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Page 1 of * 101

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

File No.* SR - 2017 - * 01
Amendment No. (req. for Amendments *)

Filing by NYSE National, Inc.

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

Initial * ☑ Amendment * ☐ Withdrawal ☐

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

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

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

Description

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

Proposal to Amend the Certificate of Incorporation and Bylaws of Its Ultimate Parent Company Intercontinental Exchange 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 * Martha Last Name * Redding

Title * Associate General Counsel NYSE Group Inc

E-mail * Martha.Redding@theice.com

Telephone * (212) 656-2938 Fax (212) 656-8101

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.

Date 03/28/2017

By David De Gregorio

(Name *)

(Title *)

Senior Counsel

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.

David DeGregorio,

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Add Remove View

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

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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

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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

Add Remove View

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")[1] and Rule 19b-4 thereunder,[2] NYSE National, Inc. ("NYSE National" or the "Exchange") proposes to amend the certificate of incorporation and bylaws of its ultimate parent company, Intercontinental Exchange, Inc. ("ICE"), to (1) update and streamline references to ICE subsidiaries that either are or control national securities exchanges and delete references to other subsidiaries of ICE; (2) eliminate an obsolete cross-reference in ICE's certificate of incorporation to its bylaws and make a technical correction to a cross-reference within the bylaws; (3) make certain simplifying or clarifying changes in ICE's bylaws relating to the location of stockholder meetings, quorum requirements, and requirements applicable to persons entitled to nominate directors or make proposals at a meeting of ICE's stockholders; and (4) replace obsolete references in the bylaws to the Vice Chair with references to the lead independent director.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

(b) The Exchange does not believe that the proposed rule change will have any direct effect, or significant indirect effect, on the application of any other Exchange rule in effect at the time of this filing.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The ICE Board of Directors has approved the changes to the ICE certificate of incorporation and bylaws. Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of Directors of the Exchange. No further action by the Board of Directors or the membership of the Exchange is required. Therefore, the Exchange's internal procedures with respect to the proposed rule change are complete. Approval will be sought for the proposed changes to the ICE certificate of incorporation from the shareholders of ICE.

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

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

Martha Redding
Associate General Counsel
NYSE Group, Inc.
(212) 656-2938

David De Gregorio
Senior Counsel
NYSE Group, Inc.
(212) 656-4166

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

(a) Purpose

The Exchange proposes to amend ICE's Third Amended and Restated Certificate of Incorporation (the "ICE Certificate") and Seventh Amended and Restated Bylaws (the "ICE Bylaws") to (1) update and streamline references to ICE subsidiaries that either are or control national securities exchanges and delete references to other subsidiaries of ICE; (2) eliminate an obsolete cross-reference in the ICE Certificate to the ICE Bylaws and make a technical correction to a cross-reference within the ICE Bylaws; (3) make certain simplifying or clarifying changes in the ICE Bylaws relating to the location of stockholder meetings, quorum requirements, and requirements applicable to persons entitled to nominate directors or make proposals at a meeting of ICE's stockholders; and (4) replace obsolete references in the ICE Bylaws to the Vice Chair with references to the lead independent director.

ICE owns 100% of the equity interest in Intercontinental Exchange Holdings, Inc. ("ICE Holdings"), which in turn owns 100% of the equity interest in NYSE Holdings LLC ("NYSE Holdings"). NYSE Holdings owns 100% of the equity interest of NYSE Group, Inc. ("NYSE Group"), which in turn directly owns 100% of the equity interest of the Exchange and its national securities exchange affiliates, the New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), and NYSE MKT LLC ("NYSE MKT").[3]

ICE Certificate

The Exchange proposes to amend the limitations on voting and ownership in Article V of the ICE Certificate to update and streamline references to ICE subsidiaries that are national securities exchanges or that control national securities exchanges, as well as to delete references to other subsidiaries of ICE. In addition, it proposes to revise the amendment provision in Article X of the ICE Certificate to remove an obsolete reference.

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[3] ICE is a publicly traded company listed on the Exchange. The Exchange's affiliates NYSE, NYSE MKT, and NYSE Arca have each submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2017-13, SR-NYSEMKT-2017-17, and SR-NYSEArca-2017-29.

Limitations on Voting and Ownership

Article V of the ICE Certificate establishes voting limitations and ownership concentration limitations on owners of ICE common stock above certain thresholds for so long as ICE owns any U.S. Regulated Subsidiary. By reference to the ICE Bylaws, "U.S. Regulated Subsidiaries" is defined to mean the four national securities exchanges owned by ICE (the Exchange, NYSE, NYSE Arca, and NYSE MKT), NYSE Arca, LLC, and NYSE Arca Equities, Inc. ("NYSE Arca Equities"), or their successors, in each case to the extent that such entities continue to be controlled, directly or indirectly, by ICE.[4]

Article V of the ICE Certificate also authorizes ICE's Board of Directors to grant exceptions to the voting and ownership concentration limitations if the Board of Directors makes certain determinations. Those include determinations that such an exception would not impair the ability of ICE, the U.S. Regulated Subsidiaries, ICE Holdings, NYSE Holdings, and NYSE Group to perform their respective responsibilities under the Exchange Act and the rules and regulations thereunder, and that such an exception is otherwise in the best interests of ICE, its stockholders and the U.S. Regulated Subsidiaries.

NYSE National proposes to amend Article V to replace references to the U.S. Regulated Subsidiaries with references to the "Exchanges." An "Exchange" would be defined as a national securities exchange registered under Section 6 of the Exchange Act[5] that is directly or indirectly controlled by ICE.[6] Accordingly, Article V would no longer include references to NYSE Arca, LLC or NYSE Arca Equities. NYSE National believes omitting such entities is appropriate because the Exchange Act definition of "exchange" states that "exchange" "includes the market place and the market facilities maintained by such exchange."[7] In addition, NYSE Arca, as the national securities exchange, has the regulatory and self-regulatory responsibility for the NYSE Arca options and equities markets.[8]

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4 ICE Certificate, Article V, Section A.10; ICE Bylaws, Article III, Section 3.15. NYSE Arca, LLC, is a subsidiary of NYSE Group, and NYSE Arca Equities is a subsidiary of NYSE Arca.

5 15 U.S.C. 78f.

6 See proposed Fourth Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc. ("Proposed ICE Certificate"), Article V, Section A.3(a).

7 15 U.S.C. 78c(a)(1).

8 See NYSE Arca Equities Rule 3.4 ("The NYSE Arca, Inc. ('NYSE Arca Parent'), as a self-regulatory organization registered with the Securities and Exchange Commission pursuant to Section 6 of the Exchange Act, shall have ultimate

Moreover, the proposed change would align Article V with voting and ownership concentration limits in the certificates of incorporation of other publicly traded companies that own one or more national securities exchanges, which do not include references to subsidiaries other than national securities exchanges.[9]

As noted above, Article V of the ICE Certificate authorizes ICE's Board of Directors to grant exceptions to the voting and ownership concentration limitations if it makes certain determinations. Such determinations include that the proposed exception would not impair the ability of ICE Holdings, NYSE Holdings and NYSE Group to perform their respective responsibilities under the Exchange Act and the rules and regulations thereunder.[10] NYSE National proposes to amend Article V to replace the references to ICE Holdings, NYSE Holdings and NYSE Group with the defined term "Intermediate Holding Companies."

Finally, Article V includes lengthy provisions listing the different categories of members and permit holders of each of the NYSE, NYSE MKT and NYSE Arca.[11] NYSE National proposes to use a new defined term, "Member," to mean a person that is a "member" of an Exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act.[12] NYSE National believes that using "Member" in place of the list of categories of members and permit holders would simplify the provisions and avoid Exchange-by-Exchange descriptions without substantive change. Each of the categories listed—an ETP Holder of NYSE Arca Equities (as defined in the NYSE Arca Equities rules of NYSE Arca); an OTP Holder or OTP Firm of NYSE Arca (each as defined in the rules of NYSE Arca); a "member" or "member organization" of NYSE (as defined in the rules of the NYSE) and

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responsibility in the administration and enforcement of rules governing the operation of its subsidiary, NYSE Arca Equities, Inc. ('Corporation')"). See also NYSE Arca Equities Rule 14.1.

9 See Second Amended and Restated Certificate of Incorporation of CBOE Holdings, Inc. ("CBOE Certificate"), Article Sixth, Sections (a)(ii)(A) and (b)(ii)(A) (referencing "Regulated Securities Exchange Subsidiaries"); and Amended and Restated Certificate of Incorporation of Bats Global Markets, Inc. ("Bats Certificate"), Article Fifth, Section (b)(i) and (ii) (referencing "Exchanges").

10 ICE Certificate, Article V, Sections A.3(a)(i) and B.3(a)(i).

11 See ICE Certificate, Article V, Section A.3(c)(ii) and (d)(ii) and Section A.9.

12 15 U.S.C. 78c(a)(3)(A).

NYSE MKT[13]—is a "member" of an exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act.[14]

More specifically, the revised ICE Certificate would require, in the case of a person seeking approval to exercise voting rights in excess of 20% of the outstanding votes, that neither such person nor any of its related persons be a Member of an Exchange, instead of referring to the different categories of membership recognized by each Exchange.[15] Similarly, the conditions relating to a person seeking approval to exceed the ownership concentration limitation would be rephrased in the same way.[16] Use of "Member" would permit a simplification, without substantive change, of the portion of the definition of the term "Related Persons" relating to members and trading permit holders.[17]

NYSE National believes that the use of "Member" and the changes to remove the Exchange-by-Exchange lists of categories of Members would be appropriate because it would align the provision in the ICE Certificate with voting and ownership concentration limits in the certificates of incorporation of other publicly traded companies that own one or more national securities exchanges, which use a similar description of membership.[18]

To implement the proposed changes, NYSE National proposes the following amendments to Article V of the ICE Certificate:

- In Article V, Section A.1, the text "any U.S. Regulated Subsidiary (as defined below)" would be replaced with "a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the 'Exchange Act')."

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13 See id.

14 15 U.S.C. 78c(a)(3)(A).

15 See Proposed ICE Certificate, Article V, Section A.3(c)(ii) and (d)(ii).

16 See Proposed ICE Certificate, Article V, Section B.3(d).

17 See Proposed ICE Certificate, Article V, Section A.10. For the current definition of "Related Persons," see ICE Certificate, Article V, Section A.9.

18 See Bats Certificate, Article Fifth, Sections (a)(ii)(D) and (E) (defining an "Exchange Member" as "a 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… that is a direct or indirect subsidiary of" Bats Global Markets, Inc.); and CBOE Certificate, Article Sixth, Sections (a)(ii)(C)(y) and (b)(ii)(D) (defining a "Trading Permit Holder" "as defined in the Bylaws of any Regulated Securities Exchange Subsidiary as they may be amended from time to time").

- In Article V, Section A.2, the text "Securities Exchange Act of 1934, as amended (the 'Exchange Act')," would be replaced with "Exchange Act."

- In Article V, Section A.3(a), the text "U.S. Regulated Subsidiary" would be replaced with the text "national securities exchange registered under Section 6 of the Exchange Act that is directly or indirectly controlled by the Corporation (each such national securities exchange so controlled, an 'Exchange'), any entity controlled by the Corporation that is not itself an Exchange but that directly or indirectly controls an Exchange (each such controlling entity, an 'Intermediate Holding Company') or"; the text ", Intercontinental Exchange Holdings, Inc. ('ICE Holdings'), NYSE Holdings LLC ('NYSE Holdings') or NYSE Group, Inc. ('NYSE Group') (if and to the extent that NYSE Group continues to exist as a separate entity)" would be deleted; and "the U.S. Regulated Subsidiaries" would be replaced with "each Exchange."

- In Article V, Section A.3(c), "and" would be added between (i) and (ii); the text "NYSE Arca, Inc. ('NYSE Arca') or NYSE Arca Equities, Inc. ('NYSE Arca Equities') or any facility of NYSE Arca" would be replaced with "one or more Exchanges"; and the text "a Member (as defined below) of any Exchange" would replace the text from "an ETP Holder (as defined in the NYSE Arca Equities rules of NYSE Arca" through the end of the paragraph.

- In Article V, Section A.3(d), "and" would be added between (i) and (ii); the text "NYSE Arca or NYSE Arca Equities or any facility of NYSE Arca" would be replaced with "one or more Exchanges"; and the text "a Member of any Exchange" would replace the text from "an ETP Holder" through the end of the paragraph.

- The definition of "Member" would be added as new Article V, Section A.8, defined to "mean a Person that is a 'member' of an Exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act." Article V, Sections A.8 and A.9 would be renumbered as Sections A.9 and A.10, respectively.

- In Article V, Section A.9 (which would be renumbered A.10), the definition of the term "Related Person" would be simplified to eliminate the Exchange-by-Exchange definition, as follows:

    - In Section A.10(d), the text "'member organization' (as defined in the rules of New York Stock Exchange, as such rules may be in effect from time to time), any 'member' (as defined in the rules of New York Stock Exchange, as such rules may be in effect from time to time)" would be replaced with "Member, any Person";

- In Section A.10(e), the text "an OTP Firm, any OTP Holder that is associated with such Person" would be replaced with "natural person and is a Member, any broker or dealer that is also a Member with which such Person is associated";

- "and" would be added between Sections A.10(g) and (h); and

- Sections A.10(i) through (l) would be deleted.

- The definition of "U.S. Regulated Subsidiary" and "U.S. Regulated Subsidiaries" in Article V, Section A.10 would be deleted.

- In Article V, Section B.1, the term "Exchange" would replace the term "U.S. Regulated Subsidiary."

- In Article V, Section B.3(a), the text "Exchange, Intermediate Holding Company or" would replace the text "U.S. Regulated Subsidiaries,"; the text "ICE Holdings, NYSE Holdings or NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity)" would be deleted; and "each Exchange" would replace "the U.S. Regulated Subsidiaries."

- In Article V, Section B.3(d), the text "NYSE Arca or NYSE Arca Equities or any facility of NYSE Arca" would be replaced with "any Exchange"; and the text "an ETP Holder" through the end of the paragraph would be replaced with "a Member of any Exchange."

- The word "and" would be added between Article V, Section B.3(c) and (d); and Article V, Section B.3(e) and (f) would be deleted.

Amendments

In addition to the amendments to Article V, NYSE National proposes to amend Article X (Amendments) of the ICE Certificate.

Clause (A) of Article X requires the vote of 80% of all outstanding shares entitled to vote in order to reduce the voting requirement set forth in Section 11.2(b) of the ICE Bylaws. However, Section 11.2(b) of the ICE Bylaws was deleted in 2015 after the sale by ICE of the Euronext business.[19] Accordingly, NYSE National proposes to delete the requirement.

Clause (B) of Article X currently requires that, so long as ICE controls any of the U.S. Regulated Subsidiaries, any proposed amendment or repeal of any provision

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[19] See Securities Exchange Act Release No. 74928 (May 12, 2015), 80 FR 28331 (May 18, 2015) (SR-NYSE-2015-18).

of the ICE Certificate must be submitted to the boards of the NYSE, NYSE Market, NYSE Regulation, NYSE Arca, NYSE Arca Equities, and NYSE MKT for a determination as to whether such amendment or repeal must be filed with the Commission under Section 19 of the Exchange Act.[20] NYSE National proposes that, in Clause (B) of Article X, the text "of the U.S. Regulated Subsidiaries" would be replaced with "Exchange"; and "New York Stock Exchange, NYSE Market, NYSE Regulation, Inc., NYSE Arca, NYSE Arca Equities and NYSE MKT" would be replaced with "each Exchange." NYSE National believes that the use of "Exchange" is appropriate for the reasons discussed above.

Additional Changes

The ICE Certificate includes references to NYSE Market (DE), Inc., defined as "NYSE Market," and NYSE Regulation, Inc. ("NYSE Regulation"). NYSE Market and NYSE Regulation were previously parties to a Delegation Agreement whereby the NYSE delegated certain regulatory functions to NYSE Regulation and certain market functions to NYSE Market. The Delegation Agreement was terminated when the NYSE re-integrated its regulatory and market functions. As a result, the two entities ceased being regulated subsidiaries.[21] NYSE Regulation was subsequently merged out of existence. The proposed changes described above would delete all references to NYSE Market and NYSE Regulation from the ICE Certificate.[22]

Finally, conforming changes would be made to the title, recitals and signature line of the ICE Certificate.

ICE Bylaws

The Exchange proposes to make certain amendments to the ICE Bylaws to correspond to the proposed amendments to the ICE Certificate. In addition, the Exchange proposes to amend the ICE Bylaws to make certain changes relating to the location of stockholder meetings, quorum requirements, and requirements applicable to persons entitled to nominate directors or make proposals at a meeting of ICE's stockholders. Finally, it proposes to replace obsolete references to the Vice Chair with references to the lead independent director.

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20 15 U.S.C. 78s.

21 See Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015 (SR-NYSE-2015-27).

22 See ICE Certificate Article V, Sections A.3(c)(iii) and (d)(iii) and Section B.3(e), and Article X, clause (B).

Changes Corresponding to the Proposed Amendments to the ICE Certificate

The Exchange proposes to make changes to the ICE Bylaws corresponding to the proposed amendments to the ICE Certificate, as described above.

First, NYSE National proposes to use "Exchanges" in place of "U.S. Regulated Subsidiaries," as in the proposed changes to the ICE Certificate. Accordingly, it proposes to make the following changes:

- The definition of "U.S. Regulated Subsidiary" in Section 3.15 would be deleted and replaced with a definition of "Exchange" that is the same as the definition in the proposed amended ICE Certificate.

- In Section 3.14(a)(2), the text "U.S. Regulated Subsidiaries, NYSE Group, Inc. ("NYSE Group") (if and to the extent that NYSE Group continues to exist as a separate entity), NYSE Holdings LLC ("NYSE Holdings"), Intercontinental Exchange Holdings, Inc. ('ICE Holdings')" would be replaced with "Exchanges, any entity controlled by the Corporation that is not itself an Exchange but that directly or indirectly controls an Exchange (each such controlling entity, an 'Intermediate Holding Company')"; and the text "U.S. Regulated Subsidiaries, NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity), NYSE Holdings, ICE Holdings" would be replaced with "Exchanges, Intermediate Holding Companies."

- In Section 3.14(b)(3), the text "the U.S. Regulated Subsidiaries" and "their" would be replaced with "each Exchange" and "its," respectively.

- In Article VII, "the U.S. Regulated Subsidiaries" would be replaced with "any Exchange."

- In Sections 3.14(a)(1), 8.1, 8.2, 8.3(b), 8.4, 9.1, 9.2, 9.3 and 11.3, the text "U.S. Regulated Subsidiary" and "of the U.S. Regulated Subsidiaries" would be replaced with "Exchange" and the text "U.S. Regulated Subsidiaries" would be replaced with "Exchanges."

- In Sections 8.2(b), 8.4, 9.1, and 9.3, the text "the U.S. Regulated Subsidiaries" and "U.S. Regulated Subsidiaries" would be replaced with "an Exchange."

- In Section 9.3, the text "the U.S. Regulated Subsidiaries" would be replaced with "each Exchange"; "U.S. Regulated Subsidiary's" would be replaced with "Exchange's"; and "their respective" would be replaced with "its."

- In Section 8.1, the text "New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Arca Equities, Inc., NYSE MKT LLC and NYSE National,

Inc. or their successors" would be replaced with "any Exchange." Similarly, in Section 11.3, the text "New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Arca Equities, Inc., NYSE MKT LLC and NYSE National, Inc. or the boards of directors of their successors" would be replaced with "each Exchange."

- In Sections 8.1 and 8.2, the defined term "U.S. Subsidiaries' Confidential Information" would be replaced with "Exchange Confidential Information," with the same meaning except limited to Exchanges.

- In Section 8.3(b), the text "U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight" would be replaced with "Exchange." The proposed change would remove the current provision that allows any U.S. Regulated Subsidiary to inspect the books and records of another U.S. Regulated Subsidiary over which the first has regulatory authority or oversight. As a result, the ICE Bylaws would no longer provide that NYSE Arca may inspect the books and records of NYSE Arca Equities or NYSE Arca, LLC. However, the proposed change would have no substantive effect, because NYSE Arca would retain its authority pursuant to NYSE Arca Equities Rules 14.1 and 14.3.[23] The national securities exchanges NYSE, NYSE MKT, NYSE Arca and NYSE National do not have regulatory authority or oversight over each other.

Article XII of the ICE Bylaws was added in connection with the acquisition of NYSE National, previously National Stock Exchange, Inc., in 2016.[24] The Exchange proposes to delete Article XII of the ICE Bylaws in its entirety. Because the substance of Article XII would be addressed by the proposed

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23 NYSE Arca Equities Rule 14.1(b) provides, among other things, that the books and records of NYSE Arca Equities are subject to the oversight of the NYSE Arca pursuant to the Act, and that the books and records of NYSE Arca Equities shall be subject at all times to inspection and copying by NYSE Arca. NYSE Arca Equities Rule 14.3(a) provides, among other things, that the books and records of NYSE Arca, LLC are deemed to be the books and records of NYSE Arca and NYSE Arca Equities for purposes of and subject to oversight pursuant to the Exchange Act. See also CBOE Holdings, Inc. Certificate of Incorporation, Article Fifteenth (providing that the books and records of a Regulated Securities Exchange Subsidiary shall be subject at all times to inspection by such subsidiary).

24 See Securities Exchange Act Releases No. 79902 (January 30, 2017) 82 FR 9258 (February 3, 2017) (SR-NSX-2016-16); and 79901 (January 30, 2017), 82 FR 9251 (February 3, 2017) (SR-NYSE-2016-90, SR-NYSEArca2016-167, SR-NYSEMKT-2016-122).

amendments to the ICE Certificate, Article XII would no longer be necessary. Specifically,

- the substance of Section 12.1(a)(1) of the ICE Bylaws would be addressed in revised Article V, Section A.3.(c)(ii) of the ICE Certificate;

- the substance of Section 12.1(a)(2) of the ICE Bylaws would be addressed in revised Article V, Section A.3.(d)(ii) of the ICE Certificate;

- the substance of Section 12.1(b) of the ICE Bylaws would be addressed in revised Article V, Section B.3.(d) of the ICE Certificate; and

- the substance of Section 12.2 of the ICE Bylaws would be addressed in revised Article X(B) of the ICE Certificate.

Meetings of Stockholders

In addition to the proposed changes corresponding to the proposed amendments to the ICE Certificate, the Exchange proposes to amend several sections of Article II (Meetings of Stockholders).

The Exchange proposes to simplify Section 2.1 of the ICE Bylaws, which relates to the location of stockholder meetings. The revised provision would provide that, as is true now, the location, if any, as well as the decision to hold a stockholder meeting solely by remote communication, would be determined by the Board of Directors and stated in the notice of meeting. The proposed changes are as follow:

- The first sentence would be revised to remove the text “for the election of directors”, “in the City of Atlanta, State of Georgia,” and “as may be fixed from time to time by the Board of Directors, or at such other place.” The text “as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting.” would be deleted and “or may” would be added in its place. The second sentence would be deleted in its entirety.

- In the third sentence, the text “The Board of Directors may, in its sole discretion, determine that any meeting of stockholders shall” and “as authorized by law” would be deleted. The word “solely” would be added after “instead be held” and the text “, in each case as may be designated by the Board of Directors from time to time and stated in the notice of meeting” added to the end of the sentence.

Section 2.7 relates to the quorum for stockholder meetings. The Exchange proposes to conform the quorum requirements in the ICE Bylaws to those in the ICE Certificate. To do so, it proposes to delete the first three sentences of Section 2.7 and replace it with the sentence “Section B of Article IX of the certificate of

incorporation sets forth the requirements for establishing a quorum at meetings of stockholders of the Corporation."

Section 2.13(b) sets forth the advance notice requirements for stockholder proposals. The Exchange proposes to make the following changes to Section 2.13(b).

- In addition to stockholders of record, the ICE Bylaws permit certain beneficial holders (defined as "Nominee Holders") to nominate directors or bring other matters for consideration before the Board of Directors meeting. The Exchange proposes to make simplifying wording changes in clause (iii) of the first sentence of Section 2.13(b), as follows:
    - In clause (x), the text "stockholder that holds of record stock of the Corporation" would be amended so that it read "stockholder of record."
    - In clause (y), the following text would be deleted: "holds such"; "'street name'"; "of such stock and can demonstrate to"; "of, and such Nominee Holder's"; and the comma before "such stock on such matter." The revised clause would read as follows: "is a person (a 'Nominee Holder') that beneficially owns stock of the Corporation through a nominee or other holder of record and provides the Corporation with proof of such beneficial ownership, including the entitlement to vote such stock on such matter."
    - In the current third and fourth sentences of Section 2.13(b), the term "indirect ownership" would be changed to "beneficial ownership" for consistency.
- The Exchange proposes to add a new defined term, "Proponent," to capture both stockholders and Nominee Holders. Accordingly:
    - A new sentence would be added to Section 2.13(b)(iii) between the first and second sentences, stating that "Stockholders and Nominee Holders who bring matters before the annual meeting pursuant to Section 2.13(b)(iii) are hereinafter referred to as 'Proponents'."
    - Throughout Section 2.13(b), "stockholder," "stockholders" and "stockholder's" would be replaced with "Proponent," "Proponents" and "Proponent's," respectively.
    - Throughout Section 2.13(b), "Proponent" would replace the phrases "stockholder or beneficial owner," "stockholder, by such beneficial owner," "stockholder, such beneficial owner," "stockholder and by such beneficial owner, if any," and "stockholder or any beneficial owner on whose behalf a nomination or nominations are being made or business or matter is

being proposed." The word "Proponent's" would replace the phrase "stockholder's or such beneficial owner's."

- Presently, the requirement for disclosing share ownership appears three times: in the current third sentence, which sets forth the provisions for stockholder notices relating to director nominations, the current fourth sentence, which sets forth the provisions for stockholder notices relating to other matters, and the current fifth sentence, which sets forth the information that a shareholder must include in any stockholder notice. Rather than keep the duplication, Exchange proposes to remove the requirement from the third and fourth sentences and retain the requirement in clause (i) of the fifth sentence. Accordingly, the text ", the number and class of all shares of each class of stock of the Corporation owned of record and beneficially by such stockholder" would be deleted from the current third and fourth sentences.

- In the current fourth sentence, the requirement that a stockholder notice include information regarding any material interest in the matter proposed "(other than as a stockholder)" would be clarified by adding "or beneficial owner of stock" after "stockholder" within the parenthetical, because a Proponent who is a nominee holder is not a stockholder.

- In clause (i) of the current fifth sentence, the text "such Proponent or" would be added before "any Associated Person."

- Clause (i) of the current sixth sentence sets forth the meaning of "Associated Person." The Exchange proposes to narrow the text to eliminate all beneficial owners of stock held of record or beneficially by the Proponent from the definition, and instead to cover only those beneficial owners on whose behalf the stockholder notice is being delivered. Accordingly, the Exchange proposes to replace the text "stockholder or any beneficial owner on whose behalf a nomination or nominations are being made or business or matter is being proposed," with "Proponent" and, in clause (i)(x), replace the text "owned of record or beneficially by such stockholder or by such beneficial owner" with "on whose behalf such Proponent is delivering a Stockholder Notice."

Additional Proposed Changes

In addition to the changes proposed above, the Exchange proposes to amend several additional sections of the ICE Bylaws.

The ICE Bylaws refer to a "Vice Chairman of the Board." However, the Board of Directors of ICE has not had a Vice Chairman since the sale of the Euronext business in 2014. Accordingly, in Sections 2.9, 3.6(b) and 3.8, the Exchange proposes to replace "Vice Chairman of the Board" with "lead independent director." As a result, the lead independent director would preside over meetings

of stockholders in the absence of the Chairman of the Board (Section 2.9), have the authority to call a special meeting of the Board of Directors (Section 3.6(b)) and would preside over meetings of the Board of Directors in the absence of the Chairman of the Board (Section 3.8).

In Section 3.12, relating to the conduct of meetings of committees of the Board of Directors of ICE, a reference to "Article II of these Bylaws" would be corrected to read "this Article III of these Bylaws."

Section 3.14 sets forth considerations directors must take into account in discharging their responsibilities as members of the board of directors. The Exchange proposes to amend the last sentence of Section 3.14(c), which limits claims against directors, officers and employees of ICE and against ICE. The revised text would be expanded in scope to apply to any "past or present stockholder, employee, beneficiary, agent, customer, creditor, community or regulatory authority or member thereof or other person or entity," and to protect agents of ICE as well as directors, officers and employees. These changes would conform the provision to the analogous statement in the governing documents of other holding companies of national securities exchanges, which are substantially similar.[25]

Finally, conforming changes would be made to the title and date of the ICE Bylaws.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[26] in general, and with Section 6(b)(1)[27] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the Exchange believes that the proposed amendments to replace references to the U.S. Regulated Subsidiaries and to the NYSE, NYSE MKT,

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25 See Amended and Restated Bylaws of Bats Global Markets, Inc., Article XII, Section 12.01; Amended and Restated Limited Liability Company Agreement of BOX Holdings Group LLC, Article 4, Section 4.12; Bylaws of IEX Group, Inc., Section 34; and Amended and Restated Bylaws of Miami International Holdings, Inc., Article VII, Section 1.

26 15 U.S.C. 78f(b).

27 15 U.S.C. 78f(b)(1).

NYSE Arca, NYSE Arca Equities and NYSE Arca, LLC with references to an "Exchange" or the "Exchanges," as appropriate, would contribute to the orderly operation of the Exchange by adding clarity and transparency to the Exchange's rules by eliminating references to entities that are not national securities exchanges in the ICE Certificate and ICE Bylaws. The Exchange Act definition of "exchange" states that "exchange" "includes the market place and the market facilities maintained by such exchange."[28] Accordingly, all market places and market facilities maintained by an Exchange would fall within the definition of Exchange and therefore would fall within the scope of the ICE Certificate and ICE Bylaws. The Exchange notes that the proposed change would align Article V of the ICE Certificate with voting and ownership concentration limits in the certificates of incorporation of other publicly traded companies that own one or more national securities exchanges, which do not include references to subsidiaries other than national securities exchanges.[29] NYSE Arca, as the national securities exchange, would retain the regulatory and self-regulatory responsibility for the NYSE Arca options and equities markets.

Similarly, as a result of the proposed use of "Exchanges" instead of "U.S. Regulated Subsidiaries," ICE Bylaws Section 8.3 would no longer provide that any U.S. Regulated Subsidiary is authorized to inspect the books and records of another U.S. Regulated Subsidiary over which the first has regulatory authority or oversight, adding further clarity and transparency to the Exchange's rules.[30]

Further, the proposed use of the defined term "Member" in place of the lists of categories of members and permit holders in Article V of the ICE Certificate would simplify the provisions without substantive change, thereby further adding clarity and transparency to the Exchange's rules and aligning the provision in the ICE Certificate with the voting and ownership concentration limits in the certificates of incorporation of other publicly traded companies that own one or more national securities exchanges, which use a similar description of membership.[31] Similarly, the proposed use of the defined term "Intermediate Holding Company" in place of the list of intermediate holding companies in

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28 15 U.S.C. 78c(a)(1).

29 See note 9, supra.

30 As noted above, the ICE Bylaws would no longer provide that NYSE Arca may inspect the books and records of NYSE Arca Equities or NYSE Arca, LLC. However, the proposed change would have no substantive effect, because NYSE Arca would retain its authority pursuant to NYSE Arca Equities Rules 14.1 and 14.3. NYSE, NYSE MKT, NYSE Arca and NYSE National do not have regulatory authority or oversight over each other, and so the proposed change would have no effect on those entities' rights.

31 See note 18, supra.

Article V of the ICE Certificate and Section 3.14 of the ICE Bylaws would simplify the provisions without substantive change, thereby further adding clarity and transparency to the Exchange's rules.

For similar reasons, the Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act[32] because the proposed rule change would be consistent with and would create a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the proposed amendments (1) replacing references to the U.S. Regulated Subsidiaries and to the NYSE, NYSE MKT, NYSE Arca, NYSE Arca Equities and NYSE Arca, LLC with references to an "Exchange" or the "Exchanges," as appropriate; (2) using "Member" in place of the lists of categories of members and permit holders in Article V of the ICE Certificate; (3) using "Intermediate Holding Company" in place of the list of intermediate holding companies in Article V of the ICE Certificate and Section 3.14 of the ICE Bylaws; and (4) removing the ability of a U.S. Regulated Subsidiary to inspect the books and records of other U.S. Regulated Subsidiaries in ICE Bylaws Section 8.3 would remove impediments to and perfect the mechanism of a free and open market by simplifying and streamlining the Exchange's rules, thereby ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the ICE governing documents. The Exchange believes that the proposed amendments to the last sentence of Section 3.14(c) of the ICE Bylaws, which limits claims against directors, officers and employees of ICE and against ICE, would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed changes would conform the provision to the analogous statement in the governing documents of other holding companies of national securities exchanges, which are substantially similar.[33]

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32 15 U.S.C. 78f(b)(5).

33 See Amended and Restated Bylaws of Bats Global Markets, Inc., Article XII, Section 12.01; Amended and Restated Limited Liability Company Agreement of BOX Holdings Group LLC, Article 4, Section 4.12; Bylaws of IEX Group, Inc., Section 34; and Amended and Restated Bylaws of Miami International Holdings, Inc., Article VII, Section 1.

The Exchange believes that the proposed amendments to remove references to NYSE Market, NYSE Regulation and the Vice Chairman and to remove the cross reference to Section 11.2(b) of the ICE Bylaws from Article X of the ICE Certificate would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the changes would eliminate obsolete references, thereby reducing potential confusion. Market participants and investors would not be harmed and in fact could benefit from the increased clarity and transparency in the ICE Certificate and ICE Bylaws. Such increased clarity and transparency would ensure that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the ICE governing documents.

The Exchange believes that the proposed amendments to Article II of the ICE Bylaws, regarding meetings of stockholders, would also remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the changes would increase the clarity of the relevant sections of Article II, thereby reducing potential confusion. Market participants and investors would not be harmed and in fact could benefit from the increased clarity and transparency regarding the location of stockholder meetings and advance notice requirements, and the conformance of the quorum requirements with those in the ICE Certificate, and so would more easily navigate and understand the ICE Bylaws.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue but rather update and streamline the ICE Certificate and Bylaws, delete obsolete or unnecessary references and make other simplifying or clarifying changes to the ICE governing documents. The Exchange believes that the proposed rule change will serve to promote clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The proposed rule change would result in no concentration or other changes of ownership of exchanges.

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

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

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2)[34] of the Exchange Act.

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

Not applicable.

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

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

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Exchange 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 Proposed Rule Change for publication in the Federal Register

Exhibit 5. Text of Proposed Rule Change

A. Text of Proposed Fourth Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc.

B. Text of proposed Eighth Amended and Restated Bylaws of Intercontinental Exchange, Inc.

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[34] 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSENAT-2017-01)

[Date]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Rule Change Amending the Certificate of Incorporation and Bylaws of Its Ultimate Parent Company, Intercontinental Exchange, Inc.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on March 28, 2017, NYSE National, Inc. (the "Exchange" or "NYSE NAT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 proposes to amend the certificate of incorporation and bylaws of its ultimate parent company, Intercontinental Exchange, Inc. ("ICE"), to (1) update and streamline references to ICE subsidiaries that either are or control national securities exchanges and delete references to other subsidiaries of ICE; (2) eliminate an obsolete cross-reference in ICE's certificate of incorporation to its bylaws and make a technical correction to a cross-reference within the bylaws; (3) make certain simplifying or

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1 15 U.S.C.78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

clarifying changes in ICE's bylaws relating to the location of stockholder meetings, quorum requirements, and requirements applicable to persons entitled to nominate directors or make proposals at a meeting of ICE's stockholders; and (4) replace obsolete references in the bylaws to the Vice Chair with references to the lead independent director. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization 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 those 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend ICE's Third Amended and Restated Certificate of Incorporation (the "ICE Certificate") and Seventh Amended and Restated Bylaws (the "ICE Bylaws") to (1) update and streamline references to ICE subsidiaries that either are or control national securities exchanges and delete references to other subsidiaries of ICE; (2) eliminate an obsolete cross-reference in the ICE Certificate to the ICE Bylaws and make a technical correction to a cross-reference within the ICE Bylaws; (3) make certain simplifying or clarifying changes in the ICE Bylaws relating to the location of

stockholder meetings, quorum requirements, and requirements applicable to persons entitled to nominate directors or make proposals at a meeting of ICE's stockholders; and (4) replace obsolete references in the ICE Bylaws to the Vice Chair with references to the lead independent director.

ICE owns 100% of the equity interest in Intercontinental Exchange Holdings, Inc. ("ICE Holdings"), which in turn owns 100% of the equity interest in NYSE Holdings LLC ("NYSE Holdings"). NYSE Holdings owns 100% of the equity interest of NYSE Group, Inc. ("NYSE Group"), which in turn directly owns 100% of the equity interest of the Exchange and its national securities exchange affiliates, the New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), and NYSE MKT LLC ("NYSE MKT").[4]

ICE Certificate

The Exchange proposes to amend the limitations on voting and ownership in Article V of the ICE Certificate to update and streamline references to ICE subsidiaries that are national securities exchanges or that control national securities exchanges, as well as to delete references to other subsidiaries of ICE. In addition, it proposes to revise the amendment provision in Article X of the ICE Certificate to remove an obsolete reference.

Limitations on Voting and Ownership

Article V of the ICE Certificate establishes voting limitations and ownership concentration limitations on owners of ICE common stock above certain thresholds for so

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[4] ICE is a publicly traded company listed on the Exchange. The Exchange's affiliates NYSE, NYSE MKT, and NYSE Arca have each submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2017-13, SR-NYSEMKT-2017-17, and SR-NYSEArca-2017-29.

long as ICE owns any U.S. Regulated Subsidiary. By reference to the ICE Bylaws, "U.S. Regulated Subsidiaries" is defined to mean the four national securities exchanges owned by ICE (the Exchange, NYSE, NYSE Arca, and NYSE MKT), NYSE Arca, LLC, and NYSE Arca Equities, Inc. ("NYSE Arca Equities"), or their successors, in each case to the extent that such entities continue to be controlled, directly or indirectly, by ICE.[5]

Article V of the ICE Certificate also authorizes ICE's Board of Directors to grant exceptions to the voting and ownership concentration limitations if the Board of Directors makes certain determinations. Those include determinations that such an exception would not impair the ability of ICE, the U.S. Regulated Subsidiaries, ICE Holdings, NYSE Holdings, and NYSE Group to perform their respective responsibilities under the Exchange Act and the rules and regulations thereunder, and that such an exception is otherwise in the best interests of ICE, its stockholders and the U.S. Regulated Subsidiaries.

NYSE National proposes to amend Article V to replace references to the U.S. Regulated Subsidiaries with references to the "Exchanges." An "Exchange" would be defined as a national securities exchange registered under Section 6 of the Exchange Act[6] that is directly or indirectly controlled by ICE.[7] Accordingly, Article V would no longer include references to NYSE Arca, LLC or NYSE Arca Equities. NYSE National believes

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5 ICE Certificate, Article V, Section A.10; ICE Bylaws, Article III, Section 3.15. NYSE Arca, LLC, is a subsidiary of NYSE Group, and NYSE Arca Equities is a subsidiary of NYSE Arca.

6 15 U.S.C. 78f.

7 See proposed Fourth Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc. ("Proposed ICE Certificate"), Article V, Section A.3(a).

omitting such entities is appropriate because the Exchange Act definition of "exchange" states that "exchange" "includes the market place and the market facilities maintained by such exchange."[8] In addition, NYSE Arca, as the national securities exchange, has the regulatory and self-regulatory responsibility for the NYSE Arca options and equities markets.[9] Moreover, the proposed change would align Article V with voting and ownership concentration limits in the certificates of incorporation of other publicly traded companies that own one or more national securities exchanges, which do not include references to subsidiaries other than national securities exchanges.[10]

As noted above, Article V of the ICE Certificate authorizes ICE's Board of Directors to grant exceptions to the voting and ownership concentration limitations if it makes certain determinations. Such determinations include that the proposed exception would not impair the ability of ICE Holdings, NYSE Holdings and NYSE Group to perform their respective responsibilities under the Exchange Act and the rules and regulations thereunder.[11] NYSE National proposes to amend Article V to replace the

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8 15 U.S.C. 78c(a)(1).

9 See NYSE Arca Equities Rule 3.4 ("The NYSE Arca, Inc. ('NYSE Arca Parent'), as a self-regulatory organization registered with the Securities and Exchange Commission pursuant to Section 6 of the Exchange Act, shall have ultimate responsibility in the administration and enforcement of rules governing the operation of its subsidiary, NYSE Arca Equities, Inc. ('Corporation')"). See also NYSE Arca Equities Rule 14.1.

10 See Second Amended and Restated Certificate of Incorporation of CBOE Holdings, Inc. ("CBOE Certificate"), Article Sixth, Sections (a)(ii)(A) and (b)(ii)(A) (referencing "Regulated Securities Exchange Subsidiaries"); and Amended and Restated Certificate of Incorporation of Bats Global Markets, Inc. ("Bats Certificate"), Article Fifth, Section (b)(i) and (ii) (referencing "Exchanges").

11 ICE Certificate, Article V, Sections A.3(a)(i) and B.3(a)(i).

references to ICE Holdings, NYSE Holdings and NYSE Group with the defined term "Intermediate Holding Companies."

Finally, Article V includes lengthy provisions listing the different categories of members and permit holders of each of the NYSE, NYSE MKT and NYSE Arca.[12] NYSE National proposes to use a new defined term, "Member," to mean a person that is a "member" of an Exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act.[13] NYSE National believes that using "Member" in place of the list of categories of members and permit holders would simplify the provisions and avoid Exchange-by-Exchange descriptions without substantive change. Each of the categories listed—an ETP Holder of NYSE Arca Equities (as defined in the NYSE Arca Equities rules of NYSE Arca); an OTP Holder or OTP Firm of NYSE Arca (each as defined in the rules of NYSE Arca); a "member" or "member organization" of NYSE (as defined in the rules of the NYSE) and NYSE MKT[14]—is a "member" of an exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act.[15]

More specifically, the revised ICE Certificate would require, in the case of a person seeking approval to exercise voting rights in excess of 20% of the outstanding votes, that neither such person nor any of its related persons be a Member of an Exchange, instead of referring to the different categories of membership recognized by each Exchange.[16] Similarly, the conditions relating to a person seeking approval to

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12 See ICE Certificate, Article V, Section A.3(c)(ii) and (d)(ii) and Section A.9.

13 15 U.S.C. 78c(a)(3)(A).

14 See id.

15 15 U.S.C. 78c(a)(3)(A).

16 See Proposed ICE Certificate, Article V, Section A.3(c)(ii) and (d)(ii).

exceed the ownership concentration limitation would be rephrased in the same way.[17] Use of "Member" would permit a simplification, without substantive change, of the portion of the definition of the term "Related Persons" relating to members and trading permit holders.[18]

NYSE National believes that the use of "Member" and the changes to remove the Exchange-by-Exchange lists of categories of Members would be appropriate because it would align the provision in the ICE Certificate with voting and ownership concentration limits in the certificates of incorporation of other publicly traded companies that own one or more national securities exchanges, which use a similar description of membership.[19]

To implement the proposed changes, NYSE National proposes the following amendments to Article V of the ICE Certificate:

- In Article V, Section A.1, the text "any U.S. Regulated Subsidiary (as defined below)" would be replaced with "a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the 'Exchange Act')."
- In Article V, Section A.2, the text "Securities Exchange Act of 1934, as

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17 See Proposed ICE Certificate, Article V, Section B.3(d).

18 See Proposed ICE Certificate, Article V, Section A.10. For the current definition of "Related Persons," see ICE Certificate, Article V, Section A.9.

19 See Bats Certificate, Article Fifth, Sections (a)(ii)(D) and (E) (defining an "Exchange Member" as "a 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… that is a direct or indirect subsidiary of" Bats Global Markets, Inc.); and CBOE Certificate, Article Sixth, Sections (a)(ii)(C)(y) and (b)(ii)(D) (defining a "Trading Permit Holder" "as defined in the Bylaws of any Regulated Securities Exchange Subsidiary as they may be amended from time to time").

amended (the 'Exchange Act')," would be replaced with "Exchange Act."

- In Article V, Section A.3(a), the text "U.S. Regulated Subsidiary" would be replaced with the text "national securities exchange registered under Section 6 of the Exchange Act that is directly or indirectly controlled by the Corporation (each such national securities exchange so controlled, an 'Exchange'), any entity controlled by the Corporation that is not itself an Exchange but that directly or indirectly controls an Exchange (each such controlling entity, an 'Intermediate Holding Company') or"; the text ", Intercontinental Exchange Holdings, Inc. ('ICE Holdings'), NYSE Holdings LLC ('NYSE Holdings') or NYSE Group, Inc. ('NYSE Group') (if and to the extent that NYSE Group continues to exist as a separate entity)" would be deleted; and "the U.S. Regulated Subsidiaries" would be replaced with "each Exchange."
- In Article V, Section A.3(c), "and" would be added between (i) and (ii); the text "NYSE Arca, Inc. ('NYSE Arca') or NYSE Arca Equities, Inc. ('NYSE Arca Equities') or any facility of NYSE Arca" would be replaced with "one or more Exchanges"; and the text "a Member (as defined below) of any Exchange" would replace the text from "an ETP Holder (as defined in the NYSE Arca Equities rules of NYSE Arca" through the end of the paragraph.
- In Article V, Section A.3(d), "and" would be added between (i) and (ii); the text "NYSE Arca or NYSE Arca Equities or any facility of NYSE Arca" would be replaced with "one or more Exchanges"; and the text "a

Member of any Exchange" would replace the text from "an ETP Holder" through the end of the paragraph.

- The definition of "Member" would be added as new Article V, Section A.8, defined to "mean a Person that is a 'member' of an Exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act." Article V, Sections A.8 and A.9 would be renumbered as Sections A.9 and A.10, respectively.
- In Article V, Section A.9 (which would be renumbered A.10), the definition of the term "Related Person" would be simplified to eliminate the Exchange-by-Exchange definition, as follows:
  - In Section A.10(d), the text "'member organization' (as defined in the rules of New York Stock Exchange, as such rules may be in effect from time to time), any 'member' (as defined in the rules of New York Stock Exchange, as such rules may be in effect from time to time)" would be replaced with "Member, any Person";
  - In Section A.10(e), the text "an OTP Firm, any OTP Holder that is associated with such Person" would be replaced with "natural person and is a Member, any broker or dealer that is also a Member with which such Person is associated";
  - "and" would be added between Sections A.10(g) and (h); and
  - Sections A.10(i) through (l) would be deleted.
- The definition of "U.S. Regulated Subsidiary" and "U.S. Regulated Subsidiaries" in Article V, Section A.10 would be deleted.

- In Article V, Section B.1, the term "Exchange" would replace the term "U.S. Regulated Subsidiary."
- In Article V, Section B.3(a), the text "Exchange, Intermediate Holding Company or" would replace the text "U.S. Regulated Subsidiaries,"; the text "ICE Holdings, NYSE Holdings or NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity)" would be deleted; and "each Exchange" would replace "the U.S. Regulated Subsidiaries."
- In Article V, Section B.3(d), the text "NYSE Arca or NYSE Arca Equities or any facility of NYSE Arca" would be replaced with "any Exchange"; and the text "an ETP Holder" through the end of the paragraph would be replaced with "a Member of any Exchange."
- The word "and" would be added between Article V, Section B.3(c) and (d); and Article V, Section B.3(e) and (f) would be deleted.

Amendments

In addition to the amendments to Article V, NYSE National proposes to amend Article X (Amendments) of the ICE Certificate.

Clause (A) of Article X requires the vote of 80% of all outstanding shares entitled to vote in order to reduce the voting requirement set forth in Section 11.2(b) of the ICE Bylaws. However, Section 11.2(b) of the ICE Bylaws was deleted in 2015 after the sale by ICE of the Euronext business.[20] Accordingly, NYSE National proposes to delete the requirement.

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[20] See Securities Exchange Act Release No. 74928 (May 12, 2015), 80 FR 28331

Clause (B) of Article X currently requires that, so long as ICE controls any of the U.S. Regulated Subsidiaries, any proposed amendment or repeal of any provision of the ICE Certificate must be submitted to the boards of the NYSE, NYSE Market, NYSE Regulation, NYSE Arca, NYSE Arca Equities, and NYSE MKT for a determination as to whether such amendment or repeal must be filed with the Commission under Section 19 of the Exchange Act.[21] NYSE National proposes that, in Clause (B) of Article X, the text "of the U.S. Regulated Subsidiaries" would be replaced with "Exchange"; and "New York Stock Exchange, NYSE Market, NYSE Regulation, Inc., NYSE Arca, NYSE Arca Equities and NYSE MKT" would be replaced with "each Exchange." NYSE National believes that the use of "Exchange" is appropriate for the reasons discussed above.

Additional Changes

The ICE Certificate includes references to NYSE Market (DE), Inc., defined as "NYSE Market," and NYSE Regulation, Inc. ("NYSE Regulation"). NYSE Market and NYSE Regulation were previously parties to a Delegation Agreement whereby the NYSE delegated certain regulatory functions to NYSE Regulation and certain market functions to NYSE Market. The Delegation Agreement was terminated when the NYSE re-integrated its regulatory and market functions. As a result, the two entities ceased being regulated subsidiaries.[22] NYSE Regulation was subsequently merged out of existence.

(May 18, 2015) (SR-NYSE-2015-18).

21 15 U.S.C. 78s.

22 See Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015 (SR-NYSE-2015-27).

The proposed changes described above would delete all references to NYSE Market and NYSE Regulation from the ICE Certificate.[23]

Finally, conforming changes would be made to the title, recitals and signature line of the ICE Certificate.

ICE Bylaws

The Exchange proposes to make certain amendments to the ICE Bylaws to correspond to the proposed amendments to the ICE Certificate. In addition, the Exchange proposes to amend the ICE Bylaws to make certain changes relating to the location of stockholder meetings, quorum requirements, and requirements applicable to persons entitled to nominate directors or make proposals at a meeting of ICE's stockholders. Finally, it proposes to replace obsolete references to the Vice Chair with references to the lead independent director.

Changes Corresponding to the Proposed Amendments to the ICE Certificate

The Exchange proposes to make changes to the ICE Bylaws corresponding to the proposed amendments to the ICE Certificate, as described above.

First, NYSE National proposes to use "Exchanges" in place of "U.S. Regulated Subsidiaries," as in the proposed changes to the ICE Certificate. Accordingly, it proposes to make the following changes:

- The definition of "U.S. Regulated Subsidiary" in Section 3.15 would be deleted and replaced with a definition of "Exchange" that is the same as the definition in the proposed amended ICE Certificate.

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[23] See ICE Certificate Article V, Sections A.3(c)(iii) and (d)(iii) and Section B.3(e), and Article X, clause (B).

- In Section 3.14(a)(2), the text “U.S. Regulated Subsidiaries, NYSE Group, Inc. (“NYSE Group”) (if and to the extent that NYSE Group continues to exist as a separate entity), NYSE Holdings LLC (“NYSE Holdings”), Intercontinental Exchange Holdings, Inc. (‘ICE Holdings’)” would be replaced with “Exchanges, any entity controlled by the Corporation that is not itself an Exchange but that directly or indirectly controls an Exchange (each such controlling entity, an ‘Intermediate Holding Company’)”; and the text “U.S. Regulated Subsidiaries, NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity), NYSE Holdings, ICE Holdings” would be replaced with “Exchanges, Intermediate Holding Companies.”
- In Section 3.14(b)(3), the text “the U.S. Regulated Subsidiaries” and “their” would be replaced with “each Exchange” and “its,” respectively.
- In Article VII, “the U.S. Regulated Subsidiaries” would be replaced with “any Exchange.”
- In Sections 3.14(a)(1), 8.1, 8.2, 8.3(b), 8.4, 9.1, 9.2, 9.3 and 11.3, the text “U.S. Regulated Subsidiary” and “of the U.S. Regulated Subsidiaries” would be replaced with “Exchange” and the text “U.S. Regulated Subsidiaries” would be replaced with “Exchanges.”
- In Sections 8.2(b), 8.4, 9.1, and 9.3, the text “the U.S. Regulated Subsidiaries” and “U.S. Regulated Subsidiaries” would be replaced with “an Exchange.”

- In Section 9.3, the text "the U.S. Regulated Subsidiaries" would be replaced with "each Exchange"; "U.S. Regulated Subsidiary's" would be replaced with "Exchange's"; and "their respective" would be replaced with "its."
- In Section 8.1, the text "New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Arca Equities, Inc., NYSE MKT LLC and NYSE National, Inc. or their successors" would be replaced with "any Exchange." Similarly, in Section 11.3, the text "New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Arca Equities, Inc., NYSE MKT LLC and NYSE National, Inc. or the boards of directors of their successors" would be replaced with "each Exchange."
- In Sections 8.1 and 8.2, the defined term "U.S. Subsidiaries' Confidential Information" would be replaced with "Exchange Confidential Information," with the same meaning except limited to Exchanges.
- In Section 8.3(b), the text "U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight" would be replaced with "Exchange." The proposed change would remove the current provision that allows any U.S. Regulated Subsidiary to inspect the books and records of another U.S. Regulated Subsidiary over which the first has regulatory authority or oversight. As a result, the ICE Bylaws would no longer provide that NYSE Arca may inspect the books and records of NYSE Arca Equities or NYSE Arca, LLC. However, the proposed change would have no

substantive effect, because NYSE Arca would retain its authority pursuant to NYSE Arca Equities Rules 14.1 and 14.3.[24] The national securities exchanges NYSE, NYSE MKT, NYSE Arca and NYSE National do not have regulatory authority or oversight over each other.

Article XII of the ICE Bylaws was added in connection with the acquisition of NYSE National, previously National Stock Exchange, Inc., in 2016.[25] The Exchange proposes to delete Article XII of the ICE Bylaws in its entirety. Because the substance of Article XII would be addressed by the proposed amendments to the ICE Certificate, Article XII would no longer be necessary. Specifically,

- the substance of Section 12.1(a)(1) of the ICE Bylaws would be addressed in revised Article V, Section A.3.(c)(ii) of the ICE Certificate;
- the substance of Section 12.1(a)(2) of the ICE Bylaws would be addressed in revised Article V, Section A.3.(d)(ii) of the ICE Certificate;
- the substance of Section 12.1(b) of the ICE Bylaws would be addressed in revised Article V, Section B.3.(d) of the ICE Certificate; and

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24 NYSE Arca Equities Rule 14.1(b) provides, among other things, that the books and records of NYSE Arca Equities are subject to the oversight of the NYSE Arca pursuant to the Act, and that the books and records of NYSE Arca Equities shall be subject at all times to inspection and copying by NYSE Arca. NYSE Arca Equities Rule 14.3(a) provides, among other things, that the books and records of NYSE Arca, LLC are deemed to be the books and records of NYSE Arca and NYSE Arca Equities for purposes of and subject to oversight pursuant to the Exchange Act. See also CBOE Holdings, Inc. Certificate of Incorporation, Article Fifteenth (providing that the books and records of a Regulated Securities Exchange Subsidiary shall be subject at all times to inspection by such subsidiary).

25 See Securities Exchange Act Releases No. 79902 (January 30, 2017) 82 FR 9258 (February 3, 2017) (SR-NSX-2016-16); and 79901 (January 30, 2017), 82 FR 9251 (February 3, 2017) (SR-NYSE-2016-90, SR-NYSEArca2016-167, SR-NYSEMKT-2016-122).

- the substance of Section 12.2 of the ICE Bylaws would be addressed in revised Article X(B) of the ICE Certificate.

Meetings of Stockholders

In addition to the proposed changes corresponding to the proposed amendments to the ICE Certificate, the Exchange proposes to amend several sections of Article II (Meetings of Stockholders).

The Exchange proposes to simplify Section 2.1 of the ICE Bylaws, which relates to the location of stockholder meetings. The revised provision would provide that, as is true now, the location, if any, as well as the decision to hold a stockholder meeting solely by remote communication, would be determined by the Board of Directors and stated in the notice of meeting. The proposed changes are as follow:

- The first sentence would be revised to remove the text "for the election of directors", "in the City of Atlanta, State of Georgia," and "as may be fixed from time to time by the Board of Directors, or at such other place." The text "as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting." would be deleted and "or may" would be added in its place. The second sentence would be deleted in its entirety.
- In the third sentence, the text "The Board of Directors may, in its sole discretion, determine that any meeting of stockholders shall" and "as authorized by law" would be deleted. The word "solely" would be added after "instead be held" and the text ", in each case as may be designated by

the Board of Directors from time to time and stated in the notice of meeting" added to the end of the sentence.

Section 2.7 relates to the quorum for stockholder meetings. The Exchange proposes to conform the quorum requirements in the ICE Bylaws to those in the ICE Certificate. To do so, it proposes to delete the first three sentences of Section 2.7 and replace it with the sentence "Section B of Article IX of the certificate of incorporation sets forth the requirements for establishing a quorum at meetings of stockholders of the Corporation."

Section 2.13(b) sets forth the advance notice requirements for stockholder proposals. The Exchange proposes to make the following changes to Section 2.13(b).

- In addition to stockholders of record, the ICE Bylaws permit certain beneficial holders (defined as "Nominee Holders") to nominate directors or bring other matters for consideration before the Board of Directors meeting. The Exchange proposes to make simplifying wording changes in clause (iii) of the first sentence of Section 2.13(b), as follows:
  - In clause (x), the text "stockholder that holds of record stock of the Corporation" would be amended so that it read "stockholder of record."
  - In clause (y), the following text would be deleted: "holds such"; "'street name'"; "of such stock and can demonstrate to"; "of, and such Nominee Holder's"; and the comma before "such stock on such matter." The revised clause would read as follows: "is a person (a 'Nominee Holder') that beneficially owns stock of the

Corporation through a nominee or other holder of record and provides the Corporation with proof of such beneficial ownership, including the entitlement to vote such stock on such matter."

- In the current third and fourth sentences of Section 2.13(b), the term "indirect ownership" would be changed to "beneficial ownership" for consistency.

- The Exchange proposes to add a new defined term, "Proponent," to capture both stockholders and Nominee Holders. Accordingly:
  - A new sentence would be added to Section 2.13(b)(iii) between the first and second sentences, stating that "Stockholders and Nominee Holders who bring matters before the annual meeting pursuant to Section 2.13(b)(iii) are hereinafter referred to as 'Proponents'."
  - Throughout Section 2.13(b), "stockholder," "stockholders" and "stockholder's" would be replaced with "Proponent," "Proponents" and "Proponent's," respectively.
  - Throughout Section 2.13(b), "Proponent" would replace the phrases "stockholder or beneficial owner," "stockholder, by such beneficial owner," "stockholder, such beneficial owner," "stockholder and by such beneficial owner, if any," and "stockholder or any beneficial owner on whose behalf a nomination or nominations are being made or business or matter is being proposed." The word "Proponent's" would replace the phrase "stockholder's or such beneficial owner's."

- Presently, the requirement for disclosing share ownership appears three times: in the current third sentence, which sets forth the provisions for stockholder notices relating to director nominations, the current fourth sentence, which sets forth the provisions for stockholder notices relating to other matters, and the current fifth sentence, which sets forth the information that a shareholder must include in any stockholder notice. Rather than keep the duplication, Exchange proposes to remove the requirement from the third and fourth sentences and retain the requirement in clause (i) of the fifth sentence. Accordingly, the text ", the number and class of all shares of each class of stock of the Corporation owned of record and beneficially by such stockholder" would be deleted from the current third and fourth sentences.
- In the current fourth sentence, the requirement that a stockholder notice include information regarding any material interest in the matter proposed "(other than as a stockholder)" would be clarified by adding "or beneficial owner of stock" after "stockholder" within the parenthetical, because a Proponent who is a nominee holder is not a stockholder.
- In clause (i) of the current fifth sentence, the text "such Proponent or" would be added before "any Associated Person."
- Clause (i) of the current sixth sentence sets forth the meaning of "Associated Person." The Exchange proposes to narrow the text to eliminate all beneficial owners of stock held of record or beneficially by the Proponent from the definition, and instead to cover only those

beneficial owners on whose behalf the stockholder notice is being delivered. Accordingly, the Exchange proposes to replace the text "stockholder or any beneficial owner on whose behalf a nomination or nominations are being made or business or matter is being proposed," with "Proponent" and, in clause (i)(x), replace the text "owned of record or beneficially by such stockholder or by such beneficial owner" with "on whose behalf such Proponent is delivering a Stockholder Notice."

Additional Proposed Changes

In addition to the changes proposed above, the Exchange proposes to amend several additional sections of the ICE Bylaws.

The ICE Bylaws refer to a "Vice Chairman of the Board." However, the Board of Directors of ICE has not had a Vice Chairman since the sale of the Euronext business in 2014. Accordingly, in Sections 2.9, 3.6(b) and 3.8, the Exchange proposes to replace "Vice Chairman of the Board" with "lead independent director." As a result, the lead independent director would preside over meetings of stockholders in the absence of the Chairman of the Board (Section 2.9), have the authority to call a special meeting of the Board of Directors (Section 3.6(b)) and would preside over meetings of the Board of Directors in the absence of the Chairman of the Board (Section 3.8).

In Section 3.12, relating to the conduct of meetings of committees of the Board of Directors of ICE, a reference to "Article II of these Bylaws" would be corrected to read "this Article III of these Bylaws."

Section 3.14 sets forth considerations directors must take into account in discharging their responsibilities as members of the board of directors. The Exchange

proposes to amend the last sentence of Section 3.14(c), which limits claims against directors, officers and employees of ICE and against ICE. The revised text would be expanded in scope to apply to any "past or present stockholder, employee, beneficiary, agent, customer, creditor, community or regulatory authority or member thereof or other person or entity," and to protect agents of ICE as well as directors, officers and employees. These changes would conform the provision to the analogous statement in the governing documents of other holding companies of national securities exchanges, which are substantially similar.[26]

Finally, conforming changes would be made to the title and date of the ICE Bylaws.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act[27] in general, and with Section 6(b)(1)[28] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the Exchange believes that the proposed amendments to replace

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26 See Amended and Restated Bylaws of Bats Global Markets, Inc., Article XII, Section 12.01; Amended and Restated Limited Liability Company Agreement of BOX Holdings Group LLC, Article 4, Section 4.12; Bylaws of IEX Group, Inc., Section 34; and Amended and Restated Bylaws of Miami International Holdings, Inc., Article VII, Section 1.

27 15 U.S.C. 78f(b).

28 15 U.S.C. 78f(b)(1).

references to the U.S. Regulated Subsidiaries and to the NYSE, NYSE MKT, NYSE Arca, NYSE Arca Equities and NYSE Arca, LLC with references to an "Exchange" or the "Exchanges," as appropriate, would contribute to the orderly operation of the Exchange by adding clarity and transparency to the Exchange's rules by eliminating references to entities that are not national securities exchanges in the ICE Certificate and ICE Bylaws. The Exchange Act definition of "exchange" states that "exchange" "includes the market place and the market facilities maintained by such exchange."[29] Accordingly, all market places and market facilities maintained by an Exchange would fall within the definition of Exchange and therefore would fall within the scope of the ICE Certificate and ICE Bylaws. The Exchange notes that the proposed change would align Article V of the ICE Certificate with voting and ownership concentration limits in the certificates of incorporation of other publicly traded companies that own one or more national securities exchanges, which do not include references to subsidiaries other than national securities exchanges.[30] NYSE Arca, as the national securities exchange, would retain the regulatory and self-regulatory responsibility for the NYSE Arca options and equities markets.

Similarly, as a result of the proposed use of "Exchanges" instead of "U.S. Regulated Subsidiaries," ICE Bylaws Section 8.3 would no longer provide that any U.S. Regulated Subsidiary is authorized to inspect the books and records of another U.S. Regulated Subsidiary over which the first has regulatory authority or oversight, adding

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29 15 U.S.C. 78c(a)(1).

30 See note 10, supra.

further clarity and transparency to the Exchange's rules.[31]

Further, the proposed use of the defined term "Member" in place of the lists of categories of members and permit holders in Article V of the ICE Certificate would simplify the provisions without substantive change, thereby further adding clarity and transparency to the Exchange's rules and aligning the provision in the ICE Certificate with the voting and ownership concentration limits in the certificates of incorporation of other publicly traded companies that own one or more national securities exchanges, which use a similar description of membership.[32] Similarly, the proposed use of the defined term "Intermediate Holding Company" in place of the list of intermediate holding companies in Article V of the ICE Certificate and Section 3.14 of the ICE Bylaws would simplify the provisions without substantive change, thereby further adding clarity and transparency to the Exchange's rules.

For similar reasons, the Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act[33] because the proposed rule change would be consistent with and would create a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged

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31 As noted above, the ICE Bylaws would no longer provide that NYSE Arca may inspect the books and records of NYSE Arca Equities or NYSE Arca, LLC. However, the proposed change would have no substantive effect, because NYSE Arca would retain its authority pursuant to NYSE Arca Equities Rules 14.1 and 14.3. NYSE, NYSE MKT, NYSE Arca and NYSE National do not have regulatory authority or oversight over each other, and so the proposed change would have no effect on those entities' rights.

32 See note 19, supra.

33 15 U.S.C. 78f(b)(5).

in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the proposed amendments (1) replacing references to the U.S. Regulated Subsidiaries and to the NYSE, NYSE MKT, NYSE Arca, NYSE Arca Equities and NYSE Arca, LLC with references to an "Exchange" or the "Exchanges," as appropriate; (2) using "Member" in place of the lists of categories of members and permit holders in Article V of the ICE Certificate; (3) using "Intermediate Holding Company" in place of the list of intermediate holding companies in Article V of the ICE Certificate and Section 3.14 of the ICE Bylaws; and (4) removing the ability of a U.S. Regulated Subsidiary to inspect the books and records of other U.S. Regulated Subsidiaries in ICE Bylaws Section 8.3 would remove impediments to and perfect the mechanism of a free and open market by simplifying and streamlining the Exchange's rules, thereby ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the ICE governing documents.

The Exchange believes that the proposed amendments to the last sentence of Section 3.14(c) of the ICE Bylaws, which limits claims against directors, officers and employees of ICE and against ICE, would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed changes would conform the

provision to the analogous statement in the governing documents of other holding companies of national securities exchanges, which are substantially similar.[34]

The Exchange believes that the proposed amendments to remove references to NYSE Market, NYSE Regulation and the Vice Chairman and to remove the cross reference to Section 11.2(b) of the ICE Bylaws from Article X of the ICE Certificate would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the changes would eliminate obsolete references, thereby reducing potential confusion. Market participants and investors would not be harmed and in fact could benefit from the increased clarity and transparency in the ICE Certificate and ICE Bylaws. Such increased clarity and transparency would ensure that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the ICE governing documents.

The Exchange believes that the proposed amendments to Article II of the ICE Bylaws, regarding meetings of stockholders, would also remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the changes would increase the clarity of the relevant sections of Article II, thereby reducing potential confusion. Market participants and investors would not be harmed and in fact could benefit from the increased clarity and transparency regarding the location of stockholder meetings and

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34 See Amended and Restated Bylaws of Bats Global Markets, Inc., Article XII, Section 12.01; Amended and Restated Limited Liability Company Agreement of BOX Holdings Group LLC, Article 4, Section 4.12; Bylaws of IEX Group, Inc., Section 34; and Amended and Restated Bylaws of Miami International Holdings, Inc., Article VII, Section 1.

advance notice requirements, and the conformance of the quorum requirements with those in the ICE Certificate, and so would more easily navigate and understand the ICE Bylaws.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue but rather update and streamline the ICE Certificate and Bylaws, delete obsolete or unnecessary references and make other simplifying or clarifying changes to the ICE governing documents. The Exchange believes that the proposed rule change will serve to promote clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The proposed rule change would result in no concentration or other changes of ownership of exchanges.

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

No written comments were solicited or received with respect to 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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSENAT-2017-01 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSENAT-2017-01. 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 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSENAT-2017-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Robert W. Errett
Deputy Secretary

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35 17 CFR 200.30-3(a)(12).

EXHIBIT 5A

Additions double underscored
Deletions [bracketed]

FOURTH[THIRD] AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF INTERCONTINENTAL EXCHANGE, INC.

Intercontinental Exchange, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

(1) The present name of the Corporation is Intercontinental Exchange, Inc. The name under which the Corporation was originally incorporated was IntercontinentalExchange Group, Inc., and the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on March 6, 2013.

(2) This Fourth[Third] Amended and Restated Certificate of Incorporation of the Corporation restates, integrates, and further amends the provisions of the Third[Second] Amended and Restated Certificate of Incorporation of the Corporation.

(3) This Fourth[Third] Amended and Restated Certificate of Incorporation of the Corporation has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL").

(4) Pursuant to Sections 242 and 245 of the DGCL, the text of the Third[Second] Amended and Restated Certificate of Incorporation, as heretofore amended, is hereby amended and restated to read in its entirety as set forth on Exhibit A.

(5) This Fourth[Third] Amended and Restated Certificate of Incorporation of the Corporation shall become effective at ____● [12:00 P.M.] Eastern Time, on ____● , 2017[October 12, 2016].

IN WITNESS WHEREOF, the undersigned, a duly authorized officer of the Corporation, has executed this Fourth[Third] Amended and Restated Certificate of Incorporation of the Corporation on this _● [12th] day of ____● , 2017[October, 2016].

INTERCONTINENTAL EXCHANGE, INC.

By: _____
Name:
Title:

Exhibit A

FOURTH[THIRD] AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF INTERCONTINENTAL EXCHANGE, INC.

ARTICLE I

Name of Corporation

The name of the Corporation is Intercontinental Exchange, Inc.

ARTICLE II

Registered Office

The address of the Corporation's registered office in the State of Delaware, County of New Castle, is 1209 Orange Street, Wilmington, Delaware 19801. The name of its registered agent at such address is: The Corporation Trust Company.

ARTICLE III

Purpose

The nature or purposes to be conducted or promoted by the Corporation are to engage in any lawful act or activity for which Corporations may be organized under the Delaware General Corporation Law.

ARTICLE IV

Stock

A. Classes and Series of Stock. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares of stock that the Corporation is authorized to issue is one billion six hundred million (1,600,000,000) shares, consisting of:

1. one billion five hundred million (1,500,000,000) shares of Common Stock, par value $0.01 per share, which shares shall be designated as "Common Stock" (the "Common Stock"); and

2. one hundred million (100,000,000) shares of Preferred Stock, par value $0.01 per share, which shares shall be designated as "Preferred Stock" (the "Preferred Stock").

B. Preferred Stock. Shares of Preferred Stock may be issued in one or more series from time to time by the Board of Directors, and the Board of Directors is expressly authorized, to the fullest extent permitted by law, to fix by resolution or resolutions the designations and the powers, preferences and rights, and the

qualifications, limitations and restrictions thereof, of the shares of each series of Preferred Stock, including without limitation the following:

1. the distinctive serial designation of such series, which shall distinguish it from other series;

2. the number of shares included in such series;

3. whether dividends shall be payable to the holders of the shares of such series and, if so, the basis on which such holders shall be entitled to receive dividends (which may include, without limitation, a right to receive such dividends or distributions as may be declared on the shares of such series by the Board of Directors of the Corporation, a right to receive such dividends or distributions, or any portion or multiple thereof, as may be declared on the Common Stock or any other class of stock or, in addition to or in lieu of any other right to receive dividends, a right to receive dividends at a particular rate or at a rate determined by a particular method, in which case such rate or method of determining such rate may be set forth), the form of such dividends, any conditions on which such dividends shall be payable and the date or dates, if any, on which such dividends shall be payable;

4. whether dividends on the shares of such series shall be cumulative and, in the case of shares of any series having cumulative dividend rights, the date or dates or method of determining the date or dates from which dividends on the shares of such series shall be cumulative;

5. the amount or amounts that shall be payable out of the assets of the Corporation to the holders of the shares of such series upon voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of the shares of such series;

6. the price or prices at which, the period or periods within which and the terms and conditions upon which the shares of such series may be redeemed, in whole or in part, at the option of the Corporation or at the option of the holder or holders thereof or upon the happening of a specified event or events;

7. the obligation, if any, of the Corporation to purchase or redeem shares of such series pursuant to a sinking fund or otherwise and the price or prices at which, the period or periods within which and the terms and conditions upon which the shares of such series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

8. whether or not the shares of such series shall be convertible or exchangeable, at any time or times at the option of the holder or holders thereof or at the option of the Corporation or upon the happening of a specified event or events, into 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, and the price or prices or

rate or rates of exchange or conversion and any adjustments applicable thereto; and

9. whether or not the holders of the shares of such series shall have voting rights or powers, in addition to the voting rights and powers provided by law, and if so the terms of such voting rights or powers, which may provide, among other things and subject to the other provisions of this Amended and Restated Certificate of Incorporation, that each share of such series shall carry one vote or more or less than one vote per share, that the holders of such series shall be entitled to vote on certain matters as a separate class (which for such purpose may be comprised solely of such series or of such series together with one or more other series or classes of stock of the Corporation) and that all of the shares of such series entitled to vote on a particular matter shall be deemed to be voted on such matter in the manner that a specified portion of the voting power of the shares of such series or separate class are voted on such matter.

For all purposes, this Amended and Restated Certificate of Incorporation shall include each certificate of designations (if any) setting forth the terms of a series of Preferred Stock.

Subject to the rights, if any, of the holders of any series of Preferred Stock set forth in a certificate of designations, an amendment of this Amended and Restated Certificate of Incorporation to increase or decrease the number of authorized shares of any series of Preferred Stock (but not below the number of shares thereof then outstanding) may be adopted by resolution adopted by the Board of Directors of the Corporation and approved by the affirmative vote of the holders of a majority of the voting power of all outstanding shares of Common Stock entitled to vote thereon and all other outstanding shares of stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law as it now exists or as it may hereafter be amended, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class, and no vote of the holders of any series of Preferred Stock, voting as a separate class, shall be required therefor.

Except as otherwise required by law or provided in the certificate of designations for the relevant series of Preferred Stock, holders of Common Stock shall not be entitled to vote on any amendment of this Amended and Restated Certificate of Incorporation that alters or changes the powers, preferences, rights or other terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other series of Preferred Stock, to vote thereon as a separate class pursuant to this Amended and Restated Certificate of Incorporation or pursuant to the Delaware General Corporation Law as then in effect.

C. Options, Warrants and Other Rights. The Board of Directors is authorized to create and issue options, warrants and other rights from time to time entitling the holders thereof to purchase securities or other property of the Corporation or

any other entity, including any class or series of stock of the Corporation or any other entity and whether or not in connection with the issuance or sale of any securities or other property of the Corporation, for such consideration (if any), at such times and upon such other terms and conditions as may be determined or authorized by the Board and set forth in one or more agreements or instruments. Among other things and without limitation, such terms and conditions may provide for the following:

1. adjusting the number or exercise price of such options, warrants or other rights or the amount or nature of the securities or other property receivable upon exercise thereof in the event of a subdivision or combination of any securities, or a recapitalization, of the Corporation, the acquisition by any Person (as defined in paragraph A.9[8] of Article V) of beneficial ownership of securities representing more than a designated percentage of the voting power of any outstanding series, class or classes of securities, a change in ownership of the Corporation's securities or a merger, statutory share exchange, consolidation, reorganization, sale of assets or other occurrence relating to the Corporation or any of its securities, and restricting the ability of the Corporation to enter into an agreement with respect to any such transaction absent an assumption by another party or parties thereto of the obligations of the Corporation under such options, warrants or other rights;

2. restricting, precluding or limiting the exercise, transfer or receipt of such options, warrants or other rights by any Person that becomes the beneficial owner of a designated percentage of the voting power of any outstanding series, class or classes of securities of the Corporation or any direct or indirect transferee of such a Person, or invalidating or voiding such options, warrants or other rights held by any such Person or transferee; and

3. permitting the Board of Directors (or certain directors specified or qualified by the terms of the governing instruments of such options, warrants or other rights) to redeem, terminate or exchange such options, warrants or other rights.

This Section C shall not be construed in any way to limit the power of the Board of Directors to create and issue options, warrants or other rights.

ARTICLE V

Limitations on Voting and Ownership

A. Voting Limitation.

1. Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation, for so long as the Corporation shall directly or indirectly control a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "Exchange Act")[any U.S. Regulated Subsidiary (as defined below)], (a) no Person, either alone or together with its Related Persons, as of any record date for the determination of

stockholders entitled to vote on any matter, shall be entitled to vote or cause the voting of shares of stock of the Corporation beneficially owned by such Person or its Related Persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter, without giving effect to this ARTICLE V (such threshold being hereinafter referred to as the "Voting Limitation"), and the Corporation shall disregard any such votes purported to be cast in excess of the Voting Limitation; and (b) if any Person, either alone or together with its Related Persons, is party to any agreement, plan or other arrangement relating to shares of stock of the Corporation entitled to vote on any matter with any other Person, either alone or together with its Related Persons, under circumstances that would result in shares of stock of the Corporation that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any Person, but for this ARTICLE V, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of stock of the Corporation that would exceed 10% of the then outstanding votes entitled to be cast on such matter (assuming that all shares of stock of the Corporation that are subject to such agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter) (the "Recalculated Voting Limitation"), then the Person, either alone or together with its Related Persons, shall not be entitled to vote or cause the voting of shares of stock of the Corporation beneficially owned by such Person, either alone or together with its Related Persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than the Recalculated Voting Limitation, and the Corporation shall disregard any such votes purported to be cast in excess of the Recalculated Voting Limitation.

2. The Voting Limitation and the Recalculated Voting Limitation, as applicable, shall apply to each Person unless and until: (a) such Person shall have delivered to the Board of Directors a notice in writing, not less than 45 days (or such shorter period as the Board of Directors shall expressly consent to) prior to any vote, of such Person's intention, either alone or together with its Related Persons, to vote or cause the voting of shares of stock of the Corporation beneficially owned by such Person or its Related Persons, in person or by proxy or through any voting agreement or other arrangement, in excess of the Voting Limitation or the Recalculated Voting Limitation, as applicable; (b) the Board of Directors shall have resolved to expressly permit such voting; and (c) such resolution shall have been filed with, and approved by, the U.S. Securities and Exchange Commission (the "SEC") under Section 19(b) of the [Securities]Exchange Act [of 1934, as amended (the "Exchange Act"),]and shall have become effective thereunder.

3. Subject to its fiduciary obligations under applicable law, the Board of Directors shall not adopt any resolution pursuant to clause (b) of

Section A.2 of this ARTICLE V unless the Board of Directors shall have determined that:

(a) the exercise of such voting rights or the entering into of such agreement, plan or other arrangement, as applicable, by such Person, either alone or together with its Related Persons, (i) will not impair the ability of any national securities exchange registered under Section 6 of the Exchange Act that is directly or indirectly controlled by the Corporation (each such national securities exchange so controlled, an "Exchange"), any entity controlled by the Corporation that is not itself an Exchange but that directly or indirectly controls an Exchange (each such controlling entity, an "Intermediate Holding Company") or[U.S. Regulated Subsidiary,] the Corporation[, Intercontinental Exchange Holdings, Inc. ("ICE Holdings"), NYSE Holdings LLC ("NYSE Holdings") or NYSE Group, Inc. ("NYSE Group") (if and to the extent that NYSE Group continues to exist as a separate entity)] to discharge their respective responsibilities under the Exchange Act and the rules and regulations thereunder and (ii) is otherwise in the best interests of (w) the Corporation, (x) its stockholders and (y) each Exchange[the U.S. Regulated Subsidiaries];

(b) the exercise of such voting rights or the entering into of such agreement, plan or other arrangement, as applicable, by such Person, either alone or together with its Related Persons, will not impair the SEC's ability to enforce the Exchange Act;

(c) in the case of a resolution to approve the exercise of voting rights in excess of 20% of the then outstanding votes entitled to be cast on such matter, (i) neither such Person nor any of its Related Persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act) (any such person subject to statutory disqualification being referred to in this Amended and Restated Certificate of Incorporation as a "U.S. Disqualified Person"); and (ii) for so long as the Corporation directly or indirectly controls one or more Exchanges[NYSE Arca, Inc. ("NYSE Arca") or NYSE Arca Equities, Inc. ("NYSE Arca Equities") or any facility of NYSE Arca], neither such Person nor any of its Related Persons is a Member (as defined below) of any Exchange[an ETP Holder (as defined in the NYSE Arca Equities rules of NYSE Arca, as such rules may be in effect from time to time) of NYSE Arca Equities (any such Person that is a Related Person of an ETP Holder shall hereinafter also be deemed to be an "ETP Holder" for purposes of this Amended and Restated Certificate of Incorporation, as the context may require) or an OTP Holder or OTP Firm (each as defined in the rules of NYSE Arca, as such rules may be in effect from time to time) of NYSE Arca (any such Person that is a Related Person of an OTP Holder or OTP Firm shall hereinafter also be deemed to be an "OTP Holder" or "OTP Firm", as appropriate, for purposes of this Amended and Restated

Certificate of Incorporation, as the context may require); and (iii) for so long as the Corporation directly or indirectly controls New York Stock Exchange LLC ("New York Stock Exchange") or NYSE Market (DE), Inc. ("NYSE Market"), neither such Person nor any of its Related Persons is a "member" or "member organization" (as defined in the rules of New York Stock Exchange, as such rules may be in effect from time to time) (a "NYSE Member", and any such Person that is a Related Person of such member or member organization shall hereinafter also be deemed to be a "NYSE Member" for purposes of this Amended and Restated Certificate of Incorporation, as the context may require); and (iv) for so long as the Corporation directly or indirectly controls NYSE MKT LLC ("NYSE MKT"), neither such Person nor any of its Related Persons is a "member" (as defined in Sections 3(a)(3)(A)(i), 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Exchange Act) of NYSE MKT (an "MKT Member," and any such Person that is a Related Person of such member or member organization shall hereinafter also be deemed to be an "MKT Member" for purposes of this Amended and Restated Certificate of Incorporation, as the context may require)];

(d) in the case of a resolution to approve the entering into of an agreement, plan or other arrangement under circumstances that would result in shares of stock of the Corporation that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any Person, but for this ARTICLE V, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of stock of the Corporation that would exceed 20% of the then outstanding votes entitled to be cast on such matter (assuming that all shares of stock of the Corporation that are subject to such agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter), (i) neither such Person nor any of its Related Persons is a U.S. Disqualified Person; and (ii) for so long as the Corporation directly or indirectly controls one or more Exchanges[NYSE Arca or NYSE Arca Equities or any facility of NYSE Arca], neither such Person nor any of its Related Persons is a Member of any Exchange[an ETP Holder, OTP Holder or an OTP Firm; (iii) for so long as the Corporation directly or indirectly controls New York Stock Exchange or NYSE Market, neither such Person nor any of its Related Persons is a NYSE Member; and (iv) for so long as the Corporation directly or indirectly controls NYSE MKT, neither such Person nor any of its Related Persons is a MKT Member].

4. In making such determinations, the Board of Directors may impose such conditions and restrictions on such Person and its Related Persons owning any shares of stock of the Corporation entitled to vote on any matter as the Board of Directors may in its sole discretion deem necessary, appropriate or

desirable in furtherance of the objectives of the Exchange Act and the governance of the Corporation.

5. If and to the extent that shares of stock of the Corporation beneficially owned by any Person or its Related Persons are held of record by any other Person (the "Record Owner"), this Section A of ARTICLE V shall be enforced against such Record Owner by limiting the votes entitled to be cast by such Record Owner in a manner that will accomplish the Voting Limitation and the Recalculated Voting Limitation applicable to such Person and its Related Persons.

6. This Section A of ARTICLE V shall not apply to (1) any solicitation of any revocable proxy from any stockholder of the Corporation by or on behalf of the Corporation or by any officer or director of the Corporation acting on behalf of the Corporation or (2) any solicitation of any revocable proxy from any stockholder of the Corporation by any other stockholder that is conducted pursuant to, and in accordance with, Regulation 14A promulgated pursuant to the Exchange Act (other than a solicitation pursuant to Rule 14a-2(b)(2) promulgated under the Exchange Act, with respect to which this Section A of ARTICLE V shall apply).

7. For purposes of this Section A of ARTICLE V, no Person shall be deemed to have any agreement, arrangement or understanding to act together with respect to voting shares of stock of the Corporation solely because such Person or any of such Person's Related Persons has or shares the power to vote or direct the voting of such shares of stock as a result of (1) any solicitation of any revocable proxy from any stockholder of the Corporation by or on behalf of the Corporation or by any officer or director of the Corporation acting on behalf of the Corporation or (2) any solicitation of any revocable proxy from any stockholder of the Corporation by any other stockholder that is conducted pursuant to, and in accordance with, Regulation 14A promulgated pursuant to the Exchange Act (other than a solicitation pursuant to Rule 14a-2(b)(2) promulgated under the Exchange Act, with respect to which this Section A of ARTICLE V shall apply), except if such power (or the arrangements relating thereto) is then reportable under Item 6 of Schedule 13D under the Exchange Act (or any similar provision of a comparable or successor report).

8. "Member" shall mean a Person that is a "member" of an Exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act.

9[8]. "Person" shall mean any natural person, company, corporation or similar entity, government, or political subdivision, agency, or instrumentality of a government.

10[9]. "Related Persons" shall mean with respect to any Person:

(a) any "affiliate" of such Person (as such term is defined in Rule 12b-2 under the Exchange Act);

(b) any other Person(s) with which such first Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the stock of the Corporation;

(c) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b-7 under the Exchange Act) or director of such Person and, in the case of a Person that is a partnership or a limited liability company, any general partner, managing member or manager of such Person, as applicable;

(d) in the case of a Person that is a Member, any Person ["member organization" (as defined in the rules of New York Stock Exchange, as such rules may be in effect from time to time), any "member" (as defined in the rules of New York Stock Exchange, as such rules may be in effect from time to time)]that is associated with such Person (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act);

(e) in the case of a Person that is a natural person and is a Member, any broker or dealer that is also a Member with which[an OTP Firm, any OTP Holder that is associated with] such Person is associated (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act);

(f) in the case of a Person that is a natural person, any relative or spouse of such natural Person, or any relative of such spouse who has the same home as such natural Person or who is a director or officer of the 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 Exchange 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[;].

[(i) in the case of a Person that is a "member" (as defined in the rules of New York Stock Exchange, as such rules may be in effect from time to time), the "member organization" (as defined in the rules of New York Stock Exchange, as such rules may be in effect from time to time) with which such Person is associated (as determined using

the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act);]

[(j) in the case of a Person that is an OTP Holder, the OTP Firm with which such Person is associated (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act);]

[(k) in the case of a Person that is a "member" (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) of NYSE MKT, the "member" (as defined in Sections 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Exchange Act) with which such Person is associated (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act); and]

[(l) in the case of a Person that is a "member" (as defined in Sections 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Exchange Act) of NYSE MKT, any "member" (as defined in Section 3(a)(3)(A)(i) of the Exchange Act) that is associated with such Person (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act).]

[10. "U.S. Regulated Subsidiary" and "U.S. Regulated Subsidiaries" shall have the meanings set forth in the Bylaws of the Corporation, as amended from time to time.]

B. Ownership Concentration Limitation.

1. Except as otherwise provided in this Section B of ARTICLE V, for so long as the Corporation shall directly or indirectly control any Exchange[U.S. Regulated Subsidiary], no Person, either alone or together with its Related Persons, shall be permitted at any time to own beneficially shares of stock of the Corporation representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the "Concentration Limitation").

2. The Concentration Limitation shall apply to each Person unless and until: (a) such Person shall have delivered to the Board of Directors a notice in writing, not less than 45 days (or such shorter period as the Board of Directors shall expressly consent to) prior to the acquisition of any shares that would cause such Person (either alone or together with its Related Persons) to exceed the Concentration Limitation, of such Person's intention to acquire such ownership; (b) the Board of Directors shall have resolved to expressly permit such ownership; and (c) such resolution shall have been filed with, and approved by, the SEC under Section 19(b) of the Exchange Act and shall have become effective thereunder.

3. Subject to its fiduciary obligations under applicable law, the Board of Directors shall not adopt any resolution pursuant to clause (b) of Section B.2 of this ARTICLE V unless the Board of Directors shall have determined that:

(a) such acquisition of beneficial ownership by such Person, either alone or together with its Related Persons, (i) will not impair the ability of any Exchange, Intermediate Holding Company or[U.S. Regulated Subsidiaries,] the Corporation[, ICE Holdings, NYSE Holdings or NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity)] to discharge their respective responsibilities under the Exchange Act and the rules and regulations thereunder and (ii) is otherwise in the best interests of (w) the Corporation, (x) its stockholders and (y) each Exchange[the U.S. Regulated Subsidiaries];

(b) such acquisition of beneficial ownership by such Person, either alone or together with its Related Persons, will not impair the SEC's ability to enforce the Exchange Act. In making such determinations, the Board of Directors may impose such conditions and restrictions on such Person and its Related Persons owning any shares of stock of the Corporation entitled to vote on any matter as the Board of Directors may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Exchange Act and the governance of the Corporation;

(c) neither such Person nor any of its Related Persons is a U.S. Disqualified Person; and

(d) for so long as the Corporation directly or indirectly controls any Exchange[NYSE Arca or NYSE Arca Equities or any facility of NYSE Arca], neither such Person nor any of its Related Persons is a Member of any Exchange.[an ETP Holder or an OTP Holder or OTP Firm;]

[(e) for so long as the Corporation directly or indirectly controls New York Stock Exchange or NYSE Market, neither such Person nor any of its Related Persons is a Member; and]

[(f) for so long as the Corporation directly or indirectly controls NYSE MKT, neither such Person nor any of its Related Persons is a MKT Member.]

4. Unless the conditions specified in Section B.2 of this ARTICLE V are met, if any Person, either alone or together with its Related Persons, at any time beneficially owns shares of stock of the Corporation in excess of the Concentration Limitation, such Person and its Related Persons shall be obligated to sell promptly, and the Corporation shall be obligated to purchase

promptly, at a price equal to the par value of such shares of stock and to the extent funds are legally available therefor, that number of shares of stock of the Corporation necessary so that such Person, together with its Related Persons, shall beneficially own shares of stock of the Corporation representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares shall become treasury shares and shall no longer be deemed to be outstanding.

5. Nothing in this Section B of ARTICLE V shall preclude the settlement of transactions entered into through the facilities of New York Stock Exchange; provided, however, that, if any Transfer of any shares of stock of the Corporation shall cause any Person, either alone or together with its Related Persons, at any time to beneficially own shares of stock of the Corporation in excess of the Concentration Limitation, such Person and its Related Persons shall be obligated to sell promptly, and the Corporation shall be obligated to purchase promptly, shares of stock of the Corporation as specified in Section B.4 of this ARTICLE V.

6. If any share of Common Stock shall be represented by a certificate, a legend shall be placed on such certificate to the effect that such share of Common Stock is subject to the Concentration Limitations as set in Section B of this Article V. If the shares of Common Stock shall be uncertificated, a notice of such restrictions and limitations shall be included in the statement of ownership provided to the holder of record of such shares of Common Stock.

C. Procedure for Repurchasing Stock.

1. In the event the Corporation shall repurchase shares of stock (the "Repurchased Stock") of the Corporation pursuant to ARTICLE V, notice of such repurchase shall be given by first class mail, postage prepaid, mailed not less than 5 business nor more than 60 calendar days prior to the repurchase date, to the holder of the Repurchased Stock, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (a) the repurchase date; (b) the number of shares of Repurchased Stock to be repurchased; (c) the aggregate repurchase price, which shall equal the aggregate par value of such shares; and (d) the place or places where such Repurchased Stock is to be surrendered for payment of the aggregate repurchase price. Failure to give notice as aforesaid, or any defect therein, shall not affect the validity of the repurchase of Repurchased Stock. From and after the repurchase date (unless default shall be made by the Corporation in providing funds for the payment of the repurchase price), shares of Repurchased Stock which have been repurchased as aforesaid shall become treasury shares and shall no longer be deemed to be outstanding, and all rights of the holder of such Repurchased Stock as a stockholder of the Corporation (except the right to receive from the Corporation the repurchase price against delivery to the Corporation of evidence of ownership of such shares) shall cease. Upon surrender in accordance with said notice of evidence of ownership of Repurchased Stock so repurchased (properly

assigned for transfer, if the Board of Directors shall so require and the notice shall so state), such shares shall be repurchased by the Corporation at par value.

2. If and to the extent that shares of stock of the Corporation beneficially owned by any Person or its Related Persons are held of record by any other Person, this ARTICLE V shall be enforced against such Record Owner by requiring the sale of shares of stock of the Corporation held by such Record Owner in accordance with this ARTICLE V, in a manner that will accomplish the Concentration Limitation applicable to such Person and its Related Persons.

D. Right to Information; Determinations by the Board of Directors. The Board of Directors shall have the right to require any Person and its Related Persons that the Board of Directors reasonably believes (i) to be subject to the Voting Limitation or the Recalculated Voting Limitation, (ii) to own beneficially (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) shares of stock of the Corporation entitled to vote on any matter in excess of the Concentration Limitation, or (iii) to own beneficially (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) an aggregate of 5% or more of the then outstanding shares of stock of the Corporation entitled to vote on any matter, which ownership such Person, either alone or together with its Related Persons, has not reported to the Corporation, to provide to the Corporation, upon the Board of Directors' request, complete information as to all shares of stock of the Corporation beneficially owned by such Person and its Related Persons and any other factual matter relating to the applicability or effect of this ARTICLE V as may reasonably be requested of such Person and its Related Persons. Any constructions, applications or determinations made by the Board of Directors pursuant to ARTICLE V in good faith and on the basis of such information and assistance as was then reasonably available for such purpose shall be conclusive and binding upon the Corporation and its directors, officers and stockholders.

ARTICLE VI

Board of Directors

A. Powers of the Board of Directors—General. All corporate powers shall be exercised by the Board of Directors of the Corporation, except as otherwise specifically required by law or as otherwise provided in this Amended and Restated Certificate of Incorporation.

B. Number of Directors. The number of directors of the Corporation shall be fixed only by resolution of the Board of Directors of the Corporation from time to time in the manner set forth in the bylaws.

C. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors or from any other cause (other than vacancies and newly created directorships that the holders of any class or classes of stock or series thereof are expressly entitled by this Amended and Restated Certificate of Incorporation to fill) may be filled by, and only by, a majority of the directors then in office, although less than a quorum, or by the sole remaining director. Any director

appointed to fill a vacancy or a newly created directorship shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

D. Directors representing holders of Preferred Stock. Notwithstanding Section C of this ARTICLE VI, in the event that the holders of any class or series of Preferred Stock of the Corporation shall be entitled, voting separately as a class, to elect any directors of the Corporation, then any vacancies and newly created directorships that are reserved to such holders voting separately as a class shall be filled only by such holders voting separately as a class, provided always that the total number of directors of the Corporation shall not exceed the number fixed pursuant to Section B of this ARTICLE VI. Except as otherwise provided in the terms of such class or series, (i) the terms of the directors elected by such holders voting separately as a class shall expire at the annual meeting of stockholders next succeeding their election and (ii) any director or directors elected by such holders voting separately as a class may be removed, with or without cause, by the holders of a majority of the voting power of all outstanding shares of stock of the Corporation entitled to vote separately as a class in an election of such directors.

E. Power to Call Stockholder Meetings. Special meetings of stockholders of the Corporation may be called at any time by, but only by, (1) the Board of Directors acting pursuant to a resolution adopted by a majority of the Board of Directors then in office, (2) the Chairman of the Board of Directors, (3) the Chief Executive Officer of the Corporation or (4) request of holders of Common Stock representing in the aggregate at least 50% of the shares of Common Stock outstanding at such time that would be entitled to vote at the meeting as determined under Section A.1 of ARTICLE V, in each case, to be held at such date, time and place, if any, either within or without the State of Delaware as may be stated in the notice of the meeting.

F. Bylaws. Except as otherwise provided in this Amended and Restated Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, amend or repeal any or all of the bylaws of the Corporation.

G. Considerations of the Board of Directors. In taking any action, including action that may involve or relate to a change or potential change in the control of the Corporation, a director of the Corporation may consider, among other things, both the long-term and short-term interests of the Corporation and its stockholders and the effects that the Corporation's actions may have in the short term or long term upon any one or more of the following matters:

1. the prospects for potential growth, development, productivity and profitability of the Corporation and its subsidiaries;

2. the current employees of the Corporation or its subsidiaries;

3. the employees of the Corporation or its subsidiaries and other beneficiaries receiving or entitled to receive retirement, welfare or similar

benefits from or pursuant to any plan sponsored, or agreement entered into, by the Corporation or its subsidiaries;

4. the customers and creditors of the Corporation or its subsidiaries;

5. the ability of the Corporation and its subsidiaries to provide, as a going concern, goods, services, employment opportunities and employment benefits and otherwise to contribute to the communities in which they do business;

6. the potential impact on the relationships of the Corporation or its subsidiaries with regulatory authorities and the regulatory impact generally; and

7. such other additional factors as a director may consider appropriate in such circumstances.

Nothing in this Section G of ARTICLE VI shall create any duty owed by any director, officer or employee of the Corporation to any Person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to the foregoing matters. No employee, former employee, beneficiary, customer, creditor, community or regulatory authority or member thereof shall have any rights against any director, officer or employee of the Corporation or the Corporation under this Section G of ARTICLE VI.

ARTICLE VII

Officer and Director Disqualification

No person that is a U.S. Disqualified Person may be a director or officer of the Corporation.

ARTICLE VIII

Elections of Directors

Elections of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

ARTICLE IX

Stockholder Action

A. No Action by Written Consent. No action of stockholders of the Corporation required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting of stockholders, without prior notice and without a vote, and the power of stockholders of the Corporation to consent in writing to the taking of any action without a meeting is specifically denied.

Notwithstanding this ARTICLE IX, the holders of any series of Preferred Stock of the Corporation shall be entitled to take action by written consent to such extent, if any, as may be provided in the terms of such series.

B. Quorum. At each meeting of stockholders of the Corporation, except where otherwise required by law or this Amended and Restated Certificate of Incorporation, the holders of a majority of the voting power of the outstanding shares of stock of the Corporation entitled to vote on a matter at the meeting, present in person or represented by proxy, shall constitute a quorum (it being understood that any shares in excess of the Voting Limitation or the Recalculated Voting Limitation shall not be counted as present at the meeting and shall not be counted as outstanding shares of stock of the Corporation for purposes of determining whether there is a quorum, unless and only to the extent that the Voting Limitation or the Recalculated Voting Limitation, as applicable, shall have been duly waived pursuant to Section A or Section B of ARTICLE V). For purposes of the foregoing, where a separate vote by class or classes is required for any matter, the holders of a majority of the voting power of the outstanding shares of such class or classes entitled to vote, present in person or represented by proxy, shall constitute a quorum to take action with respect to that vote on that matter. In the absence of a quorum of the holders of any class of stock of the Corporation entitled to vote on a matter, the meeting of such class may be adjourned from time to time until a quorum of such class shall be so present or represented. Shares of its own capital stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity, provided, further, that any such shares of the Corporation's own capital stock held by it in a fiduciary capacity shall be voted by the person presiding over any vote in the same proportions as the shares of capital stock held by the other stockholders are voted (including any abstentions from voting).

If this Amended and Restated Certificate of Incorporation provides for more or less than one vote for any share of stock of the Corporation on any matter or to the extent a stockholder is prohibited pursuant to this Amended and Restated Certificate of Incorporation from casting votes with respect to any shares of stock of the Corporation, every reference in the bylaws of the Corporation to a majority or other proportion of shares of stock of the Corporation shall refer to such majority or other proportion of the aggregate votes of such shares of stock, taking into account any greater or lesser number of votes as a result of the foregoing.

C. Bylaws. No adoption, amendment or repeal of a bylaw by action of stockholders shall be effective unless approved by the affirmative vote of the holders of not less than 66 2/3%, or such higher percentage as may be specified in Section 11.2(b) of the bylaws of the Corporation, of the voting power of all outstanding shares of Common Stock and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class. Any vote of stockholders required by this

ARTICLE IX shall be in addition to any other vote of stockholders that may be required by law, this Amended and Restated Certificate of Incorporation, the bylaws of the Corporation, any agreement with a national securities exchange or otherwise.

D. Location of Stockholder Meetings and Records. Meetings of stockholders may be held within or without the State of Delaware, as the bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the Delaware General Corporation Law as it now exists or as it may hereafter be amended) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the bylaws of the Corporation.

ARTICLE X

Amendments

The Corporation reserves the right to amend or repeal any provision contained in this Amended and Restated Certificate of Incorporation in any manner now or hereafter permitted by law, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation, (A) no provision of ARTICLE V, Section B or G of ARTICLE VI, ARTICLE IX or this clause (A) of ARTICLE X shall be amended, modified or repealed, and no provision inconsistent with any such provision shall become part of this Amended and Restated Certificate of Incorporation, unless such matter is approved by the affirmative vote of the holders of not less than 66 2/3% of the voting power of all outstanding shares of Common Stock of the Corporation and all other outstanding shares of stock of the Corporation entitled to vote on such matter, with such outstanding shares of Common Stock and other stock considered for this purpose as a single class[(provided that, in the case of an amendment seeking to reduce the minimum percentage of votes specified in Section 11.2(b) of the bylaws or which would have the effect of enabling or facilitating such reduction, the minimum percentage applicable shall be 80%)]; and (B) for so long as this Corporation shall control, directly or indirectly, any Exchange[of the U.S. Regulated Subsidiaries], before any amendment or repeal of any provision of the Certificate of Incorporation of this Corporation shall be effective, such amendment or repeal shall be submitted to the boards of directors of each Exchange[New York Stock Exchange, NYSE Market, NYSE Regulation, Inc., NYSE Arca, NYSE Arca Equities and NYSE MKT] (or the boards of directors of their successors), and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the SEC, as the case may be. Any vote of stockholders required by this ARTICLE X shall be in addition to any other vote of the stockholders that may be required by law, this Amended and Restated Certificate of Incorporation, the bylaws of the Corporation, any agreement with a national securities exchange or otherwise.

ARTICLE XI

Exculpation

A director of the Corporation shall, to the fullest extent permitted by the Delaware General Corporation Law as it now exists or as it may hereafter be amended, not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law as it now exists or as it may hereafter be amended, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended, after approval by the stockholders of this ARTICLE, to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law as so amended.

An amendment, repeal or modification of the foregoing provisions of this ARTICLE XI, or the adoption of any provision in an amended or restated Certificate of Incorporation inconsistent with this ARTICLE XI, by the stockholders of the Corporation shall not apply to or adversely affect any right or protection of a director of the Corporation existing at the time of such amendment, repeal, modification or adoption.

ARTICLE XII

Indemnification

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) such directors, officers or agents of the Corporation (and any other persons to which Delaware law permits the Corporation to provide indemnification) through bylaw provisions, agreements with such persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law as it now exists or as it may hereafter be amended, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders and others.

Any amendment, repeal or modification of any of the foregoing provisions of this ARTICLE XII shall not adversely affect any right or protection of a director, officer, agent or other person existing at the time of, or increase the liability of any person with respect to any acts or omissions of such person occurring prior to, such amendment, repeal or modification.

EXHIBIT 5B

Additions double underscored
Deletions [bracketed]

EIGHTH[SEVENTH] AMENDED AND RESTATED

BYLAWS

OF

INTERCONTINENTAL EXCHANGE, INC.

Adopted effective [January 31]___●___, 2017

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EIGHTH[SEVENTH] AMENDED AND RESTATED BYLAWS OF INTERCONTINENTAL EXCHANGE, INC.

ARTICLE I - OFFICES

1.1 The registered office of the Corporation shall be in the City of Wilmington, County of New Castle, State of Delaware.

1.2 The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II - MEETINGS OF STOCKHOLDERS

2.1 All meetings of the stockholders [for the election of directors]shall be held [in the City of Atlanta, State of Georgia,]at such place [as may be fixed from time to time by the Board of Directors, or at such other place]either within or without the State of Delaware or may[as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. Meetings of stockholders for any other purpose may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof. The Board of Directors may, in its sole discretion, determine that any meeting of stockholders shall]not be held at any place, but may instead be held solely by means of remote communication[as authorized by law], in each case as may be designated by the Board of Directors from time to time and stated in the notice of meeting.

2.2 Annual meetings of stockholders shall be held at such date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which they shall elect the Board of Directors in the manner provided for in Section 2.10 of these bylaws and transact such other business as may properly be brought before the meeting.

2.3 Notice of the annual meeting stating the place, if any, date and hour of the meeting, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given to each stockholder entitled to vote at such meeting not fewer than ten (10) nor more than sixty (60) days before the date of the meeting, unless otherwise provided by applicable law or the certificate of incorporation. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder’s address as it appears on the records of the Corporation.

2.4 The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any

purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, at the option of the Corporation, (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

2.5 Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, may be called at any time by the Board of Directors, the Chairman of the Board, if any, or the Chief Executive Officer, or at the request of holders of Common Stock representing in the aggregate at least 50% of the shares of Common Stock outstanding at such time that would be entitled to vote at the meeting as determined under Section A.1 of Article V of the certificate of incorporation. Such request shall state the purpose or purposes of the proposed meeting.

2.6 Notice of a special meeting stating the place, if any, date and hour of the meeting and the purpose or purposes for which the meeting is called, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given not fewer than ten (10) nor more than sixty (60) days before the date of the meeting, unless otherwise provided by applicable law or the certificate of incorporation, to each stockholder entitled to vote at such meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation.

2.7 Section B of Article IX of the certificate of incorporation sets forth the requirements for establishing a quorum at meetings of stockholders of the Corporation.[The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation or these bylaws. For purposes of the foregoing, where a separate vote by class or classes is required for any matter, the holders of a majority of the outstanding shares of such class or classes, present in person or represented by proxy, shall constitute a quorum to take action with respect to that vote on that matter. Two or more classes or series of stock shall be considered a single class if the holders thereof are entitled to vote together as a single class at the meeting.] In the absence of a quorum of the holders of any class of stock entitled to vote on a matter, the meeting of such class may be adjourned from time to time in the manner provided by Sections 2.8 and 2.9 of these bylaws until a quorum of such class shall be so present or represented.

2.8 Any meeting of stockholders, annual or special, may be adjourned from time to time as provided in Section 2.9 of these bylaws, to reconvene at the same or some other place, if any, and notice need not be given of any such adjourned meeting if the time and place thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, 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 in conformity with the requirements of these bylaws.

2.9 Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in the absence of the Chairman of the Board by the [Vice Chairman of the Board]lead independent director, if any, or in the absence of the [Vice Chairman of the Board]lead independent director by the Chief Executive Officer, or in the absence of the Chief Executive Officer by a Vice President, or in the absence of the foregoing persons by a Chairman designated by the Board of Directors, or in the absence of such designation by a Chairman chosen at the meeting. The Secretary, or in the absence of the Secretary an Assistant Secretary, shall act as Secretary of the meeting, but in the absence of the Secretary and any Assistant Secretary the Chairman of the meeting may appoint any person to act as Secretary of the meeting.

The order of business at each such meeting shall be as determined by the Chairman of the meeting. The Chairman of the meeting shall have the right, power and authority to adjourn a meeting of stockholders for a reasonable period of time to another place, if any, date and time, and to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting and are not inconsistent with any rules, regulations or procedures adopted by the Board of Directors pursuant to the provisions of the certificate of incorporation, including, without limitation, the establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Corporation, restrictions on entry to such meeting after the time prescribed for the commencement thereof and the opening and closing of the voting polls for each item upon which a vote is to be taken.

2.10 When a quorum is present at any meeting of stockholders:

(a) A nominee for director shall be elected to the Board of Directors if the votes cast “for” such nominee’s election exceed the votes cast “against” such nominee’s election; provided, however, that directors shall be elected by a plurality of the votes cast at any meeting of stockholders for which either (i) (x) the Secretary of the Corporation receives a notice that a stockholder has nominated a person for election to the Board of Directors in compliance with the advance notice requirements for stockholder nominees for director set forth in Section 2.13(b) of these bylaws or otherwise becomes aware that a stockholder has nominated a person for election to the Board of Directors and (y) such nomination has not been withdrawn by such stockholder on or prior to the third business

day next preceding the date the Corporation first mails its notice of meeting for such meeting to the stockholders or (ii) the number of nominees for election to the Board of Directors at such meeting exceeds the number of directors to be elected. Abstentions and broker non-votes shall not be counted as votes cast either "for" or "against" a director's election. If directors are to be elected by a plurality of the votes cast, stockholders shall not be permitted to vote "against" a nominee.

(b) Any other business other than the election of directors brought before the meeting shall be decided by the vote of the holders of a majority of the votes cast affirmatively and negatively on the question, unless the question is one upon which by express provision of the statutes, of the certificate of incorporation or these bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Abstentions and broker non-votes shall not be counted as votes cast either affirmatively or negatively on any question. Where a separate vote by class or classes is required, the vote of the holders of a majority of votes cast affirmatively and negatively on the question (or, in the case of an election of directors, the vote required in accordance with Section 2.10(a) of these bylaws) shall be the act of such class or classes, except as otherwise provided by law or by the certificate of incorporation or these bylaws.

2.11 Unless otherwise provided in the certificate of incorporation or applicable law, each stockholder shall at any meeting of the stockholders be entitled to one vote in person or by proxy for each share of the capital stock having voting power upon the matter in question held by such stockholder. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder in writing or by transmission permitted by law and filed in accordance with the procedures established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Voting at meetings of stockholders need not be by written ballot unless so directed by the Chairman of the meeting or the Board of Directors.

2.12 Prior to any meeting of stockholders, the Board of Directors or the Chief Executive Officer or any other officer designated by the Board shall appoint one or more inspectors to act at such meeting and make a written report thereof and may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at the meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain the number of shares outstanding and the voting power of each, determine the shares represented at the meeting and the validity of proxies and ballots, count all votes and ballots, determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons to assist them in the performance of their duties. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at

a meeting shall be announced at the meeting. No ballot, proxy or vote, nor any revocation thereof or change thereto, shall be accepted by the inspectors after the closing of the polls. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted therewith, any information provided by a stockholder who submits a proxy by telegram, cablegram or other electronic transmission from which it can be determined that the proxy was authorized by the stockholder, ballots and the regular books and records of the Corporation; and they may also consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons that represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for such purpose, they shall, at the time they make their certification, specify the precise information considered by them, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

2.13 (a) The matters to be considered and brought before any annual or special meeting of stockholders of the Corporation shall be limited to only such matters, including the nomination and election of directors, as shall be brought properly before such meeting in compliance with the procedures set forth in this Section 2.13.

(b) For any matter to be properly brought before any annual meeting of stockholders, the matter must be (i) specified in the notice of annual meeting given by or at the direction of the Board of Directors, including nominations made pursuant to Section 2.15, (ii) otherwise brought before the annual meeting by or at the direction of the Board of Directors or (iii) brought before the annual meeting in the manner specified in this Section 2.13(b) by a person who either (x) is a stockholder [that holds]of record [stock of the Corporation]entitled to vote at the annual meeting on such matter (including any election of a director) or (y) is a person (a "Nominee Holder") that [holds such]beneficially owns stock of the Corporation through a nominee or ["street name"]other holder of record [of such stock and can demonstrate to]and provides the Corporation with proof of such [indirect]beneficial ownership,[of, and such Nominee Holder's]including the entitlement to vote[,] such stock on such matter. Stockholders and Nominee Holders who bring matters before the annual meeting pursuant to Section 2.13(b)(iii) are hereinafter referred to as "Proponents". In addition to any other requirements under applicable law, the certificate of incorporation and these bylaws, and other than nominations pursuant to Section 2.15, which shall comply with the requirements of such Section, including the timing requirements for delivery of notice, persons nominated by [stockholders]Proponents for election as directors of the Corporation and any other proposals by [stockholders]Proponents shall be properly brought before an annual meeting of stockholders only if notice of any such matter to be presented by a [stockholder]Proponent at such meeting (a "Stockholder Notice") shall be delivered to the Secretary at the principal executive office of the Corporation not less than ninety (90) nor more than one hundred and twenty (120) days prior to the first anniversary date of the annual meeting for the preceding year; provided, however, that if and only if the annual meeting is not scheduled to be held within a period that commences thirty (30) days

before and ends thirty (30) days after such anniversary date (an annual meeting date outside such period being referred to herein as an "Other Meeting Date"), such Stockholder Notice shall be given in the manner provided herein by the later of (i) the close of business on the date ninety (90) days prior to such Other Meeting Date or (ii) the close of business on the tenth day following the date on which such Other Meeting Date is first publicly announced or disclosed. Any [stockholder]Proponent desiring to nominate any person or persons (as the case may be) for election as a director or directors of the Corporation at an annual meeting of stockholders shall deliver, as part of such Stockholder Notice, a statement in writing setting forth the name of the person or persons to be nominated, the number and class of all shares of each class of stock of the Corporation owned of record and beneficially by each such person, as reported to such [stockholder]Proponent by such person, the information regarding each such person required by paragraphs (a), (e) and (f) of Item 401 of Regulation S-K adopted by the Securities and Exchange Commission, as amended from time to time, each such person's signed consent to serve as a director of the Corporation if elected, a statement whether such person, if elected, intends to tender, promptly following such person's election or re-election, an irrevocable resignation effective upon such person's failure to receive the required vote for re-election at the next meeting at which such person would stand for re-election and upon acceptance of such resignation by the Board of Directors, in accordance with the Corporation's Governance Principles, such [stockholder's]Proponent's name and address[, the number and class of all shares of each class of stock of the Corporation owned of record and beneficially by such stockholder] and, in the case of a Nominee Holder, evidence establishing such Nominee Holder's [indirect]beneficial ownership of stock and entitlement to vote such stock for the election of directors at the annual meeting. Any [stockholder]Proponent who gives a Stockholder Notice of any matter (other than a nomination for director) proposed to be brought before an annual meeting of stockholders shall deliver, as part of such Stockholder Notice, the text of the proposal to be presented and a brief written statement of the reasons why such [stockholder]Proponent favors the proposal and setting forth such [stockholder's]Proponent's name and address,[the number and class of all shares of each class of stock of the Corporation owned of record and beneficially by such stockholder,] any material interest of such [stockholder]Proponent in the matter proposed (other than as a stockholder or beneficial owner of stock), if applicable, and, in the case of a Nominee Holder, evidence establishing such Nominee Holder's [indirect]beneficial ownership of stock and entitlement to vote such stock on the matter proposed at the annual meeting. In addition to any other requirements under applicable law, the certificate of incorporation and these bylaws, any Stockholder Notice delivered under this Section 2.13(b), whether such Stockholder Notice is delivered in connection with a nomination for election as director of the Corporation or any other matter (other than a nomination for director) proposed to be brought before a meeting of stockholders, must set forth (i) the number and class of all shares of each class of stock of the Corporation that are, directly or indirectly, owned of record and beneficially by such Proponent or any Associated Person of such [stockholder or beneficial owner]Proponent, (ii) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class of stock of the Corporation, whether or not such instrument or right shall be subject to settlement in the

underlying class or series of stock of the Corporation or otherwise (a "Derivative Instrument") directly or indirectly beneficially owned by such [stockholder, by such beneficial owner,]Proponent or by any such Associated Person, (iii) any other direct or indirect opportunity held or beneficially owned by such [stockholder, by such beneficial owner,]Proponent or by any such Associated Person, to profit or share in any profit derived from any increase or decrease in the value of shares of any class of stock of the Corporation, (iv) any proxy, contract, arrangement, understanding, or relationship pursuant to which such [stockholder, such beneficial owner,]Proponent or any such Associated Person has a right to vote any shares of any security of the Corporation, (v) any short interest in any security of the Corporation held or beneficially owned by such [stockholder, by such beneficial owner,]Proponent or by any such Associated Person, (vi) any right to dividends on the shares of any class of stock of the Corporation beneficially owned by such [stockholder, by such beneficial owner,]Proponent or by any such Associated Person, which right is separated or separable from the underlying shares, (vii) any proportionate interest in shares of any class of stock of the Corporation or Derivative Instrument held, directly or indirectly, by a general or limited partnership in which such [stockholder, such beneficial owner,]Proponent or such Associated Person is a general partner or with respect to which such [stockholder, such beneficial owner,]Proponent or such Associated Person, directly or indirectly, beneficially owns an interest in a general partner, and (viii) any performance-related fees (other than an asset-based fee) to which such [stockholder, such beneficial owner,]Proponent or such Associated Person is entitled based on any increase or decrease in the value of shares of any class of stock of the Corporation or Derivative Instruments, if any, in each case with respect to the information required to be included in the notice pursuant to (i) through (viii) above, as of the date of such Stockholder Notice (which information shall be supplemented by such [stockholder and by such beneficial owner, if any,]Proponent not later than 10 days after the record date for the meeting to disclose such beneficial ownership, interest, or arrangement as of the record date). As used in these bylaws, (i) an "Associated Person" with respect to any [stockholder or any beneficial owner on whose behalf a nomination or nominations are being made or business or matter is being proposed,]Proponent shall mean (w) any person controlling, directly or indirectly, or acting in concert with, such [stockholder or beneficial owner]Proponent, (x) any beneficial owner of shares of stock of the Corporation [owned of record or beneficially by such stockholder or by such beneficial owner]on whose behalf such Proponent is delivering a Stockholder Notice, (y) any member of such [stockholder's or such beneficial owner's]Proponent's immediate family sharing the same household, and (z) any person controlling, controlled by, or under common control with any person described in the foregoing subsections (w), (x), or (y) of this sentence, and (ii) a person shall be deemed to have a "short interest" in a security if such person, directly or indirectly, through a contract, arrangement, understanding, relationship, or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security. As used in these bylaws, shares "beneficially owned" shall mean all shares that such person is deemed to beneficially own pursuant to Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, as amended from time to time (the "Exchange Act"). If a [stockholder]Proponent is entitled to vote only for a specific class or category of directors at a meeting (annual or

special), such [stockholder's]Proponent's right to nominate one or more individuals for election as a director at the meeting shall be limited to such class or category of directors.

Notwithstanding any provision of this Section 2.13 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation at the next annual meeting of stockholders is increased by virtue of an increase in the size of the Board of Directors and either all of the nominees for director at the next annual meeting of stockholders or the size of the increased Board of Directors is not publicly announced or disclosed by the Corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a Stockholder Notice shall also be considered timely hereunder, but only with respect to nominees to stand for election at the next annual meeting as the result of any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive office of the Corporation not later than the close of business on the tenth day following the first day on which all such nominees or the size of the increased Board of Directors shall have been publicly announced or disclosed.

(c) Except as provided in the immediately following sentence, no matter shall be properly brought before a special meeting of stockholders unless such matter shall have been brought before the meeting pursuant to the Corporation's notice of such meeting. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any stockholder entitled to vote for the election of such director(s) at such meeting may nominate a person or persons (as the case may be) for election to such position(s) as are specified in the Corporation's notice of such meeting, but only if the Stockholder Notice required by Section 2.13(b) hereof shall be delivered to the Secretary at the principal executive office of the Corporation not later than the close of business on the tenth day following the first day on which the date of the special meeting and either the names of all nominees proposed by the Board of Directors to be elected at such meeting or the number of directors to be elected shall have been publicly announced or disclosed.

(d) For purposes of this Section 2.13 and Section 2.15, a matter shall be deemed to have been "publicly announced or disclosed" if such matter is disclosed in a press release reported by the Dow Jones News Service, the Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission.

(e) In no event shall the adjournment of an annual meeting or a special meeting, or any announcement thereof, commence a new period for the giving of notice as provided in this Section 2.13. This Section 2.13 shall not apply to (i) any stockholder proposal that is made pursuant to Rule 14a-8 under the Exchange Act or (ii) any nomination of a director in an election in which only the holders of one or more series of Preferred Stock of the Corporation issued pursuant to Article IV of the certificate of incorporation ("Preferred Stock") are entitled to vote (unless otherwise provided in the terms of such stock).

(f) The Chairman of any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to determine whether notice of nominees and other matters proposed to be brought before a meeting has been duly given in the manner provided in this Section 2.13 and, if not so given, shall direct and declare at the meeting that such nominees and other matters shall not be considered.

2.14 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, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or 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 a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to the time for such other action as described above. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of, or to vote at, a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of, or to vote at, a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

2.15 (a) Subject to the provisions of this Section 2.15, if expressly requested in the relevant Nomination Notice (as defined below), the Corporation shall include in its proxy statement for any annual meeting of stockholders:

(i) the names of any person or persons nominated for election (each, a "Nominee"), which shall also be included on the Corporation's form of proxy and ballot, by any Eligible Holder (as defined below) or group of up to 20 Eligible Holders that has (individually and collectively, in the case of a group) satisfied, as determined by the Board of Directors, all applicable conditions and complied with all applicable procedures set forth in this Section 2.15 (such Eligible Holder or group of Eligible Holders being a "Nominating Stockholder");

(ii) disclosure about each Nominee and the Nominating Stockholder required under the rules of the Securities and Exchange Commission or other applicable law to be included in the proxy statement;

(iii) any statement in support of the Nominee's (or Nominees', as applicable) election to the Board of Directors included by the Nominating Stockholder in the Nomination Notice for inclusion in the proxy statement (subject, without limitation, to Section 2.15(e)(ii)), provided that such statement does not exceed 500 words and fully complies with Section 14 of the Exchange Act and the rules and regulations thereunder, including Rule 14a-9 (the "Statement"); and

(iv) any other information that the Corporation or the Board of Directors determines, in their discretion, to include in the proxy statement relating to the nomination of the Nominee(s), including, without limitation, any statement in opposition to the nomination and any of the information provided pursuant to this Section.

For purposes of this Section 2.15, any determination to be made by the Board of Directors may be made by the Board of Directors, a committee of the Board of Directors or any officer of the Corporation designated by the Board of Directors or a committee of the Board of Directors and any such determination shall be final and binding on the Corporation, any Eligible Holder, any Nominating Stockholder, any Nominee and any other person so long as made in good faith (without any further requirements). The chairman of any annual meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the annual meeting, shall have the power and duty to determine whether a Nominee has been nominated in accordance with the requirements of this Section 2.15 and, if not so nominated, shall direct and declare at the annual meeting that such Nominee shall not be considered.

(b) Maximum Number of Nominees.

(i) The Corporation shall not be required to include in the proxy statement for an annual meeting of stockholders more Nominees than that number of directors constituting 20% of the total number of directors of the Corporation on the last day on which a Nomination Notice may be submitted pursuant to this Section 2.15 (rounded down to the nearest whole number, but not less than two) (the "Maximum Number"). The Maximum Number for a particular annual meeting shall be reduced by: (1) the number of Nominees that are subsequently withdrawn or that the Board of Directors itself decides to nominate for election at such annual meeting and (2) the number of incumbent directors who had been Nominees with respect to the preceding annual meeting of stockholders and whose reelection at the upcoming annual meeting is being recommended by the Board of Directors. In the event that one or more vacancies for any reason occurs on the Board of Directors after the deadline for submitting a Nomination Notice as set forth in Section 2.15(d) below but before the date of the annual meeting, and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Maximum Number shall be calculated based on the number of directors in office as so reduced.

(ii) If the number of Nominees pursuant to this Section 2.15 for any annual meeting of stockholders exceeds the Maximum Number then, promptly upon notice from the Corporation, each Nominating Stockholder will select one Nominee for inclusion in the proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of the ownership position as disclosed in each Nominating Stockholder's Nomination Notice, with the process repeated if the Maximum Number is not reached after each Nominating Stockholder has selected one Nominee. If, after the deadline for submitting a Nomination Notice as set forth in Section 2.15(d), a Nominating

Stockholder ceases to satisfy the eligibility requirements in this Section 2.15 as determined by the Board of Directors, or withdraws its nomination or a Nominee ceases to satisfy the eligibility requirements in this Section 2.15, as determined by the Board of Directors, or becomes unwilling or unable to serve on the Board of Directors, whether before or after the mailing of the definitive proxy statement, then the nomination shall be disregarded, and the Corporation: (1) shall not be required to include in its proxy statement or on any ballot or form of proxy the disregarded Nominee or any successor or replacement nominee proposed by the Nominating Stockholder or by any other Nominating Stockholder and (2) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that the Nominee will not be included as a Nominee in the proxy statement or on any ballot or form of proxy and will not be voted on at the annual meeting.

(c) Eligibility of Nominating Stockholder.

(i) An "Eligible Holder" is a person who has either (1) been a record holder of the shares of the Corporation's common stock used to satisfy the eligibility requirements in this Section 2.15(c) continuously for the three-year period specified in subsection (ii) below or (2) provides to the Secretary of the Corporation, within the time period referred to in Section 2.15(d), evidence of continuous ownership of such shares for such three-year period from one or more securities intermediaries in a form that the Board of Directors determines would be deemed acceptable for purposes of a shareholder proposal under Rule 14a-8(b)(2) under the Exchange Act (or any successor rule). Notwithstanding the foregoing, any otherwise Eligible Holder (including each fund and/or beneficial owner whose stock ownership has been counted for the purposes of qualifying as an Eligible Holder) whose Nominee has been elected as a director at an annual meeting will not be eligible to nominate or participate in the nomination of a Nominee for the following two annual meetings other than the nomination of such previously elected Nominee.

(ii) An Eligible Holder or group of up to 20 Eligible Holders may submit a nomination in accordance with this Section 2.15 only if the person or group (in the aggregate) has continuously owned at least the Minimum Number (as defined below) of shares of the Corporation's common stock throughout the three-year period preceding and including the date of submission of the Nomination Notice, and continues to own at least the Minimum Number of such shares through the date of the annual meeting. For purposes of qualifying as an Eligible Holder and satisfying the "ownership" requirements of this Section 2.15, two or more funds that are (A) under common management and investment control, (B) under common management and funded primarily by the same employer, or (C) a "group of investment companies," as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended, shall be treated as one stockholder or beneficial owner. For the avoidance of doubt, in the event of a nomination by a group of Eligible Holders, any and all

requirements and obligations for an individual Eligible Holder that are set forth in this Section 2.15, including the minimum holding period, shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the ownership of the group in the aggregate. Should any stockholder withdraw from a group of Eligible Holders at any time prior to the annual meeting of stockholders, the group of Eligible Stockholders shall only be deemed to own the shares held by the remaining members of the group.

(iii) The "Minimum Number" means 3% calculated as of the most recent date for which the total number of outstanding shares of common stock of the Corporation is given in any filing by the Corporation with the Securities and Exchange Commission prior to the submission of the Nomination Notice.

(iv) For purposes of this Section 2.15, an Eligible Holder "owns" only those outstanding shares of the Corporation as to which the Eligible Holder possesses both:

(A) the full voting and investment rights pertaining to the shares; and

(B) the full economic interest in (including the opportunity for profit and risk of loss on) such shares;

provided that the number of shares calculated in accordance with clauses (A) and (B) shall not include any shares: (1) sold by such Eligible Holder or any of its affiliates in any transaction that has not been settled or closed, (2) borrowed by such Eligible Holder or any of its affiliates for any purpose or purchased by such Eligible Holder or any of its affiliates pursuant to an agreement to resell, or (3) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Holder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of: (x) reducing in any manner, to any extent or at any time in the future, such Eligible Holder's or any of its affiliates' full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting, or altering to any degree, gain or loss arising from the full economic ownership of such shares by such Eligible Holder or any of its affiliates.

An Eligible Holder "owns" shares held in the name of a nominee or other intermediary so long as the Eligible Holder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Holder's ownership of shares shall be deemed to continue during any period in which the Eligible Holder has delegated any voting power by means of a proxy, power of attorney, or other similar instrument or arrangement that is revocable at any time by the Eligible

Holder. An Eligible Holder's ownership of shares shall be deemed to continue during any period in which the Eligible Holder has loaned such shares provided that the Eligible Holder has the power to recall such loaned shares on five business days' notice and has recalled such shares as of the record date with respect to such annual meeting. The terms "owned," "owning," "ownership" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the Corporation are "owned" for these purposes shall be determined by the Board of Directors.

(v) No person shall be permitted to be in more than one group constituting a Nominating Stockholder, and if any person appears as a member of more than one group, it shall be deemed to be a member of the group that has the largest ownership position as reflected in the Nomination Notice.

(d) Nomination Notice. To nominate a Nominee, the Nominating Stockholder must, no earlier than the close of business 150 calendar days and no later than the close of business 120 calendar days before the anniversary of the date that the Corporation mailed its proxy statement for the prior year's annual meeting of stockholders, submit to the Secretary of the Corporation at the principal executive office of the Corporation all of the following information and documents (collectively, the "Nomination Notice"); provided, however, that if (and only if) the annual meeting occurs on an Other Meeting Date (as defined in Section 2.13), the Nomination Notice shall be given in the manner provided in this Section 2.15(d) by the later of the close of business on the date that is 120 days prior to such Other Meeting Date or the tenth day following the date such Other Meeting Date is first publicly announced or disclosed:

(i) A Schedule 14N (or any successor form) relating to the Nominee, completed and filed with the Securities and Exchange Commission by the Nominating Stockholder as applicable, in accordance with the applicable rules;

(ii) A written notice, in a form deemed satisfactory by the Board of Directors, of the nomination of such Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Stockholder (including, in the case of a group, each group member):

(A) the information required with respect to the nomination of directors pursuant to Section 2.13 of these Bylaws;

(B) the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N;

(C) a representation and warranty that the Nominating Stockholder did not acquire, and is not holding, securities of the Corporation for the purpose or with the effect of influencing or changing

control of the Corporation;

(D) a representation and warranty that the Nominee's candidacy or, if elected, membership on the Board of Directors would not violate applicable state or federal law or the rules of the principal national securities exchange on which the Corporation's securities are traded;

(E) a representation and warranty that the Nominee:

(1) does not have any direct or indirect relationship with the Corporation that will cause the Nominee to be deemed not independent pursuant to the Corporation's Independence Policy of the Board of Directors as most recently published on its website and otherwise qualifies as independent under the rules of the principal national securities exchange on which the Corporation's shares of common stock are traded;

(2) meets the audit committee independence requirements under the rules of the principal national securities exchange on which the Corporation's shares of common stock are traded;

(3) is a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule);

(4) is an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision); and

(5) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933 or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of the Nominee;

(F) a representation and warranty that the Nominating Stockholder satisfies the eligibility requirements set forth in Section 2.15(c) and has provided evidence of ownership to the extent required by Section 2.15(c)(i);

(G) a representation and warranty that the Nominating Stockholder intends to continue to satisfy the eligibility requirements described in Section 2.15(c) through the date of the annual meeting;

(H) a representation and warranty that the Nominating Stockholder will not engage in a "solicitation" within the meaning of Rule 14a-1(l) (without reference to the exception in Rule 14a-l(l)(2)(iv)) (or any successor rules) under the Exchange Act in support of the election of any individual as a director at the applicable annual meeting, other than its Nominee(s) or any nominee of the Board of Directors;

(I) a representation and warranty that the Nominating Stockholder will not use any proxy card other than the Corporation's proxy card in soliciting stockholders in connection with the election of a Nominee at the annual meeting;

(J) if desired, the Statement; and

(K) in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination;

(iii) An executed agreement, in a form deemed satisfactory by the Board of Directors, pursuant to which the Nominating Stockholder (including each group member) agrees:

(A) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election of a Nominee;

(B) to file any written solicitation or other communication with the Corporation's stockholders relating to one or more of the Corporation's directors or director nominees or any Nominee with the Securities and Exchange Commission, regardless of whether any such filing is required under any rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation;

(C) to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Stockholder or any of its Nominees with the Corporation, its stockholders or any other person in connection with the nomination or election of directors, including, without limitation, the Nomination Notice;

(D) to indemnify and hold harmless (jointly with all other group members, in the case of a group member) the Corporation and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or

any of its directors, officers or employees arising out of or relating to a failure or alleged failure of the Nominating Stockholder or any of its Nominees to comply with, or any breach or alleged breach of, its respective obligations, agreements or representations under this Section 2.15; and

(E) in the event that (1) any information included in the Nomination Notice or any other communication by the Nominating Stockholder (including with respect to any group member) with the Corporation, its stockholders or any other person in connection with the nomination or election of a Nominee ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading) or (2) the Nominating Stockholder (including any group member) has failed to continue to satisfy the eligibility requirements described in Section 2.15(c), to promptly (and in any event within 48 hours of discovering such misstatement, omission or failure) notify the Corporation and any other recipient of such communication of (1) the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission or (2) of such failure; and

(iv) An executed agreement, in a form deemed satisfactory by the Board of Directors, by the Nominee:

(A) to provide to the Corporation such other information and certifications, including completion of the Corporation's director questionnaire, as it may reasonably request;

(B) that the Nominee has read and agrees, if elected, to serve as a member of the Board of Directors, to adhere to the Corporation's Corporate Governance Guidelines and Global Code of Business Conduct and any other Corporation policies and guidelines applicable to directors; and

(C) that the Nominee is not and will not become a party to (i) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity other than the Corporation in connection with service or action as a director of the Corporation that has not been disclosed to the Corporation, (ii) any agreement, arrangement or understanding with any person or entity as to how the Nominee would vote or act on any issue or question as a director (a "Voting Commitment") that has not been disclosed to the Corporation or (iii) any Voting Commitment that could reasonably be expected to limit or interfere with the Nominee's ability to comply, if elected as a director of the Corporation, with its fiduciary duties under applicable law.

The information and documents required by this Section 2.15(d) to be provided by the Nominating Stockholder shall be: (i) provided with respect to and executed by each group member, in the case of information applicable to group members; and (ii) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a Nominating Stockholder or group member that is an entity. The Nomination Notice shall be deemed submitted on the date on which all of the information and documents referred to in this Section 2.15(d) (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to or, if sent by mail, received by the Secretary of the Corporation.

(e) Exceptions.

(i) Notwithstanding anything to the contrary contained in this Section 2.15, the Corporation may omit from its proxy statement any Nominee and any information concerning such Nominee (including the Statement) and no vote on such Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation), and the Nominating Stockholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of the Nominee, if:

(A) the Corporation receives a notice, whether or not subsequently withdrawn, pursuant to Section 2.13 of these Bylaws that a stockholder intends to nominate a candidate for director at the annual meeting;

(B) the Nominating Stockholder or the designated lead group member, as applicable, or any qualified representative thereof, does not appear at the meeting of stockholders to present the nomination submitted pursuant to this Section 2.15 or the Nominating Stockholder withdraws its nomination;

(C) the Board of Directors determines that such Nominee's nomination or election to the Board of Directors would result in the Corporation violating or failing to be in compliance with the Corporation's bylaws or certificate of incorporation or any applicable law, rule or regulation to which the Corporation is subject, including any rules or regulations of the principal national securities exchange on which the Corporation's securities are traded;

(D) the Nominee was nominated for election to the Board of Directors pursuant to this Section 2.15 at one of the Corporation's two preceding annual meetings of stockholders and either withdrew or became ineligible or received a vote of less than 20% of the shares of common stock entitled to vote for such Nominee;

(E) the Nominee (1) has been, within the past three years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended, or (2) is a U.S. Disqualified Person, as defined in the certificate of incorporation; or

(F) the Corporation is notified, or the Board of Directors determines, that a Nominating Stockholder has failed to continue to satisfy the eligibility requirements described in Section 2.15(c), any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), the Nominee becomes unwilling or unable to serve on the Board of Directors or any material violation or breach occurs of the obligations, agreements, representations or warranties of the Nominating Stockholder or the Nominee under this Section 2.15;

(ii) Notwithstanding anything to the contrary contained in this Section 2.15, the Corporation may omit from its proxy statement, or may supplement or correct, any information, including all or any portion of the statement in support of the Nominee(s) included in the Nomination Notice, if the Board of Directors determines that:

(A) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading;

(B) such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; or

(C) the inclusion of such information in the proxy statement would otherwise violate the federal proxy rules or any other applicable law, rule or regulation.

The Corporation may solicit against, and include in the proxy statement its own statement relating to, any Nominee.

ARTICLE III - DIRECTORS

3.1 Subject to the immediately following sentence, the number of directors shall be determined exclusively by the Board of Directors from time to time pursuant to a resolution adopted by a majority of the directors then in office. If the holders of any class or classes of stock or series thereof are entitled as such by the certificate of incorporation to elect one or more directors, the preceding sentence shall not apply to such directors and the number of such directors shall be as provided in the terms of such stock and pursuant to the resolution or resolutions authorizing or fixing the terms of such stock.

Each director shall be elected by the stockholders at their annual meeting. Each director shall hold office until the next election, and until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. Any director may resign at any time upon written notice or by electronic transmission given to the Board of Directors or to the Chief Executive Officer or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein, no acceptance of such resignation shall be necessary to make it effective. Directors need not be stockholders.

3.2 Any vacancies resulting from death, resignation, disqualification, removal or other cause, and newly created directorships resulting from any increase in the authorized number of directors or from any other cause, may be filled by, and only by, directors then in office, even if less than a quorum, or by the sole remaining director. Whenever the holders of any class or classes of stock or series thereof are entitled, by the certificate of incorporation, to elect one or more directors, vacancies and newly created directorships of such class or classes or series may be filled by, and only by, a majority of the directors elected by such class or classes or series then in office, although less than a quorum, or by the sole remaining director so elected. Any director elected or appointed to fill a vacancy or a newly created directorship shall hold office until his or her successor is duly elected and shall qualify, or until his or her earlier resignation or removal.

3.3 The business of the Corporation shall be managed by or under the direction of its Board of Directors, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these bylaws directed or required to be exercised or done by the stockholders.

INDEPENDENCE REQUIREMENTS

3.4 At least a majority of the members of the Board of Directors shall satisfy the independence requirements for directors of the Corporation, as modified and amended by the Board of Directors from time to time. The Chief Executive Officer of the Corporation may be a member of the Board of Directors. The Chief Executive Officer and any other directors who do not satisfy the independence requirements shall be recused from acts of the Board of Directors, whether it is acting as the Board of Directors or as a committee of the Board of Directors, with respect to acts of any committee of the Board of Directors that is required to be comprised solely of directors that satisfy the independence requirements of the Corporation, as modified and amended by the Board of Directors from time to time.

MEETINGS OF THE BOARD OF DIRECTORS

3.5 The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware.

3.6

(a) Regular meetings of the Board of Directors may be held at such time and at such place as shall from time to time be determined by the Board of Directors and publicized among all directors, and if so determined and publicized, notice thereof need not be given.

(b) Special meetings of the Board of Directors may be called by the Chairman of the Board, if any, by the [Vice Chairman of the Board]lead independent director, if any, by the Chief Executive Officer or by any two directors on notice to each director given either personally or by mail, e-mail or facsimile at least twenty-four hours prior to such meeting, or by mail at least three (3) calendar days prior to such meeting, which notice, with respect to each director, may be waived in writing by such director.

3.7 At each meeting of the Board of Directors, one-half of the total number of directors fixed by resolution of the Board of Directors in accordance with Section 3.1 (including any vacancies) shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board unless the certificate of incorporation or these bylaws shall require a vote of a greater number. In case at any meeting of the Board a quorum shall not be present, the members of the Board present may adjourn the meeting from time to time until a quorum shall be present.

3.8 Meetings of the Board of Directors shall be presided over by the Chairman of the Board, if any, or in the absence of the Chairman of the Board by the [Vice Chairman of the Board]lead independent director, if any, or in the absence of the [Vice Chairman of the Board]lead independent director by the Chief Executive Officer, or in their absence by a Chairman chosen at the meeting. The Secretary, or in the absence of the Secretary an Assistant Secretary, shall act as Secretary of the meeting, but in the absence of the Secretary and any Assistant Secretary the Chairman of the meeting may appoint any person to act as Secretary of the meeting.

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

3.10 Members of the Board of Directors, or of any committee designated by the Board, may participate in a meeting of the Board or of such committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

COMMITTEES OF DIRECTORS

3.11 The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. 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. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

Any such committee, to the extent 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, and may authorize the seal of the Corporation to be affixed to all papers that require it; but no such committee shall have such power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the Delaware General Corporation Law to be submitted to stockholders for approval; or (ii) adopting, amending or repealing any provision of these bylaws.

3.12 Unless the Board of Directors otherwise provides, each committee designated by the Board may adopt, amend and repeal rules for the conduct of its business. In the absence of a provision by the Board or a provision in the rules of such committee to the contrary, a majority of the entire authorized number of members of such committee shall constitute a quorum for the transaction of business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and in other respects each committee shall conduct its business in the same manner as the Board conducts its business pursuant to this Article III of these bylaws.

COMPENSATION OF DIRECTORS

3.13 Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board of Directors or any committee thereof shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director (which amounts may be paid in cash or such other form as the Board or any committee may authorize). No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Stockholders of special or standing committees may be allowed like compensation for attending committee meetings.

CONSIDERATIONS OF THE BOARD OF DIRECTORS

3.14

(a) In discharging his or her responsibilities as a member of the Board, each director also must, to the fullest extent permitted by applicable law, take into consideration the effect that the Corporation's actions would have on the ability of:

(1) the [U.S. Regulated Subsidiaries]Exchanges to carry out their responsibilities under the Exchange Act; and

(2) the [U.S. Regulated Subsidiaries, NYSE Group, Inc. ("NYSE Group") (if and to the extent that NYSE Group continues to exist as a separate entity), NYSE Holdings LLC ("NYSE Holdings"), Intercontinental Exchange Holdings, Inc. ("ICE Holdings")]Exchanges, any entity controlled by the Corporation that is not itself an Exchange but that directly or indirectly controls an Exchange (each such controlling entity, an "Intermediate Holding Company") and the Corporation (a) to engage in conduct that fosters and does not interfere with the ability of the [U.S. Regulated Subsidiaries, NYSE Group (if and to the extent that NYSE Group continues to exist as a separate entity), NYSE Holdings, ICE Holdings]Exchanges, Intermediate Holding Companies and the Corporation to prevent fraudulent and manipulative acts and practices in the securities markets; (b) to promote just and equitable principles of trade in the securities markets; (c) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (d) to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (e) in general, to protect investors and the public interest.

(b) In discharging his or her responsibilities as a member of the Board or as an officer or employee of the Corporation, each such director, officer or employee shall (1) comply with the U.S. federal securities laws and the rules and regulations thereunder, (2) cooperate with the SEC and (3) cooperate with each Exchange[the U.S. Regulated Subsidiaries] pursuant to and, to the extent of, its[their] regulatory authority.

(c) Nothing in this Section 3.14 shall create any duty owed by any director, officer or employee of the Corporation to any Person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to the foregoing matters, or by implication be read to apply more broadly than as defined in this Section 3.14. No past or present stockholder, employee, [former employee,] beneficiary, agent, customer, creditor, community or regulatory authority or member thereof or other person or entity shall have any

rights against any director, officer, [or]employee or agent of the Corporation or the Corporation under this Section 3.14.

3.15 "Exchange" shall mean a national securities exchange registered under Section 6 of the Exchange Act that is directly or indirectly controlled by the Corporation ["U.S. Regulated Subsidiaries" shall mean New York Stock Exchange LLC, NYSE Arca, LLC, NYSE Arca, Inc., NYSE Arca Equities, Inc., NYSE MKT LLC, and NYSE National, Inc. or their successors, in each case to the extent that such entities continue to be controlled, directly or indirectly, by the Corporation (and each, a "U.S. Regulated Subsidiary")].

ARTICLE IV - NOTICES

4.1 Whenever any notice is required by law, the certificate of incorporation or these bylaws to be given, a waiver thereof in writing, signed by the person or persons entitled to said notice, or a waiver thereof by electronic transmission by such person, whether given before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any written waiver of notice unless so required by the certificate of incorporation or these bylaws. If mailed, notice to stockholders shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at the stockholder's address as it appears on the records of the Corporation. Without limiting the manner by which notices otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the Delaware General Corporation Law.

ARTICLE V - OFFICERS

5.1 The Board of Directors may elect from among its members a Chairman of the Board. The Board of Directors may also choose officers of the Corporation, which may include a Chief Executive Officer, a President, a Chief Financial Officer, a Chief Strategic Officer, a Chief Technology Officer, a General Counsel, a Secretary and one or more Senior Vice Presidents and may also choose one or more Vice Presidents, Assistant Secretaries, Treasurers and Assistant Treasurers and such other officers as the Board may deem desirable or appropriate and may give any of them such further designations or alternate titles as it considers desirable. In addition, the Board at any time and from time to time may authorize any officer of the Corporation to appoint one or more officers of the kind described in the immediately preceding sentence (other than any Senior Officers). Any number of offices may be held by the same person and directors may hold any office, unless the certificate of incorporation or these bylaws otherwise provide. For purposes of these bylaws, "Senior Officers" shall mean the Corporation's Chief Executive Officer, the President, the Chief Financial Officer, the Chief Strategic Officer,

the Chief Technology Officer, the General Counsel, the Secretary, any Senior Vice Presidents, and any other officer designated a "Senior Officer" by the Board or the Compensation Committee of the Board from time to time in its sole discretion. For the avoidance of doubt, any employee deemed an officer of the Corporation under Section 16 of the Exchange Act shall be deemed a Senior Officer for purposes of these bylaws.

5.2 The Board of Directors shall choose a Chief Executive Officer and a Secretary. The Secretary shall have the duty to record the proceedings of the meetings of the stockholders, the Board of Directors and any committees in a book to be kept for that purpose.

5.3 The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be stated in these bylaws or as shall be determined from time to time by resolution of the Board of Directors and which are not inconsistent with these bylaws and, to the extent not so stated, as generally pertain to their respective offices, subject to the control of the Board.

5.4 Unless otherwise provided in the resolution of the Board of Directors electing or authorizing the appointment of any officer, each officer of the Corporation shall hold office until his or her successor is chosen and qualifies or until his or her earlier resignation or removal. Any officer may resign at any time upon written notice to the Board or to the Chief Executive Officer or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective. Any officer may be removed with or without cause at any time by the affirmative vote of a majority of the Board of Directors. Any officer authorized by the Board to appoint a person to hold an office of the Corporation may also remove such person from such office with or without cause at any time, unless otherwise provided in the resolution of the Board providing such authorization. Any such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation, but the election of an officer shall not of itself create contractual rights. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.

ARTICLE VI - CERTIFICATE OF STOCK

6.1 The shares of stock in the Corporation shall be represented by certificates, *provided* that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate theretofore issued until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board, to the extent, if any, required by applicable law, 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 Chief Executive Officer or a Vice President and the Chief Financial Officer or an Assistant Treasurer, the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares of stock registered in certificate form owned by him or her in the Corporation.

If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, *provided* that, except as otherwise provided in Section 202 of the Delaware General Corporation Law, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, 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 shares, the Corporation shall send to the registered owner thereof a written notice containing the information required by law to be set forth or stated on certificates or 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 uncertificated shares and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

6.2 Any of or all the signatures on the certificate may be facsimile. 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 by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

LOST CERTIFICATES

6.3 The Board of Directors may direct a new certificate or certificates or uncertificated shares to 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 or such person’s legal representative. When authorizing such issue of a new certificate or certificates or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the Corporation a bond in such sum 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.

TRANSFER OF STOCK

6.4 Subject to any applicable restrictions on transfer, upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly

endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation to issue a new certificate or uncertificated shares to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

REGISTERED STOCKHOLDERS

6.5 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 the State of Delaware.

ARTICLE VII - JURISDICTION

The Corporation, its directors and officers, and those of its employees whose principal place of business and residence is outside of the United States shall be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the SEC for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws and the rules and regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of any Exchange[the U.S. Regulated Subsidiaries] (and shall be deemed to agree that the Corporation may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding), and the Corporation and each such director, officer or employee, in the case of any such director, officer or employee by virtue of his acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the SEC, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

ARTICLE VIII - CONFIDENTIAL INFORMATION

8.1 To the fullest extent permitted by applicable law, all confidential information that shall come into the possession of the Corporation pertaining to the self-regulatory function of any Exchange[New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Arca Equities, Inc., NYSE MKT LLC and NYSE National, Inc. or their successors], in each case to the extent that such entities continue to be controlled, directly or indirectly, by the Corporation (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of any Exchange[of the U.S. Regulated Subsidiaries (the "U.S. Subsidiaries'](the "Exchange Confidential Information") shall (x) not be made available to any Persons (other than as provided in Sections 8.2 and 8.3 of these bylaws) other than to those officers, directors, employees and agents of the Corporation that have a reasonable need to know the contents thereof; (y) be retained in confidence by the Corporation and the officers,

directors, employees and agents of the Corporation; and (z) not be used for any commercial purposes.

8.2 Notwithstanding Section 8.1 of these bylaws, nothing in these bylaws shall be interpreted so as to limit or impede:

(a) the rights of the SEC or any Exchange[of the U.S. Regulated Subsidiaries] to have access to and examine such [U.S. Subsidiaries']Exchange's Exchange Confidential Information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or

(b) the ability of any officers, directors, employees or agents of the Corporation to disclose [the U.S. Subsidiaries']Exchange Confidential Information to the SEC or an Exchange[the U.S. Regulated Subsidiaries].

8.3 The Corporation's books and records shall be subject at all times to inspection and copying by:

(a) the SEC; and

(b) any Exchange[U.S. Regulated Subsidiary]; provided that such books and records are related to the operation or administration of such Exchange[U.S. Regulated Subsidiary or any other U.S. Regulated Subsidiary over which such U.S. Regulated Subsidiary has regulatory authority or oversight].

8.4 The Corporation's books and records related to [U.S. Regulated Subsidiaries]an Exchange shall be maintained within the United States. For so long as the Corporation directly or indirectly controls any Exchange[U.S. Regulated Subsidiary], the books, records, premises, officers, directors and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors and employees of such Exchange[U.S. Regulated Subsidiaries] for purposes of and subject to oversight pursuant to the Exchange Act.

ARTICLE IX - COMPLIANCE WITH SECURITIES LAWS

9.1 The Corporation shall comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with the SEC and the Exchanges[U.S. Regulated Subsidiaries] pursuant to and to the extent of their respective regulatory authority, and shall take reasonable steps necessary to cause its agents to cooperate, with the SEC and, where applicable, an Exchange[the U.S. Regulated Subsidiaries] pursuant to and to the extent of their regulatory authority.

9.2 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 Articles VII and VIII and Sections 3.14 and 9.3 of these bylaws, as applicable, with respect to their activities related to any Exchange[U.S. Regulated Subsidiary].

9.3 The Corporation, its directors, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of each Exchange[the U.S. Regulated Subsidiaries] (to the extent of each Exchange's[U.S. Regulated Subsidiary's] self-regulatory function) and to its obligations to investors and the general public, and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of an Exchange[the U.S. Regulated Subsidiaries] relating to their regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of the Exchange[U.S. Regulated Subsidiaries] to carry out its[their respective] responsibilities under the Exchange Act.

9.4 No stockholder, employee, former employee, beneficiary, customer, creditor, community, regulatory authority or member thereof shall have any rights against the Corporation or any director, officer or employee of the Corporation under this Article IX.

ARTICLE X - GENERAL PROVISIONS

DIVIDENDS

10.1 Dividends upon the capital stock of the Corporation, subject to the provisions of the certificate of incorporation, if any, and applicable law may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property or in shares of capital stock, subject to the provisions of the certificate of incorporation.

10.2 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 directors from time to time, in their absolute discretion, think 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 purposes as the directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

FISCAL YEAR

10.3 The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

SEAL

10.4 The Board of Directors may adopt a corporate seal having inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

TIME PERIODS

10.5 In applying any provision of these bylaws that requires that an act be done or not be done a specified number of days prior to any event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

INDEMNIFICATION

10.6 The Corporation shall, to the fullest extent permitted by law, as those laws may be amended and supplemented from time to time, indemnify any director or Senior Officer made, or threatened to be made, a party to any action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of being a director or Senior Officer of the Corporation or a predecessor corporation or, at the Corporation's request, a director, officer, partner, member, employee or agent of another corporation or other entity; *provided, however*, that the Corporation shall indemnify any director or Senior Officer in connection with a proceeding initiated by such person only if such proceeding was authorized in advance by the Board of Directors of the Corporation. The indemnification provided for in this Section 10.6 shall: (i) not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement or vote of stockholders or disinterested directors or otherwise, both as to action in their official capacities and as to action in another capacity while holding such office; (ii) continue as to a person who has ceased to be a director or Senior Officer; and (iii) inure to the benefit of the heirs, executors and administrators of an indemnified person.

Expenses incurred by any such person in defending a civil or criminal action, suit or proceeding by reason of the fact that he is or was a director or Senior Officer of the Corporation (or was serving at the Corporation's request as a director, officer, partner, member, employee or agent of another corporation or other entity) shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or Senior Officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized by law. Notwithstanding the foregoing, the Corporation shall not be required to advance such expenses to a person who is a party to an action, suit or proceeding brought by the Corporation and approved by a majority of the Board of Directors of the Corporation that alleges willful misappropriation of corporate assets by such person, disclosure of confidential information in violation of such person's fiduciary or contractual obligations to the Corporation or any other willful and deliberate breach in bad faith of such person's duty to the Corporation or its stockholders.

The foregoing provisions of this Section 10.6 shall be deemed to be a contract between the Corporation and each director or Senior Officer who serves in such capacity at any time while this bylaw is in effect, and any repeal or modification thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts. The rights provided to any person by this bylaw shall be enforceable against the Corporation by such person, who shall be

presumed to have relied upon it in serving or continuing to serve as a director or officer or in such other capacity as provided above.

The Board of Directors in its discretion shall have power on behalf of the Corporation to indemnify any person, other than a director or Senior Officer, made or threatened to be made a party to any action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person, or his or her testator or intestate, is or was an officer, employee or agent of the Corporation or, at the Corporation's request, is or was serving as a director, officer, partner, member, employee or agent of another corporation or other entity.

To assure indemnification under this Section 10.6 of all directors, officers, employees and agents who are determined by the Corporation or otherwise to be or to have been "fiduciaries" of any employee benefit plan of the Corporation that may exist from time to time, Section 145 of the Delaware General Corporation Law shall, for the purposes of this Section 10.6, be interpreted as follows: an "other enterprise" shall be deemed to include such an employee benefit plan, including without limitation, any plan of the Corporation that is governed by the Act of Congress entitled "Employee Retirement Income Security Act of 1974," as amended from time to time; the Corporation shall be deemed to have requested a person to serve an employee benefit plan where the performance by such person of his duties to the Corporation also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to such Act of Congress shall be deemed "fines."

FORM OF RECORDS

10.7 Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or be in the form of, electronic data storage, media punch cards, magnetic tape, photographs, microphotographs or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect the same.

INTERPRETATION

10.8 Any reference in these bylaws to the Delaware General Corporation Law shall be to the Delaware General Corporation Law as it now exists or as it may hereafter be amended.

ARTICLE XI - AMENDMENTS TO THE BYLAWS

11.1 The Board of Directors may adopt additional bylaws, and may amend or repeal any bylaws, whether or not adopted by them, at any time.

11.2 Stockholders of the Corporation may adopt additional bylaws and may amend or repeal any bylaws; *provided* that notice of the proposed change was given in

the notice of the stockholders meeting at which such action is to be taken, subject to any vote of the holders of any class or series of stock of the Corporation required by law or the Certificate of Incorporation.

11.3 Notwithstanding Sections 11.1 and 11.2, for so long as the Corporation shall control, directly or indirectly, any Exchange,[of the U.S. Regulated Subsidiaries] before any amendment or repeal of any provision of these bylaws shall be effective, such amendment or repeal shall either be (i) filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder or (ii) submitted to the boards of directors of each Exchange[New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Arca Equities, Inc., NYSE MKT LLC and NYSE National, Inc. or the boards of directors of their successors], in each case only to the extent that such entity continues to be controlled directly or indirectly by the Corporation, and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the SEC, as the case may be.

[ARTICLE XII -- VOTING AND OWNERSHIP LIMITATIONS]

[12.1

(a) Subject to its fiduciary obligations under applicable law, for so long as the Corporation directly or indirectly controls NYSE National, Inc. (or its successor), the Board of Directors shall not adopt any resolution pursuant to clause (b) of Section A.2 of Article V of the Corporation's Certificate of Incorporation unless the Board of Directors shall have determined that:

(1) in the case of a resolution to approve the exercise of voting rights in excess of 20% of the then outstanding votes entitled to be cast on such matter, neither such Person nor any of its Related Persons is an ETP Holder (as defined in the bylaws of NYSE National, Inc., as such bylaws may be in effect from time to time) of NYSE National, Inc. (any such Person that is a Related Person of an ETP Holder shall hereinafter also be deemed to be an "ETP Holder" for purposes of these bylaws, as the context may require);

(2) in the case of a resolution to approve the entering into of an agreement, plan or other arrangement under circumstances that would result in shares of stock of the Corporation that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any Person, but for Article V of the Certificate of Incorporation of the Corporation, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of stock of the Corporation that would exceed 20% of the then outstanding votes entitled to be cast on such matter (assuming that all shares of stock of the Corporation that

are subject to such agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter), neither such Person nor any of its Related Persons is, with respect to NYSE National, Inc., an ETP Holder.

(b) Subject to its fiduciary obligations under applicable law, for so long as the Corporation directly or indirectly controls NYSE National, Inc. (or its successor), the Board of Directors shall not adopt any resolution pursuant to clause (b) of Section B(2) of Article V of the Corporation's Certificate of Incorporation, unless the Board of Directors shall have determined that neither such Person nor any of its Related Persons is an ETP Holder with respect to NYSE National, Inc. (or its successor).

(c) For the purpose of this Section 12.1, "Person" shall have the meaning assigned in the Certificate of Incorporation of the Corporation, as it shall be in effect from time to time.

(d) "Related Person" shall have the meaning assigned by the Certificate of Incorporation of the Corporation, as it shall be in effect from time to time.]

[12.2 For so long as the Corporation shall control, directly or indirectly, NYSE National, Inc. (or its successor), the Board of Directors shall not adopt any resolution to repeal or amend any provision of the certificate of incorporation of the Corporation unless such amendment or repeal shall either be (A) filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder or (B) submitted to the board of directors of NYSE National, Inc. (or the board of directors of its successor), and if such board of directors determines that such amendment or repeal must be filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the SEC, as the case may be.]