sole remaining director, and each director so elected shall hold office for a term that shall coincide with the term of the class to which such director shall have been elected. The New Bylaws would also amend Section 3.03 to provide that if there are no directors in office, then an election of directors may be held in accordance with Delaware Law.

Section 3.04 of the Current Bylaws addresses the resignation of directors. For example, Section 3.04 provides that when one or more directors resign from the board of directors, effective at a future date, a majority of the directors then in office, including

those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective. This provision would be retained in the New Bylaws, but it would be moved to Section 3.03. In addition, as is effectively the case under Section 3.04 of the Current Bylaws, Section 3.03 of the New Bylaws would provide that any director so chosen shall hold office as provided in the filling of other vacancies.

j. Removal of Directors

Section 3.05 of the Current Bylaws provides that the board of directors or any director may be removed, with or without cause, by the affirmative vote of at least $66\frac{2}{3}$ percent of the voting power of all then-outstanding shares of voting stock of the Corporation. The New Bylaws would amend Section 3.05 to provide that directors may only be removed for cause with the affirmative vote of a simple majority of the holders of voting power of all then-outstanding securities of the Corporation generally entitled to vote in the election of directors, voting together as a single class.

The purpose of this amendment is to align the Corporation's requirements for removal of directors with Section 141(k)(1) of Delaware Law, which generally provides that, in the case of a corporation with a classified board, a simple majority of stockholders may remove any director, but only for cause, unless the certificate of incorporation provides otherwise.

k. Committees of Directors

Sections 3.10(a) and (b) of the Current Bylaws permit the board of directors to appoint an executive committee with certain enumerated powers of the board, as well as other committees permitted by law. The New Bylaws would amend Section 3.10(a) to

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

Section 3.10(c) of the Current Bylaws describes the requirements for committee meetings. The New Bylaws would amend Section 3.10(c) to require that each committee keep regular minutes of its meetings and report the same to the board of directors of the Corporation when required. This amendment is being made to assure that matters addressed during committee meetings are recorded in the corporate records of the Corporation and are available to be communicated to the full board of directors of the Corporation.

1. Preferred Stock Directors

The New Bylaws would add new Section 3.12 to clarify that whenever the holders of one or more classes or series of Preferred Stock have the right to elect one or more directors (a "Preferred Stock Director"), pursuant to the New Certificate of Incorporation, the provisions of Article III of the New Bylaws relating to the election, term of office, filling of vacancies, removal, and other features of directorships would not apply to the

Preferred Stock Directors. Rather, such features would be governed by the applicable provisions of the New Certificate of Incorporation. This amendment is consistent with proposed Article Sixth(f) of the New Certificate of Incorporation with respect to the rights of holders of Preferred Stock, should any class or series of Preferred Stock be issued with director voting rights in the future.

m. Officers

Section 4.01 of the Current Bylaws provides that the officers of the Corporation shall include, if and when designated by the board of directors, the chairman of the board of directors, the chief executive officer, the president, one or more vice presidents and certain other employees. The New Bylaws would amend Section 4.01 to remove the chairman of the board of directors from the list of potential officers of the Corporation. Similarly, the New Bylaws would also remove Section 4.02(b) of the Current Bylaws, which describes the duties of the chairman of the board of directors. These changes would be made to reflect the fact that the chairman of the board of directors does not serve in an officer role in the Corporation.

n. Form of Stock Certificates

The New Bylaws would amend Section 6.01 of the Current Bylaws to state that the shares of the Corporation shall be represented by certificates, unless the board of directors provides by resolution that some or all of any class or series of stock be uncertificated. Except as otherwise provided by law, holders of certificated and uncertificated shares of the same class and series would have identical rights and obligations. Pursuant to Section 6.03(d) of the New Bylaws, the board will also have the power to make rules for issuance, transfer and registration of certificated or uncertificated

shares, and the issuance of new certificates in lieu of those lost or destroyed. The New Bylaws further amend Section 6.01 to provide that the Corporation will not have the power to issue a certificate in bearer form. These amendments are intended to align the bylaws of the Corporation with standard provisions for Delaware public companies.

o. Fixing Record Dates

Section 6.04 of the Current Bylaws provides the procedures for fixing a record date for determining the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof. In general, a determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting. However, Section 6.04(a) of the Current Bylaws also permits the board of directors to fix a new record date for the adjourned meeting. The New Bylaws would amend Section 6.04(a) to clarify that the board of directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting in its discretion or as required by Delaware Law. In such case, the board of directors would be permitted to fix the same date or an earlier date as the record date for stockholders entitled to notice of such adjourned meeting. The New Bylaws would also remove Section 6.04(b) of the Current Bylaws, which relates to the fixing of a record date for determining the stockholders entitled to consent to corporate action in writing without a meeting. This provision would be removed because the New Bylaws would remove the ability of stockholders to authorize or take corporate action by written consent.

p. Indemnification

Article X of the Current Bylaws contains certain provisions for the indemnification of directors, officers, employees and certain other agents of the

Corporation. The New Bylaws will eliminate such provisions in their entirety. These provisions are being eliminated because provisions regarding indemnification are already contained in Article Ninth of the Current Certificate of Incorporation and will remain in Article Ninth of the New Certificate of Incorporation.

q. Notices

Article XI of the Current Bylaws contains provisions governing the delivery of notices to stockholders and directors. Section 11.01(b) of the Current Bylaws, for example, states that notices to directors may be given through U.S. mail, facsimile, telex or telegram, except that such notice, other than one which is delivered personally, must be sent to such address as such director shall have filed in writing with the secretary of the Corporation, or, in the absence of such filing, to the last known post office address of such director. The corresponding section of the New Bylaws, Section 10.01(b), would be revised to additionally permit notice to directors to be given through electronic mail, in addition to the other forms of delivery currently permitted. The Exchange believes that it has become customary to deliver business communications through electronic mail. The remainder of the notice provisions would not be substantively amended in the New Bylaws.

r. Future Bylaws Amendments

Article Eighth of the Current Certificate of Incorporation (as proposed to be maintained in the New Certificate of Incorporation) provides that the bylaws may be adopted, amended or repealed by the board of directors or by action of the stockholders, in accordance with the procedures set out in the bylaws. Article XII of the Current Bylaws permits the bylaws to be amended or repealed *only* by action of the stockholders

holding 70 percent of the shares entitled to vote. Article XI of the New Bylaws would amend Article XII to provide that the bylaws may be altered, adopted, amended or repealed *either* by a majority of the board of directors, or by the stockholders with the affirmative vote of not less than $66\frac{2}{3}$ of the total voting power then entitled to vote at a meeting of stockholders, unless a higher percentage is required under the New Certificate of Incorporation. The New Certificate of Incorporation does not include a higher percentage, so the threshold set forth in the New Bylaws would govern. The Current Bylaws require a vote of at least 70 percent of the total stockholder voting power in order to maintain consistency with the threshold that was separately agreed to in the Investor Rights Agreement.¹⁸ As noted above, the Investor Rights Agreement is expected to terminate upon the IPO, except with respect to certain registration rights provisions, so the 70 percent threshold is no longer contractually necessary to maintain.¹⁹ The requirement to obtain 70 percent stockholder approval for any amendments to the Corporation's bylaws was practical while the Corporation was closely-held. However, the Exchange believes that it is customary for amendments to a publicly-held corporation's bylaws to be predominantly a matter for the corporation's board of directors, both as a matter of convenience, and to make unwanted corporate takeovers more difficult. As a result, the New Bylaws require that, should the stockholders wish to amend the Corporation's bylaws, a supermajority of $66\frac{2}{3}$ percent would be required. The

¹⁸ See Investor Rights Agreement, Section 4.3(d).

¹⁹ See supra note 14 and accompanying text.

threshold reduction from 70 percent to $66\frac{2}{3}$ is intended to be consistent with other publicly-held companies.

In addition to the board of directors and stockholder approval requirements, Article XI of the New Bylaws would maintain the provisions contained in Article XII of the Current Bylaws requiring that, for so long as the Corporation will control a national securities exchange registered with the Commission under Section 6 of the Act, before any amendment to the New Bylaws may become effective, the amendment must be submitted to the board of directors of such exchange, and if required by Section 19 of the Act,²⁰ filed with or filed with and approved by the Commission.

s. Loans to Officers

Article XIII of the Current Bylaws authorizes the Corporation to lend money to or guarantee obligations of any officer of the company under certain circumstances. In order to comply with Section 13(k)(1) of the Act,²¹ which will apply to the Corporation after the IPO, the New Bylaws eliminate this authority.

t. Other Amendments

The New Bylaws also remove references to the Investor Rights Agreement, as the provisions of that agreement, other than certain registration rights, is expected to terminate upon the occurrence of the IPO.²² In addition, the New Bylaws make various non-substantive, stylistic changes throughout. For example, as with the New Certificate

²⁰ 15 U.S.C. 78s.

²¹ 15 U.S.C. 78m(k)(1).

²² See supra note 14 and accompanying text.

of Incorporation, the New Bylaws would reflect a change in the name of the Corporation from “BATS Global Markets, Inc.” to “Bats Global Markets, Inc.”

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)(1) of the Act, 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 Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.²³ In particular, the New Certificate of Incorporation is consistent with Section 6(b)(1) of the Act because it would retain the limitations on ownership and total voting power that currently exist and would adopt super-majority requirements for certain amendments to the New Certificate of Incorporation. These provisions would help prevent any stockholder, including any member of the Exchange along with its Related Persons, from exercising undue control over the operation of the Exchange. In addition, Sections 2.03 and 2.10(c) of the New Bylaws would prohibit the ability of the stockholders to call a special meeting of the stockholders and to act by written consent. Therefore, as with the New Certificate of Incorporation, the New Bylaws would help prevent any stockholder from exercising undue control over the operation of the Exchange and assure that the Exchange is able to carry out its regulatory obligations under the Act.

²³ 15 U.S.C. 78f(b).

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange believes that the proposed rule change would enhance competition. The other major operators of registered national securities exchanges are currently public companies, with the access to the public markets that this facilitates. The amendments to the Corporation's certificate of incorporation and bylaws will facilitate the Corporation's IPO, facilitating capital formation and allowing the Corporation to better compete with other public companies operating national securities exchanges and other markets.

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

The Exchange has not solicited or received written comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2016-10 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-BATS-2016-10. 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 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-BATS-2016-10 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.²⁴

Robert W. Errett
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).

Exhibit 5A

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

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

Name

FIRST: The name of the [Corporation]corporation is [BATS]Bats Global Markets, Inc. (the “**Corporation**”).

Registered Office

SECOND: The initial address of the Corporation’s registered office [of the Corporation] in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801[, and the]. The initial name of its [initial]registered agent at [that]such address is The Corporation Trust Company.

Purpose

THIRD: The purpose or purposes of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended (“**Delaware Law**”).

[Authorized]Capital Stock

FOURTH:

(a) Authorized Shares.

([a]i) The total number of shares of stock that the Corporation shall have authority to issue is [75,000,000] 150 million shares, consisting of 125 million shares of voting common stock [having a], par value [of] \$[.01]0.01 per share (“**Common Stock**”) of which 55,000,000 are designated as Voting Common Stock (the “**Voting Common Stock**”), [10,000,000 are designated as Class A Non-Voting Common Stock (“Class A Non-Voting Common Stock”), and 10,000,000 are designated as Class B Non-Voting Common Stock (“Class B Non-Voting Common Stock” and, together with the Class A Non-Voting Common Stock,]10 million shares of non-voting common stock, par value \$0.01 per share (the “Non-Voting Common Stock,” together with the Voting Common Stock, the “Common Stock”) and 15 million shares of preferred stock, par value \$0.01 per share (the “Preferred Stock”). The rights, preferences, powers, privileges, and the restrictions, qualifications and limitations of the Voting Common Stock [, Class A]and Non-Voting Common[Stock and Class B Non-Voting Common] Stock are identical, other than in respect of voting and conversion rights as set forth herein, and, except as

otherwise provided herein, for all purposes under this Amended and Restated Certificate of Incorporation (this “Certificate of Incorporation”), the Voting Common Stock[, Class A] and Non-Voting Common[Stock and Class B Non-Voting Common] Stock shall together constitute a single class of shares of the capital stock of the Corporation.

(ii) The board of directors of the Corporation (the “Board of Directors”) is hereby empowered, without any action or vote by the Corporation’s stockholders (except as may otherwise be provided by the terms or any class or series of Preferred Stock then outstanding) to authorize by resolution or resolutions from time to time the issuance of one or more classes or series of Preferred Stock by filing a certificate pursuant to Delaware Law (a “Certificate of Designation”) and to fix the designations, powers, preferences and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions thereof, if any, with respect to each such class or series of Preferred Stock and the number of shares constituting each such class or series, and to increase or decrease the number of shares of any such class or series to the extent permitted by Delaware Law.

[(b) *Voting Rights.*

(i) *Voting Common Stock.* Except as otherwise required by law or this Certificate of Incorporation, the holders of the Voting Common Stock shall possess exclusively all voting power, and each holder of Voting Common Stock shall have one vote in respect of each share held by him of record on the books of the Corporation for the election of directors and on all matters submitted to a vote of shareholders of the Corporation.

(ii) *Class A Non-Voting Common Stock.* Except as otherwise required by law, shares of Class A Non-Voting Common Stock shall be non-voting; provided that so long as any shares of Class A Non-Voting Common Stock are outstanding, the Corporation shall not, without the written consent of a majority of the outstanding shares of Class A Non-Voting Common Stock or the affirmative vote of holders of a majority of the outstanding shares of Class A Non-Voting Common Stock at a meeting of the holders of Class A Non-Voting Common Stock duly called for such purpose, amend, alter or repeal (by merger, consolidation, combination, reclassification or otherwise) its Certificate of Incorporation or bylaws so as to adversely affect (disproportionately relative to the Voting Common Stock or the Class B Non-Voting Common Stock) the preferences, rights or powers of the Class A Non-Voting Common Stock.

(iii) *Class B Non-Voting Common Stock.* Except as otherwise required by law, shares of Class B Non-Voting Common Stock shall be non-voting; provided that so long as any shares of Class B Non-Voting Common Stock are outstanding, the Corporation shall not, without the written consent of a majority of the outstanding shares of Class B Non-Voting Common Stock or the affirmative vote of holders of a majority of the outstanding shares of Class B Non-Voting Common Stock at a meeting of the holders of Class B Non-Voting Common Stock duly called for such purpose, amend, alter or repeal (by merger, consolidation, combination, reclassification or otherwise) its Certificate of Incorporation or bylaws so as to adversely affect (disproportionately relative to the Voting Common Stock or the Class A Non-Voting Common Stock) the preferences, rights or powers of the Class B Non-Voting Common Stock.]

(b) *Reclassification.* At the time that this Certificate of Incorporation becomes effective under Delaware Law (the “**Effective Time**”):

(i) each share of Class A Non-Voting Common Stock, par value \$0.01 per share, which was designated as Class A Non-Voting Common Stock in the Amended and Restated Certificate of Incorporation of the Corporation dated as of January 31, 2014 (the “**2014 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 converted into one share of Voting Common Stock pursuant to the terms of the 2014 Certificate; and

(ii) each share of Class B Non-Voting Common Stock, par value \$0.01 per share, which was designated as Class B Non-Voting Common Stock in the 2014 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 as one share of Non-Voting Common Stock.

(c) *Voting Rights.* Each holder of Voting Common Stock, as such, shall be entitled to one vote for each share of Voting Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote, and the shares of Non-Voting Common Stock shall be non-voting; *provided, however,* that:

(i) except as otherwise required by Delaware Law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any Certificate of Designation relating to any class or series of Preferred Stock) that relates solely to the terms of one or more outstanding class or series of Preferred Stock if the holders of such affected class or series of Preferred Stock are entitled, either separately or together with the holders of one or more other such series of Preferred Stock, to vote thereon pursuant to this Certificate of Incorporation (including any Certificate of Designation relating to any class or series of Preferred Stock) or pursuant to Delaware Law; and

(ii) so long as any shares of Non-Voting Common Stock are outstanding, the Corporation shall not, without the affirmative vote of holders of a majority of the outstanding shares of Non-Voting Common Stock at a meeting of the holders of Non-Voting Common Stock duly called for such purpose, amend, alter or repeal (by merger, consolidation, combination, reclassification or otherwise) this Certificate of Incorporation or the bylaws of the Corporation (the “**Bylaws**”) so as to adversely affect (disproportionately relative to the Voting Common Stock) the preferences, rights or powers of the Non-Voting Common Stock.

[(c) *Conversion of Class A Non-Voting Common Stock.*

(i) Upon a transfer by any holder of any issued and outstanding shares of Class A Non-Voting Common Stock to a person other than any Related Person of such holder or upon any other Non-Voting ISE Conversion Event (as defined in the Investor Rights Agreement), the shares of Class A Non-Voting Common Stock so transferred (or all shares in connection with a termination of the Investor Rights Agreement) shall

automatically, without any action on the part of the transferor, the transferee or the Corporation, be converted into an equal number of shares of Voting Common Stock upon the consummation of such transfer. Upon surrender of the certificate or certificates representing the shares so transferred and converted the Corporation shall issue and deliver in accordance with the surrendering holder's instructions the certificate or certificates representing the shares of Voting Common Stock into which such transferred shares of Class A Non-Voting Common Stock have been converted.

(ii) The shares of Class A Non-Voting Common Stock shall be convertible into shares of Voting Common Stock on a one-to-one basis at any time and from time to time at the option of the holder. Any such conversion shall be effected by the surrender to the Corporation of the certificate or certificates representing the Class A Non-Voting Common Stock, together with written notice by the holder of such Class A Non-Voting Common Stock, stating that such holder desires to convert the shares of Class A Non-Voting Common Stock, or a stated number of such shares represented by such certificate or certificates, into an equal number of shares of the Voting Common Stock. Such notice shall also state the name or names (with addresses) and denominations in which the certificate or certificates for shares of Voting Common Stock are to be issued and shall include instructions for the delivery thereof. The Corporation shall promptly upon receipt of such notice and certificates, issue and deliver in accordance with the surrendering holder's instructions the certificate or certificates evidencing the shares of Voting Common Stock issuable upon such conversion, and the Corporation will deliver to the converting holder a certificate representing any Class A Non-Voting Common Stock shares which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion that were not converted. Such conversion, to the extent permitted by law, shall be deemed to have been effected as of the close of business on the date on which such surrendered certificate or certificates shall have been received by the Corporation.]

(d) *Conversion of [Class B] Non-Voting Common Stock.*

(i) The shares of [Class B] Non-Voting Common Stock shall only be convertible, on a one-for-one basis, into shares of Voting Common Stock following a Qualified Transfer (as defined below). The term “**Qualified Transfer**” shall mean a sale or other transfer of [Class B] Non-Voting Common Stock by a holder of such shares: ([a]A) in a widely distributed public offering registered pursuant to the Securities Act of 1933, as amended, ([b]B) in a private sale or transfer in which the relevant transferee (together with its Affiliates and other transferees acting in concert with it) acquires no more than 2% of any class of voting shares (as defined in 12 C.F.R. § 225.2(q)(3) and determined by giving effect to any such permitted conversion of transferred shares of [Class B] Non-Voting Common Stock upon such transfer pursuant to this Article [FOURTH]Fourth) of the Corporation, ([c]C) to a transferee that (together with its Affiliates and other transferees acting in concert with it) owns or controls more than 50% of any class of voting shares (as defined in 12 C.F.R. § 225.2(q)(3)) of the Corporation without regard to

any transfer of shares from the transferring holder of shares of [Class B] Non-Voting Common Stock or ([d]D) to the Corporation. As used in this subparagraph (d)(i) of this Article [FOURTH]Fourth, the term “**Affiliate**” shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person, and “**control**” (including, with correlative meanings, the terms “**controlled by**” and “under common control with”) has the meaning set forth in 12 C.F.R. § 225.2(e)(1).

(ii) Following a Qualified Transfer, a holder of such transferred shares of [Class B] Non-Voting Common Stock may surrender to the Corporation the certificate or certificates representing the [Class B] Non-Voting Common Stock, and any evidence of the Qualified Transfer as the Corporation may reasonably request, together with written notice by the holder of such [Class B] Non-Voting Common Stock, stating that such holder desires to convert the shares of [Class B] Non-Voting Common Stock, or a stated number of such shares represented by such certificate or certificates, into an equal number of shares of Voting Common Stock. Such notice shall also state the name or names (with addresses) and denominations in which the certificate or certificates for shares of Voting Common Stock are to be issued and include instructions for the delivery thereof. The Corporation shall promptly upon receipt of such notice, certificates and evidence of a Qualified Transfer as it may reasonably request, issue and deliver in accordance with the surrendering holder’s instructions the certificate or certificates evidencing the shares of Voting Common Stock issuable upon conversion, and the Corporation will deliver to the converting holder a certificate representing any [Class B] Non-Voting Common Stock shares which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion that were not converted. Except as otherwise provided herein, such conversion, to the extent permitted by [law]Delaware Law, shall be deemed to have been effected as of the close of business on the date on which such surrendered certificate or certificates shall have been received by the Corporation.

Limitations on Transfer, Ownership and Voting

FIFTH: In addition to any limitations on the transfer of shares of the Corporation’s capital stock set forth in the Bylaws [of the Corporation], the following shall apply to the fullest extent permitted by law:

(a) *Definitions.* As used in this Article [FIFTH]Fifth:

(i) The term “**Person**” shall mean a natural person, partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government;

(ii) 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 Securities Exchange Act of 1934, as amended (the “**Act**”)); (B) any other Person 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 of the capital stock of the Corporation [(provided no Person shall be deemed a Related Person pursuant to this clause (B) solely as a result of such Person's being or becoming a party to an Investor Rights Agreement entered into by and among the Corporation and the stockholders named therein on or about the date hereof, (the "Investor Rights Agreement"))]; (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 Act) or director of such Person and, in the case of a Person that is a partnership or limited liability company, any general partner, managing member or manager of such Person, as applicable; (D) in the case of any Person that is a registered broker or dealer that has been admitted to membership in any national securities exchange registered under Section 6 of the Act with the Securities and Exchange Commission (the "**Commission**") that is a direct or indirect subsidiary of the Corporation (hereinafter, any such national securities exchange shall be referred to generally as an "**Exchange**" and any such Person, an "**Exchange Member**"), any Person that is associated with the Exchange Member (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Act); (E) in the case of a Person that is a natural person and Exchange Member, any broker or dealer that is also an Exchange Member with which such Person is associated; (F) in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse who has the same home as such Person or who is a director or officer of the Corporation 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 Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (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; and

(iii) The term "**beneficially own**", "**own beneficially**" or any derivative thereof shall have the meaning set forth in Rule 13d-3 under the Act.

(b) *Limitations.*

(i) For so long as the Corporation shall control, directly or indirectly, an Exchange except as provided in clause (ii) below:

(A) [No]no Person, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than forty percent (40%) of any class of capital stock of the Corporation;

(B) [No]no Exchange Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than twenty percent (20%) of any class of capital stock of the Corporation; and

(C) [No]no Person, either alone or together with its Related Persons, at any time may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement[(other than the Investor Rights Agreement)], vote or cause the voting of shares of the capital stock of the

Corporation or give any consent or proxy with respect to shares representing more than twenty percent (20%) of the voting power of the then issued and outstanding capital stock of the Corporation, nor may any Person, either alone or together with its Related Persons, enter into any agreement, plan or other arrangement[(other than the Investor Rights Agreement)] with any other Person, either alone or together with its Related Persons, under circumstances that would result in the shares of capital stock of the Corporation that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of the capital stock of the Corporation that would represent more than twenty percent (20%) of said voting power.

(ii) Subject to clauses (iii) and (iv) below:

(A) The limitations in clauses (i)(A) and (i)(C) above shall not apply in the case of any class of stock that does not have the right by its terms to vote in the election of members of the Board of Directors[of the Corporation] or on other matters that may require the approval of the holders of voting shares of the Corporation (other than matters affecting the rights, preferences or privileges of said class of stock)[; and].

(B) The limitations in clauses (i)(A) and (i)(C) above (except with respect to Exchange Members and their Related Persons) may be waived by the Board of Directors[of the Corporation] pursuant to a resolution duly adopted by the Board of Directors, if, in connection with taking such action, the Board of Directors adopts a resolution stating that it is the determination of such Board that such action will not impair the ability of an Exchange to carry out its functions and responsibilities as an “exchange” under the Act and the rules and regulations promulgated thereunder, that it is otherwise in the best interests of the Corporation, its stockholders and the Exchange, and that it will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder, and such resolution shall not be effective until it is filed with and approved by the Commission. In making the determinations referred to in the immediately preceding sentence, the Board of Directors may impose on the Person in question and its Related Persons such conditions and restrictions that it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act and the rules and regulations promulgated thereunder, and the governance of the applicable Exchange.

(iii) Notwithstanding clauses (ii)(A) and (ii)(B) 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 of the Corporation 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 Act).

(iv) Notwithstanding clauses (ii)(A) and (ii)(B) 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 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, 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.

(c) *Required Notices.*

(i) Any Person that, either alone or together with its Related Persons, owns, directly or indirectly (whether by acquisition or by a change in the number of shares outstanding), of record or beneficially, five percent (5%) or more of the then outstanding shares of capital stock of the Corporation (excluding shares of any class of stock that does not have the right by its terms to vote generally in the election of members of the Board of Directors[of the Corporation]) shall, immediately upon acquiring knowledge of its ownership of five percent (5%) or more of the then outstanding shares of such stock, give the Board of Directors written notice of such ownership, which notice shall state: (A) such Person's full legal name; (B) such Person's title or status and the date on which such title or status was acquired; (C) such Person's (and its Related Person's) approximate ownership interest of the Corporation; and (D) whether such Person has the power, directly or indirectly, to direct the management or policies of the Corporation, whether through ownership of securities, by contract or otherwise.

(ii) Each Person required to provide written notice pursuant to subparagraph (c)(i) of this Article [~~FIFTH~~Fifth] shall update such notice promptly after any change in the contents of that notice; *provided* that no such updated notice shall be required to be provided to the Board of Directors: (A) in the event of an increase or decrease in the ownership percentage so reported of less than one percent (1%) of the then outstanding shares of any class of capital stock (such increase or decrease to be measured cumulatively from the amount shown on the last such notice), unless any increase or decrease of less than one percent (1%) results in such Person owning more than twenty percent (20%) or more than forty percent (40%) of the shares of any class of capital stock then outstanding (at a time when such Person previously owned less than such percentages) or such Person owning less than twenty percent (20%) or less than forty percent (40%) of the shares of any class of capital stock then outstanding (at a time when such Person previously owned more than such percentages); or (B) in the event the Corporation issues additional shares of capital stock (or securities convertible into capital stock) or takes any other action that dilutes the ownership of such Person, or acquires or redeems shares of outstanding

capital stock or takes any other action that increases the ownership of such Person, in each case without any change in the number of shares held by such Person.

(iii) The Board of Directors[of the Corporation] shall have the right to require any Person reasonably believed to be subject to and in violation of this Article [FIFTH]Fifth to provide the Corporation complete information as to all shares of stock of the Corporation owned, directly or indirectly, of record or beneficially, by such Person and its Related Persons and as to any other factual matter relating to the applicability or effect of this Article [FIFTH]Fifth as may reasonably be requested of such Person.

(d) *Effect of Purported Transfers and Voting in Violation of this Article.* If any stockholder purports to sell, transfer, assign or pledge to any Person, other than the Corporation, any shares of the Corporation that would violate the provisions of this Article [FIFTH]Fifth, then the Corporation shall record on the books of the Corporation the transfer of only that number of shares that would not violate the provisions of this Article [FIFTH]Fifth and shall treat the remaining shares as owned by the purported transferor, for all purposes, including without limitation, voting, payment of dividends and distributions with respect to such shares, whether upon liquidation or otherwise. If any stockholder purports to vote, or to grant any proxy or enter into any agreement, plan or other arrangement relating to the voting of[,] shares that would violate the provisions of this Article [FIFTH]Fifth, then the Corporation shall not honor such vote, proxy, agreement, plan or other arrangement to the extent that such provisions would be violated, and any shares subject to that arrangement shall not be entitled to be voted to the extent of such violation.

(e) *Right to Redeem Shares Purportedly Transferred in Violation of this Article Fifth.* If any stockholder purports to sell, transfer, assign, pledge, or own any shares of the Corporation in violation of the provisions of this Article Fifth, then the Corporation shall have the right to, and shall promptly after confirming such violation and to the extent funds are legally available, redeem the shares sold, transferred, assigned, pledged, or owned in violation of the provisions of this Article Fifth for a price per share equal to the fair market value of those shares (such fair market being determined as the volume-weighted average price per share of the Common Stock during the five (5) business days immediately preceding the date of such redemption). Written notice shall be given by the Secretary of the Corporation to the holder or holders of record with respect to the redeemable shares at the address of the holder or holders of record appearing on the books of the Corporation, which notice shall specify a date for redemption of the shares that shall be not less than ten (10) days nor more than thirty (30) days from the date of such notice. Any shares that have been so called for redemption shall not be deemed outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been given to the holder or holders of those shares if a sum sufficient to redeem such shares shall have been irrevocably deposited or set aside to pay the redemption price to the holder or holders of the shares upon surrender of certificates for those shares. Written notice shall be given by the Secretary of the Corporation to all holders of record appearing on the books of the Corporation of any redemption by the Corporation (including, without limitation, a redemption pursuant to this clause (e)) (in each

case, a “**Redemption**”) not more than ten (10) days after consummation of the Redemption, which notice shall specify the number of shares outstanding after the Redemption of each class of the Corporation’s capital stock.

Board of Directors

SIXTH:

(a) *Power and Authority.* The business and affairs of the Corporation shall be managed by or under the Board of Directors. In addition to the powers and authority expressly conferred by Delaware Law, this Certificate of Incorporation or the Bylaws, the Board of Directors is hereby empowered to exercise all such powers and to do all such acts and things as may be exercised or done by the Corporation.

(b) *Number of Directors.* The number of directors may be increased or decreased from time to time by a resolution adopted by the Board of Directors.[Directors shall be elected by the stockholders of the Corporation pursuant to and in accordance with this Certificate of Incorporation and the Bylaws of the Corporation.]

(c) *Election of Directors.* (i) The directors shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be practicable, of one-third of the total number of directors constituting the entire Board of Directors. Each director shall serve for a term ending on the date of the third annual meeting of stockholders next following the annual meeting at which such director was elected; *provided* that directors initially designated as Class I directors shall serve for a term ending on the date of the 2017 annual meeting, directors initially designated as Class II directors shall serve for a term ending on the 2018 annual meeting, and directors initially designated as Class III directors shall serve for a term ending on the date of the 2019 annual meeting. Notwithstanding the foregoing, each director shall hold office until such director’s successor shall have been duly elected and qualified or until the earlier of such director’s death, resignation or removal. In the event of any change in the number of directors, the Board of Directors shall apportion any newly created directorships among, or reduce the number of directorships in, such class or classes as shall equalize, as nearly as possible, the number of directors in each class. In no event will a decrease in the number of directors shorten the term of any incumbent director.

(ii) The names and mailing addresses of the persons who are to serve initially as directors of each Class are:

<u>Name</u>	<u>Mailing Address</u>
Class I <u>Jamil Nazarali, Frank Reardon and Michael Richter</u>	<u>8050 Marshall Drive Lenexa, KS 66214</u>
Class II <u>Chris Concannon, Alan Freudenstein and Robert</u>	<u>8050 Marshall Drive</u>

	<u>Name</u>	<u>Mailing Address</u>
	<u>Jones</u>	<u>Lenexa, KS 66214</u>
<u>Class III</u>	<u>John McCarthy, Chris Mitchell and Joe Ratterman</u>	<u>8050 Marshall Drive Lenexa, KS 66214</u>

(d) No Cumulative Voting; No Written Ballot. There shall be no cumulative voting in the election of directors. Election of directors need not be by written ballot unless the Bylaws[of the Corporation shall] so provide.

(e) Removal of Directors. The Board of Directors or any individual director may be removed from office in accordance with the Bylaws[of the Corporation].

(f) Directors Elected by Preferred Stockholders. Notwithstanding anything else contained herein, whenever the holders of one or more classes or series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, the election, term of office, filling of vacancies, removal and other features of such directorships shall be governed by the terms of the resolution or resolutions adopted by the Board of Directors, and such directors so elected shall not be subject to the provisions of this Article Sixth unless otherwise provided therein.

Duration

SEVENTH: The duration of the Corporation shall be perpetual.

Bylaws

EIGHTH: The Board of Directors shall have the power to adopt, amend or repeal the Bylaws[of the Corporation]. The Bylaws[of the Corporation] may also be amended or repealed, or new Bylaws of the Corporation may be adopted, by action taken by the stockholders of the Corporation. All amendments to the[Corporation's] Bylaws must be made in accordance with procedures set out in the Bylaws[of the Corporation].

Indemnification and Limitation of Director Liability

NINTH:

(a) Indemnification. The Corporation shall provide indemnification for members of its Board of Directors, members of committees of the Board of Directors and of other committees of the Corporation, and its executive officers, and may provide indemnification for its other officers and its agents and employees, and those serving another corporation, partnership, joint venture, trust or other enterprise at the request of the Corporation, in each case to the maximum extent permitted by Delaware[law] Law; provided, however, that the Corporation may limit the extent of such indemnification by individual contracts with its directors and executive officers; and, provided, further, that the Corporation shall not be required to indemnify any person in

connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against the Corporation or its directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors[of the Corporation] or (iii) such indemnification is provided by the Corporation, in its sole discretion, pursuant to the powers vested in the Corporation under [the General Corporation]Delaware Law[of Delaware].

(b) *Limitation of Liability.* To the fullest extent not prohibited by [the General Corporation]Delaware Law[of the State of Delaware], as it exists on the date this Certificate of Incorporation is adopted or as such law may later be amended, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director. No amendment to or repeal of this Article shall adversely affect any right or protection of a director of the Corporation that exists at the time of such amendment or repeal with respect to any actions taken, or inactions, prior thereto.

[Action without Meeting]Meetings of Stockholders

TENTH:

[Action may be taken by the stockholders of the Corporation, without a meeting, by written consent as and to the extent provided at the time by the General Corporation Law of Delaware.]

(a) *Annual Meetings.* An annual meeting of stockholders for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting shall be held at such place, on such date, and at such time as the Board of Directors shall determine.

(b) *Special Meetings.* Special meetings of the stockholders may be called only by the Board of Directors acting pursuant to a resolution adopted by a majority of the Board of Directors. Notwithstanding the foregoing, whenever holders of one or more classes or series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, such holders may call, pursuant to the terms of such class or series of Preferred Stock adopted by resolution or resolutions of the Board of Directors pursuant to Article Fourth(a)(ii) hereto, special meetings of holders of such Preferred Stock.

(c) *No Action by Written Consent.* Subject to the rights of the holders of any class or series of Preferred Stock then outstanding, as may be set forth in the resolution or resolutions adopted by the Board of Directors pursuant to Article Fourth(c)(i) hereto for such class or series of Non-Voting Common Stock, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken only upon the vote of stockholders at an annual or special meeting duly noticed and called in accordance with Delaware Law, as amended from time to time, and this Article Tenth and may not be taken by written consent of stockholders without a meeting.

Forum Selection

ELEVENTH: The Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of Delaware Law or (d) any action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article Eleventh.

Compromise or Other Arrangement

[ELEVENTH]TWELFTH: Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under Section 291 of Title 8 of[the] Delaware [Code]Law or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under Section 279 of Title 8 of[the] Delaware [Code]Law, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as such court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

Section 203

THIRTEENTH: The Corporation shall be governed by Section 203 of Delaware Law.

Amendment of Certificate of Incorporation

FOURTEENTH:

[TWELFTH.](a) The Corporation reserves the right to amend this Certificate of Incorporation, and to change or repeal any provision of this Certificate of Incorporation, in the manner prescribed at the time by statute (*provided, however*, that any such amendment, change or repeal must be first approved by the Board of Directors), and all rights conferred upon stockholders in this Certificate of Incorporation are granted subject to this reservation. Notwithstanding the foregoing, the provisions set forth in Articles Fourth(c) and (d), Fifth

through Thirteenth or this Article Fourteenth may not be repealed or amended in any respect, and no other provision may be adopted, amended or repealed which would have the effect of modifying or permitting the circumvention of the provisions set forth in any of Articles Fourth(c) and (d), Fifth, Sixth through Thirteenth or this Article Fourteenth, unless such action is approved by the affirmative vote of the holders of not less than 66²/₃% of the total voting power of all outstanding securities of the Corporation generally entitled to vote in the election of directors, voting together as a single class.

(b) For so long as the Corporation shall control, directly or indirectly, an Exchange, before any amendment to or repeal of any provision of this Certificate of Incorporation shall be effective, those changes shall be submitted to the [Board of Directors]board of directors of such Exchange and if the same must be filed with or filed with and approved by the Commission before the changes may be effective, under Section 19 of the Act and the rules and regulations promulgated thereunder by the Commission or otherwise, then the proposed changes to [the]this Certificate of Incorporation[of this Corporation] shall not be effective until filed with or filed with and approved by the Commission, as the case may be.

Exhibit 5B

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

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

**ARTICLE I
OFFICES**

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

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

**ARTICLE II
STOCKHOLDERS MEETINGS**

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

Section 2.02. Annual Meeting.

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

(b) At an annual meeting of the Stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be: (A) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (B) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (C) otherwise properly brought before the meeting by a Stockholder. For business to be properly brought before an annual meeting by a Stockholder, the Stockholder must have given timely notice thereof in writing to the Secretary of the Corporation (the “**Secretary**”). To be timely, a Stockholder’s notice must be delivered to or mailed and received at the principal executive offices of the Corporation not later than the close of

business on the ~~[sixtieth (60th)]~~one hundred and twentieth (120th) day ~~[nor]~~or earlier than the close of business on the ~~[ninetieth (90th)]~~one hundred and fiftieth (150th) day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) days from the date contemplated at the time of the previous year's proxy statement, notice by the Stockholder to be timely must be so received ~~[not]~~no earlier than the close of business on the ~~[ninetieth (90th)]~~one hundred and twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ~~[sixtieth]~~seventieth (~~[60]~~70)th day prior to such annual meeting or, in the event public announcement of the date of such annual meeting is first made by the Corporation fewer than seventy (70) days prior to the date of such annual meeting, the close of business on the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation. A Stockholder's notice to the Secretary shall set forth as to each matter the Stockholder proposes to bring before the annual meeting: (i) a brief description of the business desired to be brought before the annual meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these bylaws of the Corporation (the "Bylaws") the language of the proposed amendment), and the reasons for conducting such business at the annual meeting, (ii) the name and address, as they appear on the Corporation's books, of the Stockholder proposing such business, and the beneficial owner, if any, on whose behalf the proposal is being made, (iii) the class and number of shares of the Corporation which are beneficially owned by the Stockholder, (iv) any material interest of the Stockholder or such beneficial owner in such business~~[and]~~, (v) a description of all arrangements or understandings between the Stockholder and any other person or persons (naming such person or persons) pursuant to which the proposal is to be made by the Stockholder, (vi) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative, long or short positions, profit interests, forwards, futures, swaps, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into by or on behalf of, or any other agreement, arrangement or understanding that has been made, the effect or intent of which is to create or mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such Stockholder or any such beneficial owner with respect to the Corporation's securities, (vii) a representation as to whether such Stockholder or any such beneficial owner intends or is part of a group that intends to (A) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding capital stock required to approve or adopt the proposal and/or (B) otherwise to solicit proxies from Stockholders in support of such proposal, (viii) any other information that ~~[is]~~would be required to be provided by the Stockholder pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), in his or her capacity as a proponent ~~[to]~~of a Stockholder proposal and (ix) such other information relating to any proposed item of business as the Corporation may reasonably require to determine whether such proposed item of business is a proper matter for Stockholder action. Notwithstanding the foregoing, in order to include information with respect to a Stockholder proposal in the proxy statement and form of proxy for a Stockholder's meeting, Stockholders must provide notice as required by the regulations promulgated under the 1934 Act. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at any annual meeting except in accordance with the procedures set forth in this paragraph (b). The chairman of the

annual meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting[and] in accordance with the provisions of this paragraph (b), and, if he or she should so determine, he or she shall so declare at the meeting that any such business not properly brought before the meeting shall not be transacted.

(c) Only persons who are nominated in accordance with the procedures set forth in this [Section 2.02(c)]paragraph (c) of Section 2.02 shall be eligible for election as directors. Nominations of persons for election to the Board of Directors[of the Corporation] may be made at a meeting of Stockholders by or at the direction of the Board of Directors or by any Stockholder [of the Corporation] entitled to vote in the election of directors at the meeting who complies with the notice procedures set forth in this paragraph (c)[and Section 4.2 of that certain Investor Rights Agreement (the “Investor Agreement”), dated on or about the date hereof, as may be amended from time to time, for so long as such Investor Agreement is in effect (capitalized terms in the Investor Agreement shall have the meanings assigned to them in such Investor Agreement, a copy of which is attached to these Bylaws as Exhibit A]. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation in accordance with the provisions of paragraph (b) of this Section 2.02. Such Stockholder’s notice shall set forth (i) as to each person, if any, whom the Stockholder proposes to nominate for election or re-election as a director: (A) the name, age, business address and residence address of such person, (B) the principal occupation or employment of such person, (C) the class and number of shares of the Corporation which are beneficially owned by such person, (D) a description of all arrangements or understandings between the Stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the Stockholder,[and] (E) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative, long or short positions, profit interests, forwards, futures, swaps, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into by or on behalf of, or any other agreement, arrangement or understanding that has been made, the effect or intent of which is to create or mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such Stockholder or any such beneficial owner or any such nominee with respect to the Corporation’s securities, (F) a representation that the Stockholder is a Stockholder of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to bring such nomination or other business before the meeting, (G) a representation as to whether such Stockholder or any such beneficial owner intends or is part of a group that intends to (a) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation’s outstanding capital stock required to elect each such nominee and/or (b) otherwise to solicit proxies from Stockholders in support of such nomination and (H) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation such person’s written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected); and (ii) as to [such]the Stockholder giving notice, and the beneficial owner, if any, on whose behalf the notice was given, the information required to be provided by a Stockholder proposing business pursuant to paragraph (b) of this Section 2.02. At the request of the Board of Directors, any person nominated

by a Stockholder for election as a director shall furnish to the Secretary of the Corporation that information required to be set forth in the Stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this paragraph (c). The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by these Bylaws, and if he or she should so determine, he or she shall so declare at the meeting, and the defective nomination shall be disregarded.

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

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

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

Section 2.03. Special Meetings.

[(a) Special meetings of the Stockholders of the Corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption) or (iv) by the holders

of shares entitled to cast not less than ten percent (10%) of the votes at the meeting, and shall be held at such place, on such date, and at such time as the Board of Directors, shall fix.

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

Special meetings of the Stockholders may be called only by the Board of Directors acting pursuant to a resolution adopted by a majority of the Board of Directors. Notwithstanding the foregoing, whenever holders of one or more classes or series of Preferred Stock, as defined in the Corporation's certificate of incorporation, as may be amended from time to time (the "Certificate of Incorporation"), shall have the right, voting separately as a class or series, to elect directors, such holders may call, pursuant to the terms of the resolution or resolutions adopted by the Board of Directors pursuant to the Certificate of Incorporation, special meetings of holders of such Preferred Stock.

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

Section 2.05. Quorum; Vote Requirements. At all meetings of Stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person or by proxy duly authorized, of the holders of a majority of the [outstanding] voting power of all the then-outstanding shares of stock entitled to vote at a meeting of Stockholders shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of Stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the voting power of the shares represented

thereat, but no other business shall be transacted at such meeting. The Stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough Stockholders to leave less than a quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all action taken by the holders of a majority of the [vote]votes cast[, excluding abstentions,] at any meeting at which a quorum is present shall be valid and binding upon the Corporation; *provided, however,* that directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the [statute]General Corporation Law of the State of Delaware as the same exists or may hereafter be amended (“Delaware Law”) or by the Certificate of Incorporation or these Bylaws, a majority of the voting power of the outstanding shares of such class or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality of the votes of the shares present in person or represented by proxy, in the case of the election of directors) of the votes [cast]present in person or represented by proxy, excluding abstentions, by the holders of shares of such class or classes or series shall be the act of such class or classes or series. Abstentions and broker non-votes shall not be counted as votes cast.

Section 2.06. Adjournment and Notice of Adjourned Meetings. Any meeting of Stockholders, whether annual or special, may be adjourned from time to time[either] by the Board of Directors or the chairman of the meeting[or by the vote of a majority of the shares casting votes, excluding abstentions]. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Stockholder of record entitled to vote at the meeting.

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

Section 2.08. Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given

written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his or her act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in[the General Corporation Law of Delaware,] Section 217(b) of Delaware Law. If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even split for the purpose of [subsection]clause (c) above shall be a majority or even split in interest.

Section 2.09. List of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of Stockholders, a complete list of the Stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each Stockholder and the number of shares registered in the name of each Stockholder. Such list shall be open to the examination of any Stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not specified, at the place where the meeting is to be held. The list shall be produced and kept at the time and place of meeting during the whole time thereof and may be inspected by any Stockholder who is present.

Section 2.10. Action Without Meeting.

[(a) Unless otherwise provided in the Certificate of Incorporation, any action required by statute to be taken at any annual or special meeting of the Stockholders, or any action which may be taken at any annual or special meeting of the Stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

(b) Every written consent shall bear the date of signature of each Stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the Corporation in the manner herein required, written consents signed by a sufficient number of Stockholders to take action are delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of Stockholders are recorded. Delivery made to a Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

(c) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those Stockholders who have not consented in writing. If the action which is consented to is such as would have required the filing of a certificate under any section of the General Corporation Law of the State of Delaware if such action had been voted on by Stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of Stockholders, that written

notice and written consent have been given as provided in Section 228 of the General Corporation Law of Delaware. Notwithstanding the foregoing, no such action by written consent may be taken following the closing of the initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the “1933 Act”), covering the offer and sale of Common Stock of the Corporation (the “Initial Public Offering”).]

Subject to the rights of the holders of any class or series of Preferred Stock then outstanding, as may be set forth in the certificate of designations for such class or series of Preferred Stock, any action required or permitted to be taken at any annual or special meeting of Stockholders may be taken only upon the vote of Stockholders at an annual or special meeting duly noticed and called in accordance with Delaware Law and may not be taken by written consent of Stockholders without a meeting.

Section 2.11. Organization.

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

(b) The Board of Directors[of the Corporation] shall be entitled to make such rules or regulations for the conduct of meetings of Stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to Stockholders of record of the Corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of Stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE III DIRECTORS

Section 3.01. Number and Term of Office. The Board of Directors[of the Corporation] shall consist of [fifteen (15) members, or such other]one or more directors, with the exact number of [members as]directors to be determined from time to time solely by resolution adopted by the affirmative vote of a majority of the Board of Directors[, unless]. As set forth in Article Sixth(c)

of the Certificate of Incorporation, the directors shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be practicable, of one-third of the total number of directors constituting the entire Board of Directors. Except as otherwise provided in the Certificate of Incorporation, each director shall serve for a term ending on the date of the third annual meeting of Stockholders next following the annual meeting at which such director was elected. Notwithstanding the foregoing, each director shall hold office until such director's successor shall have been duly elected and qualified or until the earlier of such director's death, resignation or removal. Directors need not be Stockholders unless so required by the Certificate of Incorporation. If for any cause[,] the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the Stockholders called for that purpose in the manner provided in these Bylaws. No person that is subject to any statutory disqualification (as defined in Section 3(a)(39) of the 1934 Act) may be a director of the Corporation.

Section 3.02. Powers. The [powers]business and affairs of the Corporation shall be [exercised, its business conducted and its property controlled by the]managed by or under the direction of a Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation. The Board of Directors shall have the power to interpret these Bylaws and any interpretation made by it shall be final and conclusive.

Section 3.03. Vacancies. Unless otherwise provided in the Certificate of Incorporation, [any] vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or [other causes]otherwise and[any] newly created directorships resulting from any increase in the number of directors[,] shall[unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by Stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director.], except as otherwise required by Delaware Law, be filled solely by a majority of the directors then in office (although less than a quorum) or by the sole remaining director, and each director so elected shall hold office for a term that shall coincide with the term of the Class to which such director shall have been elected. If there are no directors in office, then an election of directors may be held in accordance with Delaware Law. Unless otherwise provided in the Certificate of Incorporation, when one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in the filling of the other vacancies.

Section 3.04. Resignation. Any director may resign at any time by delivering his or her written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors.[When

one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.]

Section 3.05. Removal. [Subject to the rights of the holders of any series of Common Stock, the Board of Directors or any individual] No director may be removed from office [at any time (i) with cause by the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all the then-outstanding shares of voting stock of the Corporation, entitled to vote at an election of directors (the “Voting Stock”) or (ii) without] by the Stockholders except for cause [by] with the affirmative vote of the holders of [at least sixty-six and two-thirds percent (66 2/3%) of the] not less than a majority of the total voting power of all[the] then-outstanding [shares of the Voting Stock] securities of the Corporation generally entitled to vote in the election of directors, voting together as a single class.

Section 3.06. Meetings.

(a) **Annual Meetings.** The annual meeting of the Board of Directors shall be held immediately before or after the annual meeting of Stockholders and at the place where such meeting is held. No notice of an annual meeting of the Board of Directors shall be necessary and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

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

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

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

(e) **Notice of Meetings.** Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, facsimile, telegraph or telex, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting, or sent in writing to each director by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends

the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

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

Section 3.07. Quorum and Voting.

(a) Unless the Certificate of Incorporation requires a greater number [and except with respect to indemnification questions arising under Section 10.01 hereof, for which a quorum shall be one third of the exact number of directors fixed from time to time in accordance with the Certificate of Incorporation], a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however*, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

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

Section 3.08. Action Without Meeting. Unless otherwise restricted by Delaware Law, the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing, and such writing or writings are filed with the minutes of proceedings of the Board of Directors or such committee.

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

Section 3.10. Committees.

(a) [**Executive Committee.**]The Board of Directors may [by resolution passed by a majority of the whole Board of Directors appoint an Executive Committee]designate one or more committees,

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

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

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

([d]c) **[Meetings.]** Unless the Board of Directors shall otherwise provide, regular meetings of [the Executive Committee or any other]any committee appointed pursuant to this Section 3.10(c) shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

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

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

ARTICLE IV OFFICERS

Section 4.01. Officers Designated. The officers of the Corporation shall include, if and when designated by the Board of Directors, [the Chairman of the Board of Directors,] the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer, the Treasurer, and the Controller, all of whom shall be elected at the annual [organizational]meeting of the Board of Directors. The Board of Directors may also appoint one or more Assistant Secretaries, Assistant Treasurers, Assistant Controllers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may

assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the Corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the Corporation shall be fixed by or in the manner designated by the Board of Directors.

Section 4.02. Tenure and Duties of Officers.

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

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

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

[(d)c] **Duties of President.** The President shall be a senior executive officer of the Corporation and shall perform such duties and have such powers as the Board of Directors or the Chief Executive Officer shall designate from time to time. In the absence or disability of the Chief Executive Officer, or if there is no Chief Executive Officer, the President shall serve as the chief executive officer of the Corporation and shall have the powers and duties prescribed in paragraph [(c)b] of this Section 4.02.

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

[(f)e] **Duties of Secretary.** The Secretary shall attend all meetings of the Stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the Corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings

of the Stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties given to him or her in these Bylaws and other duties commonly incident to his or her office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The Chief Executive Officer may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to his or her office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer shall designate from time to time.

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

Section 4.03. Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

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

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

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

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

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

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

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

Section 5.02. Voting of Securities Owned by the Corporation. Unless otherwise instructed by the Board of Directors, the Chief Executive Officer of the Corporation shall have the power and authority on behalf of the Corporation to attend and to vote at any meeting of [stockholders] Stockholders, members, partners or equity holders of any corporation, limited liability company, partnership or any other entity (including [BATS] without limitation, Bats Global Markets Holdings, Inc. and Direct Edge Holdings LLC, and their respective successors) in which the Corporation may hold stock, partnership or other equity interests, as the case may be, and may exercise on behalf of the Corporation any and all of the rights and powers incident to the ownership of such stock, partnership or other equity interest at such meeting, and shall have the power and authority to execute and deliver proxies, waivers and consents on behalf of the Corporation in connection with the exercise by the Corporation of the rights and powers incident to the ownership of such stock, partnership or other equity interest. The Board of Directors may from time to time confer like powers upon any other person or persons.

ARTICLE VI SHARES OF STOCK

Section 6.01. Form and Execution of Certificates. [Certificates for the]The shares of [stock of] the Corporation shall be [in such form as is consistent with the Certificate of Incorporation and applicable law]represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares or a combination of certificated and uncertificated shares. Any such resolution that the shares of a class or series will only be uncertificated shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Except as otherwise provided by Delaware Law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of shares represented by certificates of the same class and series shall be identical. Every holder of stock in the Corporation shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman of the Board of Directors, or the President or Chief Executive Officer or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by [him] such holder in the Corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent[,] or registrar before such certificate is issued, it may be issued with the same effect as if he, she or it were such officer, transfer agent, or registrar at the date of issue. Each certificate shall state upon the face or back thereof, in full or in summary, all of the powers, designations, preferences, and rights[,] and the limitations or restrictions of the shares authorized to be issued or shall, except as otherwise required by [law]Delaware Law, set forth on the face or back a statement that the Corporation will furnish without charge to each Stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this [section]Section 6.01 or otherwise required by [law or with respect to this section]Delaware Law or pursuant to this Section 6.01 a statement that the Corporation will furnish without charge to each Stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. [Except as otherwise expressly provided by law, the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.]The Corporation shall not have power to issue a certificate in bearer form.

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

bond in such form and amount as it may direct as indemnity against any claim that may be made [against the Corporation] with respect to the certificate alleged to have been lost, stolen[,] or destroyed.

Section 6.03. Transfers.

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

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

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

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

Section 6.04. Fixing Record Dates.

(a) In order that the Corporation may determine the Stockholders entitled to notice of or to vote at any meeting of Stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining Stockholders entitled to notice of or to vote at a meeting of Stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of Stockholders of record entitled to notice of or to vote at a meeting of Stockholders shall apply to any adjournment of the meeting; *provided* [, however,]that the Board of Directors may in its discretion or as required by Delaware Law fix a new record date for determination of Stockholders entitled to vote at the adjourned meeting, and in such case shall fix the same date or an earlier date as the record date for Stockholders entitled to notice of such adjourned meeting.

[(b) Prior to the Initial Public Offering, in order that the Corporation may determine the Stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be

more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any Stockholder of record seeking to have the Stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within 10 days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within 10 days of the date on which such a request is received, the record date for determining Stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of Stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining Stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.]

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

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

ARTICLE VII OTHER SECURITIES OF THE CORPORATION

All bonds, debentures and other corporate securities of the Corporation, other than stock certificates (covered in Section 6.01), may be signed by the Chairman of the Board of Directors, the President or Chief Executive Officer or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however*, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to

which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the Corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the Corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the Corporation.

ARTICLE VIII DIVIDENDS

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

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

ARTICLE IX FISCAL YEAR

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

ARTICLE X [INDEMNIFICATION]

Section 10.01. Indemnification of Directors, Officers, Employees And Other Agents. The Corporation shall indemnify its directors and executive officers to the fullest extent not prohibited by the Delaware General Corporation Law; provided, however, that the Corporation may limit the extent of such indemnification by individual contracts with its directors and executive officers; and, provided, further, that the Corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by

such person or any proceeding by such person against the Corporation or its directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the Corporation or (iii) such indemnification is provided by the Corporation, in its sole discretion, pursuant to the powers vested in the Corporation under the Delaware General Corporation Law.

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

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

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

(c) **Enforcement.** Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the Corporation and the director or executive officer. Any right to indemnification or advances granted by this Bylaw to a director or executive officer shall be enforceable by or on behalf of the person holding such right in the forum in which the proceeding is or was pending or, if such forum is not available or a determination is made that such forum is not convenient, in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting his claim. The Corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the Delaware General Corporation Law for the Corporation to indemnify the

claimant for the amount claimed. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its Stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or its Stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

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

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

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

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

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

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

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

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

including expenses of establishing a right to indemnification under this Bylaw or any applicable law.

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

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

Section 10.02. Corporation Not Liable. The Corporation shall not be liable for any loss or damage sustained by any current or former member of any national securities exchange registered with the Securities and Exchange Commission (the “Commission”) under Section 6 of the 1934 Act that is a direct or indirect subsidiary of the Corporation (each, an “Exchange”) growing out of the use or enjoyment by such current or former member of the facilities afforded by the Corporation or its subsidiaries, including, without limitation, an Exchange.]

[ARTICLE XI] NOTICES

Section [11.01]10.01. Notices.

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

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

(c) **Affidavit of Mailing.** An affidavit of mailing, executed by a duly authorized and competent employee of the Corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the Stockholder or Stockholders, or director or directors, to whom any such notice or notices was or were given, and

the time and method of giving the same, shall in the absence of fraud, be *prima facie* evidence of the facts therein contained.

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

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

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

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

(h) **Notice to Person with Undeliverable Address.** Whenever notice is required to be given, under any provision of [law]Delaware Law or the Certificate of Incorporation or these Bylaws[of the Corporation], to any Stockholder to whom (i) notice of two (2) consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two (2), payments (if sent by first class mail) of dividends or interest on securities during a twelve-month period, have been mailed[addressed] to such person at [his]such person's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the Corporation a written notice setting forth [his]such person's then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate under any provision of[the] Delaware[General Corporation] Law, the

certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to this paragraph (h).

ARTICLE [XII] XI **AMENDMENTS**

[Subject to paragraph (h) of Section 10.01 of the Bylaws, or as set forth in the Certificate of Incorporation of the Corporation, the Bylaws of the Corporation may be] These Bylaws or any of them, may be altered, amended or repealed, or new Bylaws [of the Corporation may be adopted, by action taken by the stockholders of the Corporation adopted] may be made, by the Stockholders [of seventy percent (70%) of the shares] entitled to vote thereon at any annual or special meeting thereof or by the Board of Directors. Unless a higher percentage is required by the Certificate of Incorporation as to any matter that is the subject of these Bylaws, all such amendments must be approved by the affirmative vote of the holders of not less than 66²/₃% of the voting power of all the then-outstanding shares of stock entitled to vote at a meeting of Stockholders, voting together as a single class, or by a majority of the Board of Directors. For so long as the Corporation shall control, directly or indirectly, [an] a national securities exchange (an “Exchange”) registered under Section 6 of the 1934 Act with the Securities and Exchange Commission (the “Commission”), before any amendment to or repeal of any provision of [the] these Bylaws [of the Corporation] shall be effective, those changes shall be submitted to the [Board of Directors] board of directors of each Exchange and if the same must be filed with or filed with and approved by the Commission before the changes may be effective, under Section 19 of the 1934 Act and the rules promulgated under the 1934 Act by the Commission or otherwise, then the proposed changes to [the] these Bylaws [of the Corporation] shall not be effective until filed with or filed with and approved by the Commission, as the case may be.

[ARTICLE XIII **LOANS TO OFFICERS**

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

ARTICLE [XIV] XII **SRO FUNCTIONS OF EXCHANGES**

Section [14.01]12.01. Non-Interference. For so long as the Corporation shall, directly or indirectly, control an Exchange [(for purposes of this Article XIV, each Exchange generically referred to as the “Exchange”)], the directors, officers, employees and agents of the Corporation

shall give due regard to the preservation of the independence of the self-regulatory function of the Exchange and to its obligations to investors and the general public and shall not take actions which would interfere with the effectuation of decisions by the Board of Directors of the Exchange relating to its regulatory functions (including disciplinary matters) or which would interfere with the Exchange's ability to carry out its responsibilities under the 1934 Act. No present or past [stockholder]Stockholder, employee, beneficiary, agent, customer, creditor, regulatory authority (or member thereof) or other person or entity shall have any rights against the Corporation or any director, officer, employee or agent of the Corporation under this Section [14.01]12.01.

Section [14.02]12.02. Confidentiality. All books and records of the Exchange reflecting confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) that shall come into the possession of the Corporation, and the information contained in those books and records shall not be made available to any persons (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the Corporation that have a reasonable need to know the contents thereof, and shall be retained in confidence by the Corporation and the members of the Board of Directors, officers, employees and agents of the Corporation, and shall not be used for any non-regulatory purposes. Notwithstanding the foregoing sentence, nothing in these Bylaws shall be interpreted so as to limit or impede the rights of the Commission or the Exchange to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission or the Exchange.

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

Section [14.04]12.04. Compliance with Securities Laws; Cooperation with the Securities and Exchange Commission. The Corporation shall comply with the federal securities laws and the rules and regulations promulgated thereunder and shall cooperate with the Commission and the Exchange pursuant to and to the extent of their respective regulatory authority. The officers, directors, employees and agents of the Corporation, by virtue of their acceptance of such position, shall comply with the federal securities laws and the rules and regulations promulgated thereunder and shall be deemed to agree to cooperate with the Commission and the Exchange in respect of the Commission's oversight responsibilities regarding the Exchange and the self-regulatory functions and responsibilities of the Exchange, and the Corporation shall take reasonable steps necessary to cause its officers, directors, employees and agents to so cooperate. No present or past [stockholder]Stockholder, employee, beneficiary, agent, customer, creditor, regulatory authority

(or member thereof) or other person or entity shall have any rights against the Corporation or any director, officer, employee or agent of the Corporation under this Section [14.04]12.04.

Section [14.05]12.05. Consent to Jurisdiction. The Corporation and its officers, directors, employees and agents by virtue of their acceptance of such positions, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the Commission, and the Exchange, for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to, the activities of the Exchange, and by virtue of their acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the United States federal courts, the Commission or the Exchange, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency. The Corporation and its officers, directors, employees and agents also agree that they will maintain an agent, in the United States, for the service of process of a claim arising out of, or relating to, the activities of the Exchange.

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