

# NASDAQ Stock Market LLC

## BY-LAWS

### BY-LAWS OF THE NASDAQ STOCK MARKET LLC

These By-Laws have been established as the By-laws of The Nasdaq Stock Market LLC, a Delaware limited liability company (the "*Company*"), pursuant to the Second Amended Limited Liability Company Agreement of the Company, dated as of July 9, 2009 (as amended from time to time, the "*LLC Agreement*"), and, together with the LLC Agreement, constitute the limited liability company agreement of the Company within the meaning of the LLC Act (as defined in the LLC Agreement). In the event of any inconsistency between the LLC Agreement and these By-Laws, the provision of the LLC Agreement shall control.

Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the LLC Agreement.

### Article I DEFINITIONS

When used in these By-Laws, unless the context otherwise requires, the terms set forth below shall have the following meanings:

- (a) "Act" means the Securities Exchange Act of 1934, as amended.
- (b) "affiliate" has the meaning ascribed to that term in Rule 12b-2 of the General Rules and Regulations under the Act, as in effect on the date of the LLC Agreement.
- (c) "Board" or "Board of Directors" means the Board of Directors of the Company.
- (d) "broker" shall have the same meaning as in Section 3(a)(4) of the Act.
- (e) "Commission" means the Securities and Exchange Commission.
- (f) "Company Member" means the means Nasdaq, Inc., as the sole member of the Company.
- (g) "day" means calendar day.
- (h) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act.
- (i) "Director" means the Persons elected or appointed to the Board of Directors from time to time in accordance with the LLC Agreement and these By-Laws, in their capacity as managers of the Company.
- (j) "Election Date" means a date selected by the Board on an annual basis, on which Nasdaq Members may vote with respect to Member Representative Directors in the event of a contested election.

(k) "Executive Representative" shall have the same meaning as in the Nasdaq Rules.

(l) "Industry Director" means a Director (excluding any two officers of the Company, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

(m) "Industry member" means a Nasdaq Listing and Hearing Review Council member, Nasdaq Review Council member, or member of any other committee appointed by the Board who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or to FINRA (or

any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

(n) "investment banking or securities business" means the business, carried on by a broker or dealer, of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others.

(o) "List of Candidates" means the list of candidates for Member Representative Director positions to be elected on an Election Date.

(p) "Member Nominating Committee" means the Member Nominating Committee appointed pursuant to these By-Laws.

(q) "Member Representative Director" means a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by a Nasdaq Member pursuant to these By-Laws. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of a Nasdaq Member.

(r) "Member Representative member" means a Nasdaq Listing and Hearing Review Council member, Nasdaq Review Council member, or member of any other committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to these By-Laws.

(s) "FINRA" means the Financial Industry Regulatory Authority, Inc. and its affiliates.

(t) "Nasdaq Member" means any registered broker or dealer that has been admitted to membership in the national securities exchange operated by the Company. A Nasdaq Member is not a member of the Company by reason of being a Nasdaq Member.

(u) "Nominating Committee" means the Nominating Committee of the Board appointed pursuant to these By-Laws.

(v) "Non-Industry Director" means a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Company; or (iii) any other individual who would not be an Industry Director.

(w) "Non-Industry member" means a Nasdaq Listing and Hearing Review Council member, Nasdaq Review Council member, or member of any other committee appointed by the Board who is (i) a Public member; (ii) an officer or employee of an issuer of securities listed on the national securities exchange operated by the Company; or (iii) any other individual who would not be an Industry member.

(x) "person associated with a Nasdaq Member" or "associated person of a Nasdaq Member" means any partner, officer, director, or branch manager of a Nasdaq member (or person

occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Nasdaq member, or any employee of such Nasdaq member, except that any person associated with a Nasdaq member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these By-Laws.

(y) "Public Director" means a Director who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA. For the avoidance of doubt, a director of an issuer of securities listed on the national securities exchange operated by the Company shall not be precluded from being considered a "Public Director" solely on the basis of such directorship.

(z) "Public member" means a Nasdaq Listing and Hearing Review Council member, Nasdaq Review Council member, or member of any other committee appointed by the Board who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA. For the avoidance of doubt, a director of an issuer of securities listed on the national securities exchange operated by the Company shall not be precluded from being considered a "Public member" solely on the basis of such directorship.

(aa) "Record Date" means a date selected by the Board for the purpose of determining the Nasdaq Members entitled to vote for the election of Member Representative Directors on an Election Date in the event of a Contested Election.

(bb) "registered broker or dealer" means any registered broker or dealer, as defined in Section 3(a)(48) of the Act, that is registered with the Commission under the Act.

(cc) "Rules" or "Nasdaq Rules" means the rules of the Company set forth in the rule manual maintained by the Company, as adopted by the Board, as hereafter amended or supplemented.

(dd) "statutory disqualification" shall have the same meaning as in Section 3(a)(39) of the Act.

(ee) "Contested Election" means an election for one or more Member Representative Directors for which the number of candidates on the List of Candidates exceeds the number of positions to be elected.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 (November 30, 2007); amended by SR-NASDAQ-2008-043 (July 21, 2008); amended by SR-NASDAQ-2009-042 (July 9, 2009); amended Oct. 18, 2017 (SR-NASDAQ-2017-110); amended Sept. 20, 2019 (SR-NASDAQ-2019-081).

## **Article II ANNUAL ELECTION OF MEMBER REPRESENTATIVE DIRECTORS AND OTHER ACTIONS BY NASDAQ MEMBERS**

### **Section 1. Record and Election Date**

**(a)** The Member Representative Directors shall be elected to the Board on an annual basis. For each annual election of Member Representative Directors, the Board shall select a Record Date and an Election Date. The Record Date shall be at least 10 days but not more than 60 days prior to the Election Date. The Member Nominating Committee shall create a list of one or more candidates for each Member Representative Director position (the "*List of Candidates*") on the Board to be elected on the Election Date. Promptly after selection of the Election Date, in a Notice to Members and in a prominent location on a publicly accessible website, the Company (i) shall announce the Election Date and the List of Candidates, and (ii) shall describe the procedures for Nasdaq Members to nominate candidates for election at the next annual meeting. In the Event of a Contested Election, the Company shall also send Nasdaq Members the formal notice described in Section 1 (c).

**(b)** An additional candidate may be added to the List of Candidates by any Nasdaq Member that submits a timely and duly executed written nomination to the Secretary of the Company. To be timely, a Nasdaq Member's notice shall be delivered to the Secretary at the principal executive offices of the Company not later than the close of business on the 90<sup>th</sup> day nor earlier than the close of business on the 120<sup>th</sup> day prior to the first anniversary of the preceding year's Election Date (provided, however, that in the event that the Election Date is more than 30 days before or more than 70 days after such anniversary date, notice by the Nasdaq Member must be so delivered not earlier than the close of business on the 120<sup>th</sup> day prior to such Election Date and not later than the close of business on the later of the 90<sup>th</sup> day prior to such Election Date or the tenth day following the day on which public announcement of such Election Date is first made by the Company). Such Nasdaq Member's notice shall set forth: (i) as to the person whom the Nasdaq Member proposes to nominate for election as a Member Representative Director, all information relating to that person that is required to be disclosed in solicitations of proxies for election of Directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act and the rules thereunder (and such person's written consent to be named in the List of Candidates as a nominee and to serving as a Director if elected); (ii) a petition in support of the nomination duly executed by the Executive Representatives of 10% or more of all Nasdaq Members; and (iii) the name and address of the Nasdaq Member making the nomination. The Company may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a Member Representative Director.

**(c)** If, by the date on which a Nasdaq Member may no longer submit a timely nomination under paragraph (b), there is only one candidate for each Member Representative Director position to be elected on the Election Date, the Member Representative Directors shall be elected by the Company Member from the List of Candidates. If there is a Contested Election, a formal notice of the Election Date and the List of Candidates shall be sent by the Company at least 10 days but no more than 60 days prior to the Election Date to the Nasdaq Members who were Nasdaq Members on the Record Date, by any means, including electronic transmission, as determined by the Board or committee thereof.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007; amended Oct. 18, 2017 (SR-NASDAQ-2017-110).

## **Section 2. Voting**

In the event of a Contested Election, each Nasdaq Member shall have the right to cast one vote for each Member Representative Director position to be filled; provided, however, that any such vote must be cast for a person on the List of Candidates. Notwithstanding the foregoing, a Nasdaq member, either alone or together with its affiliates, may not cast votes representing more than 20% of the votes cast for a candidate, and any votes cast by the Nasdaq member, either alone or together with its affiliates, in excess of such 20% limitation shall be disregarded. The votes may not be cumulated. The votes shall be cast by written ballot, electronic transmission or any other means as set forth in a notice to the Nasdaq Members sent by the Company prior to the Election Date. Only votes received prior to 11:59 p.m. Eastern Time on the Election Date shall count for the election of a Member Representative Director. The Persons on the List of Candidates who receive the most votes shall be elected to the Member Representative Director positions.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007; amended by SR-NASDAQ-2009-042 (July 9, 2009).

## **Section 3. Filling of Vacancies**

If a Member Representative Director position shall become vacant prior to the expiration of such person's term, or if an increase in the size of the Board results in the creation of a new Member Representative Director position, the Company Member shall elect a Person from a list of candidates prepared by the Member Nominating Committee to fill such vacancy, except that if the remaining term of office for the vacant Director position is less than six months, no replacement shall be required.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

## **Section 4. Member Meetings**

The Company shall not be required to hold meetings of the Nasdaq Members.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

# **Article III BOARD OF DIRECTORS**

## **Section 1. Selection**

Whenever any Director position other than a Member Representative Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee shall nominate, and the Company Member shall select, a person satisfying the classification (Industry, Non-Industry, or Public Director), if applicable, for the directorship as provided in Article III, Section 2 to fill such vacancy.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

## **Section 2. Qualifications**

**(a)** The number of Non-Industry Directors, including at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives), shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors to be elected under the terms of the LLC Agreement. A Director may not be subject to a statutory disqualification.

**(b)** A Director shall be removed immediately upon a determination by the Board, by a majority vote of the remaining Directors, (a) that the Director no longer satisfies the classification for which the Director was elected; and (b) that the Director's continued service as such would violate the compositional requirements of the Board set forth in Article III, Section 2(a). If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of article III, Section 2(a) by virtue of such vacancy.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007.

## **Section 3. Regulation**

**(a)** The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of the Company, not inconsistent with law, the LLC Agreement or these By-Laws, as the Board may deem proper. A Director shall, in the performance of such Director's duties, be fully protected, to the fullest extent permitted by law, in relying in good faith upon the books of account or reports made to the Company by any of its officers, by an independent certified public accountant, by an appraiser selected with reasonable care by the Board or any committee of the Board or by any agent of the Company, or in relying in good faith upon other records of the Company.

**(b)** In light of the unique nature of the Company and its operations and in light of the Company's status as a self-regulatory organization, the Board, when evaluating any proposal, shall, to the fullest extent permitted by applicable law, take into account all factors that the Board deems relevant, including, without limitation, to the extent deemed relevant, (i) the potential impact thereof on the integrity, continuity and stability of the national securities exchange operated by the Company and the other operations of the Company, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 4. Committees**

(a) Upon request of the Secretary of the Company, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Member Representative, Non-Industry, or Public Committee member. The Secretary of the Company shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this subsection at least annually and upon request of the Secretary of the Company, and shall report immediately to the Secretary any change in such information.

(b) The term of office of a committee member shall terminate immediately upon a determination by the Board, by a majority vote of the Directors, (i) that the committee member no longer satisfies the classification for which the committee member was selected; and (ii) that the committee member's continued service as such would violate the compositional requirements of such committee set forth in these By-Laws. If the term of office of a committee member terminates under this Section, and the remaining term of office of such committee member at the time of termination is not more than six months, during the period of vacancy the relevant committee shall not be deemed to be in violation of the compositional requirements of such committee set forth in these By-Laws by virtue of such vacancy.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 5. Committees Composed Solely of Directors**

(a) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the Company between meetings of the Board. The number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors on the Executive Committee. The percentage of Public Directors on the Executive Committee shall be at least as great as the percentage of Public Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee shall be at least as great as the percentage of Member Representative Directors on the whole Board. An Executive Committee member shall hold office for a term of one year.

(b) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of the Company, including recommendations for Company's annual operating and capital budgets and proposed changes to the rates and fees charged by the Company. A Finance Committee member shall hold office for a term of one year.



(c) The Board shall appoint a Regulatory Oversight Committee. The Committee shall oversee the adequacy and effectiveness of Nasdaq's regulatory and self-regulatory organization responsibilities; assess Nasdaq's regulatory performance; and assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of Nasdaq's regulatory functions. In furtherance of its functions, the Regulatory Oversight Committee shall (A) review Nasdaq's regulatory budget and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (B) meet regularly with the Chief Regulatory Officer in executive session; and (C) be informed about the compensation and promotion or termination of the Chief Regulatory Officer and the reasons therefor. The Regulatory Oversight Committee shall consist of at least three members, each of whom shall be a Public Director and an "independent director" as defined in Nasdaq Rule 5605.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007; amended by SR-NASDAQ-2009-042 (July 9, 2009); amended Sept. 20, 2019 (SR-NASDAQ-2019-081).

#### **Section 6. Committees Not Composed Solely of Directors**

(a) The Board shall appoint a Nasdaq Listing and Hearing Review Council and a Nasdaq Review Council as provided in Articles V and VI of the By-Laws.

(b) The Board shall appoint a Nominating Committee and a Member Nominating Committee. The Member Nominating Committee shall nominate candidates for each Member Representative Director position on the Board that is to be elected by Nasdaq Members or the Company Member under the terms of the LLC Agreement and these By-Laws, and shall nominate candidates for appointment by the Board for each vacant or new position on the Nasdaq Listing and Hearing Review Council, the Nasdaq Review Council, or other committee that is to be filled with a Member Representative member under the terms of these By-Laws. The Nominating Committee shall nominate candidates for all other vacant or new Director positions on the Board, and candidates for all other vacant or new positions on the Nasdaq Listing and Hearing Review Council or the Nasdaq Review Council.

(i) The Nominating Committee shall consist of no fewer than six and no more than nine members. The number of Non-Industry members on the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee. If the Nominating Committee consists of six members, at least two shall be Public members. If the Nominating Committee consists of seven or more members, at least three shall be Public members. No officer or employee of the Company shall serve as a member of the Nominating Committee in any voting or non-voting capacity. No more than three of the Nominating Committee members and no more than two of the Industry members shall be current Directors.

(ii) A Nominating Committee member may not simultaneously serve on the Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for

election to the Board until such time as he or she is no longer a member of the Nominating Committee.

**(iii)** The Member Nominating Committee shall consist of no fewer than three and no more than six members. All members of the Member Nominating Committee shall be a current associated person of a current Nasdaq Member. The Board will appoint such individuals after appropriate consultation with representatives of Nasdaq Members.

**(iv)** Members of the Nominating Committee and the Member Nominating Committee shall be appointed annually by the Board and may be removed by a majority vote of the Board.

**(v)** The Secretary shall collect from each nominee for Director such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Member Representative, Non-Industry, or Public Director, if applicable, and the Secretary shall certify to the Nominating Committee or the Member Nominating Committee each nominee's classification, if applicable. Directors shall update the information submitted under this subsection at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

**(c)** The Board shall appoint a Quality of Markets Committee.

**(i)** The Quality of Markets Committee shall have the following functions: (A) to provide advice and guidance to the Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of the national securities exchange operated by the Company from the perspective of investors, both individual and institutional, retail firms, market making firms, Nasdaq-listed companies, and other market participants; and (B) to advise the Board with respect to national market system plans and linkages between the facilities of the Company and other markets.

**(ii)** The Quality of Markets Committee shall include broad representation of participants in the national securities exchange operated by the Company, including investors, market makers, integrated retail firms, and order entry firms. The Quality of Markets Committee shall include a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Quality of Markets Committee. The number of Non-Industry members of the Quality of Markets Committee shall equal or exceed the sum of the number of Industry members and Member Representative members.

**(iii)** At all meetings of the Quality of Markets Committee, a quorum for the transaction of business shall consist of a majority of the Quality of Markets Committee, including not less than 50 percent of the Non-Industry members. If at least 50 percent of the Non-Industry members (A) are present at or (B) have filed a waiver

of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry members be present to constitute the quorum shall be waived.

**(d)** Reserved.

**(e)** In the event that Nasdaq establishes an arbitration or mediation program that is not operated by FINRA in accordance with FINRA rules, the Board shall appoint an Arbitration and Mediation Committee.

**(i)** If Nasdaq appoints an Arbitration and Mediation Committee, such Committee shall advise the Board on the development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of public investors and Nasdaq Members, shall monitor rules and procedures governing the conduct of dispute resolution, and shall have such other powers and authority as are necessary to effectuate the purposes of the Nasdaq Rules.

**(ii)** Any Arbitration and Mediation Committee shall consist of no fewer than 3 and no more than 10 members, and shall have at least 50 percent Non-Industry members.

**(iii)** At all meetings of an Arbitration and Mediation Committee, a quorum for the transaction of business shall consist of a majority of the Arbitration and Mediation Committee, including not less than 50 percent of Non-Industry committee members. If at least 50 percent of the Non-Industry committee members (A) are present at or (B) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Non-Industry committee members be present to constitute the quorum shall be waived.

**(f)** Reserved.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007; amended by SR-NASDAQ-2009-042 (July 9, 2009); amended Apr. 30, 2014 (SR-NASDAQ-2014-048), operative May 30, 2014.

#### **Section 7. Conflicts of Interest; Contracts and Transactions Involving Directors**

**(a)** A Director or a member of the Nasdaq Listing and Hearing Review Council, the Nasdaq Review Council, or any other committee shall not directly or indirectly participate in any adjudication of the interests of any party if that Director or Nasdaq Listing and Hearing Review Council member, Nasdaq Review Council member, or other committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director or Nasdaq Listing and Hearing Review Council member, Nasdaq Review Council member, or other committee member shall recuse himself or herself or shall be disqualified.

(b) No contract or transaction between the Company and one or more of its Directors or officers, or between the Company and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 8. Compensation of Board, Council, and Committee Members**

The Board may provide for reasonable compensation of the Chair of the Board, the Directors, Nasdaq Listing and Hearing Review Council and Nasdaq Review Council members, and the members of other committees. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the Company.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Article IV OFFICERS, AGENTS, AND EMPLOYEES**

#### **Section 1. Delegation of Duties of Officers**

The Board may delegate the duties and powers of any officer of the Company to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 2. Resignation and Removal of Officers**

(a) Any officer may resign at any time upon notice of resignation to the Board, the Chief Executive Officer, the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer of the Company may be removed, with or without cause, by the Board. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with the Company.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 3. Chair of the Board**

The Chair of the Board shall preside at all meetings of the Board at which the Chair is present. The Chair shall exercise such other powers and perform such other duties as may be assigned to the Chair from time to time by the Board.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 4. Chief Executive Officer**

The Chief Executive Officer shall, in the absence of the Chair of the Board, preside at all meetings of the Board at which the Chief Executive Officer is present. The Chief Executive Officer shall be the chief executive officer of the Company and shall have general supervision over the business and affairs of the Company. The Chief Executive Officer shall have all powers and duties usually incident to the office of the Chief Executive Officer, except as specifically limited by a resolution of the Board. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to the Chief Executive Officer from time to time by the Board.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 5. President**

The President shall, in the absence of the Chair of the Board and the Chief Executive Officer, preside at all meetings of the Board at which the President is present. The President shall have general supervision over the operations of the Company. The President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board. The President shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 6. Vice President**

The Board shall elect one or more Vice Presidents. In the absence or disability of the President or if the office of President becomes vacant, the Vice Presidents in the order determined by the Board, or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board at any time to extend or restrict such powers and duties or to assign them to others. Any Vice President may have such additional designations in such Vice President's title as the Board may determine. The Vice Presidents shall generally assist the President in such manner as the President shall direct. Each Vice President shall exercise such other powers and perform such other duties as may be assigned to such Vice President from time to time by the Board, the Chief Executive Officer or the President. The term

"Vice President" used in this Section shall include the positions of Executive Vice President, Senior Vice President, and Vice President.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 7. Chief Regulatory Officer**

An officer of the Company shall be designated as the Chief Regulatory Officer of the Company. The Chief Regulatory Officer shall have general supervision of the regulatory operations of the Company, including responsibility for overseeing the exchange's surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another self-regulatory organization to which the Company is a party. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Company in executive session at regularly scheduled meetings of such committee, and at any time upon request of the Chief Regulatory Officer or any member of the Regulatory Oversight Committee. The Chief Regulatory Officer may also serve as the General Counsel of the Company.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended Sept. 6, 2018 (SR-NASDAQ-2018-072).

#### **Section 8. Secretary**

The Secretary shall act as Secretary of all meetings of the Board at which the Secretary is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of the Company, and shall have supervision over the care and custody of the books and records of the Company. The Secretary shall be empowered to affix the Company's seal, if any, to documents, the execution of which on behalf of the Company under its seal is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board. The Secretary shall exercise such other powers and perform such other duties as may be assigned to the Secretary from time to time by the Board, the Chief Executive Officer or the President.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 9. Assistant Secretary**

In the absence of the Secretary or in the event of the Secretary's inability or refusal to act, any Assistant Secretary, approved by the Board, shall exercise all powers and perform all duties of the Secretary. An Assistant Secretary shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Secretary from time to time by the Board or the Secretary.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

## **Section 10. Treasurer**

The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of the Company and shall cause the funds of the Company to be deposited in the name of the Company in such banks or other depositories as the Board may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of the Company. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to the Treasurer from time to time by the Board, the Chief Executive Officer or the President.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

## **Section 11. Assistant Treasurer**

In the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assistant Treasurer, approved by the Board, shall exercise all powers and perform all duties of the Treasurer. An Assistant Treasurer shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Treasurer from time to time by the Board or the Treasurer.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

## **Article V NASDAQ LISTING AND HEARING REVIEW COUNCIL**

### **Section 1. Appointment and Authority**

The Board shall appoint a Nasdaq Listing and Hearing Review Council. The Nasdaq Listing and Hearing Review Council may be authorized to act for the Board in a manner consistent with these By-Laws and the Rules with respect to listing decisions. The Nasdaq Listing and Hearing Review Council also shall consider and make recommendations to the Board on policy and rule changes relating to issuer listings. The Board may delegate such other powers and duties to the Nasdaq Listing and Hearing Review Council as the Board deems appropriate.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 2. Number of Members and Qualifications**

**(a)** The Nasdaq Listing and Hearing Review Council shall consist of no fewer than eight and no more than 18 members, of which not more than 50 percent may be engaged in market-making activity or employed by a Nasdaq Member whose revenues from market-making activity exceed ten percent of its total revenues. The Nasdaq Listing and Hearing Review Council shall include at least five Non-Industry members (including at least two Public members), and a number of Member Representative members that is

equal to at least 20 percent of the total number of members of the Nasdaq Listing and Hearing Review Council.

**(b)** As soon as practicable following the appointment of members, the Nasdaq Listing and Hearing Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Nasdaq Listing and Hearing Review Council. The Board, by resolution adopted by a majority of Directors then in office, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 3. Nomination Process**

The Secretary of the Company shall collect from each nominee for the office of member of the Nasdaq Listing and Hearing Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry, Member Representative, Public, or Non-Industry member, and the Secretary shall certify to the Nominating Committee or the Member Nominating Committee (as applicable) each nominee's qualifications and classification. After appointment to the Nasdaq Listing and Hearing Review Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 4. Term of Office**

**(a)** Except as otherwise provided in this Article, each Nasdaq Listing and Hearing Review Council member shall hold office for a term of three years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

**(b)** The Nasdaq Listing and Hearing Review Council shall be divided into three classes. The term of office of those of the first class shall expire in January 2006, the term of office of those of the second class shall expire in January 2007, and the term of office of those of the third class shall expire in January 2008.

**(c)** No member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive terms following the expiration of such member's initial term.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 5. Resignation**



A member of the Nasdaq Listing and Hearing Review Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 6. Removal**

Any or all of the members of the Nasdaq Listing and Hearing Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 7. Disqualification**

Notwithstanding Article V, Section 4, the term of office of a Nasdaq Listing and Hearing Review Council member shall terminate immediately upon a determination by the Board, by a majority vote, (a) that the member no longer satisfies the classification (Industry, Member Representative, Public, or Non-Industry) for which the member was elected; and (b) that the member's continued service as such would violate the compositional requirements of the Nasdaq Listing and Hearing Review Council set forth in Article V, Section 2. If the term of office of a Nasdaq Listing and Hearing Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Nasdaq Listing and Hearing Review Council shall not be deemed to be in violation of Article V, Section 2 by virtue of such vacancy.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 8. Filling of Vacancies**

If a position on the Nasdaq Listing and Hearing Review Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee or the Member Nominating Committee (as applicable) shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Article V, Section 2(a) to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 9. Quorum and Voting**

At all meetings of the Nasdaq Listing and Hearing Review Council, a quorum for the transaction of business shall consist of a majority of the Nasdaq Listing and Hearing Review Council, including one Non-Industry member and one Member Representative member. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 10. Meetings**

The members of the Nasdaq Listing and Hearing Review Council may participate in a meeting through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Article VI NASDAQ REVIEW COUNCIL**

#### **Section 1. Appointment and Authority**

The Board shall appoint a Nasdaq Review Council. The Nasdaq Review Council may be authorized to act for the Board in a manner consistent with these By-Laws and the Nasdaq Rules with respect to an appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; the exercise of exemptive authority; and such other proceedings or actions as may be authorized by the Nasdaq Rules. The Nasdaq Review Council also may consider and make recommendations to the Board on policy and rule changes relating to business and sales practices of Nasdaq Members and associated persons and enforcement policies, including policies with respect to fines and other sanctions, may advise the Board on regulatory proposals and industry initiatives relating to quotations, execution, trade reporting, and trading practices and may advise the Board in its administration of programs and systems for the surveillance and enforcement of rules governing Nasdaq Members' conduct and trading activities in the national securities exchange operated by the Company. The Board may delegate such other powers and duties to the Nasdaq Review Council as the Board deems appropriate.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended Apr. 30, 2014 (SR-NASDAQ-2014-048), operative May 30, 2014.

#### **Section 2. Number of Members and Qualifications**

The Nasdaq Review Council shall consist of no fewer than 8 and no more than 12 members. The Nasdaq Review Council shall include a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Nasdaq

Review Council. The number of Non-Industry members, including at least three Public members, shall equal or exceed the sum of the number of Industry members and Member Representative members. As soon as practicable following the appointment of members, the Nasdaq Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Nasdaq Review Council. The Board, by resolution adopted by a majority of Directors then in office, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair. No more than 50 percent of the members of the Nasdaq Review Council shall be engaged in market making activity or employed by a Nasdaq Member firm whose revenues from market making activity exceed 10 percent of its total revenues.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007; amended Apr. 30, 2014 (SR-NASDAQ-2014-048), operative May 30, 2014.

### **Section 3. Nomination Process**

The Secretary of the Company shall collect from each nominee for the office of member of the Nasdaq Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry, Member Representative, Non-Industry, or Public member, and the Secretary shall certify to the Nominating Committee or the Member Nominating Committee (as applicable) each nominee's qualifications and classification. After appointment to the Nasdaq Review Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 4. Term of Office**

**(a)** Except as otherwise provided in this Article, each Nasdaq Review Council member shall hold office for a term of three years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

**(b)** The Nasdaq Review Council shall be divided into three classes. The term of office of those of the first class shall expire one year after the date of their appointment, the term of office of those of the second class shall expire two years after the date of their appointment, and the term of office of those of the third class shall expire three years after the date of their appointment. After the expiration of the term of office of those in the first class, members shall be appointed for terms of three years to replace those whose terms expire.

**(c)** No member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive three-year terms following the expiration of such member's initial term.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007.

#### **Section 5. Resignation**

A member of the Nasdaq Review Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 6. Removal**

Any or all of the members of the Nasdaq Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 7. Disqualification**

Notwithstanding Article VI, Section 4, the term of office of a Nasdaq Review Council member shall terminate immediately upon a determination by the Board, by a majority vote, (a) that the member no longer satisfies the classification (Industry, Member Representative, Non-Industry, or Public) for which the member was elected; and (b) that the member's continued service as such would violate the compositional requirements of the Nasdaq Review Council set forth in Article VI, Section 2. If the term of office of a Nasdaq Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Nasdaq Review Council shall not be deemed to be in violation of Article VI, Section 2 by virtue of such vacancy.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 8. Filling of Vacancies**

If a position on the Nasdaq Review Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee or the Member Nominating Committee (as applicable) shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Article VI, Section 2 to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 9. Quorum and Voting**

At all meetings of the Nasdaq Review Council, a quorum for the transaction of business shall consist of a majority of the Nasdaq Review Council, including not less than 50 percent of the Non-Industry members of the Nasdaq Review Council and at least one Member Representative member of the Nasdaq Review Council; provided, however, that a quorum for the transaction of business with regard to an appeal of proceedings involving Exchange Rules 4612, 4619, 4620, and 11890, and Exchange Options Rules Chapter V Section 6 shall consist of three members of the Nasdaq Review Council. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended Apr. 30, 2014 (SR-NASDAQ-2014-048), operative May 30, 2014.

#### **Section 10. Meetings**

The members of the Nasdaq Review Council may participate in a meeting through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 11. Review Subcommittee**

The Nasdaq Review Council shall appoint a Review Subcommittee to determine whether disciplinary and membership proceedings decisions should be called for review by the Nasdaq Review Council under the Nasdaq Rules and to perform any other function authorized by the Nasdaq Rules. The Review Subcommittee shall be composed of no fewer than two and no more than four members of the Nasdaq Review Council. The number of Non-Industry members of the Review Subcommittee shall equal or exceed the sum of the number of Industry members and Member Representative members of the Review Subcommittee, and the Review Subcommittee shall include at least one Member Representative member. At all meetings of the Review Subcommittee, a quorum for the transaction of business shall consist of not less than 50 percent of the members of the Review Subcommittee, including not less than 50 percent of the Non-Industry members of the Review Subcommittee and one Member Representative member of the Review Subcommittee.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Article VII MISCELLANEOUS PROVISIONS**

#### **Section 1. Waiver of Notice**

(a) Whenever notice is required to be given by law, the LLC Agreement or these By-Laws, a waiver thereof by the Person or Persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the

business to be transacted at, nor the purpose of, any regular or special meeting of the Board, or members of a committee, need be specified in any waiver of notice.

**(b)** 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.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

## **Section 2. Execution of Instruments, Contracts, etc.**

**(a)** All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of the Company by such officer or officers or Person or Persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board, any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board may authorize any officer, employee, or agent, in the name of and on behalf of the Company, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

**(b)** All applications, written instruments, and papers required by any department of the United States government or by any state, county, municipal, or other governmental authority may be executed in the name of the Company by any officer of the Company, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of the Company. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

## **Article VIII AMENDMENTS; EMERGENCY BY-LAWS**

### **Section 1. By the Company Member or Board**

These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, by a resolution adopted by the Board at any regular or special meeting of the Board and a written agreement executed and delivered by the Company Member.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007.

### **Section 2. Emergency By-Laws**

The Board may adopt emergency By-Laws subject to repeal or change by action of the Company Member which shall, notwithstanding any different provision of law, the LLC

Agreement, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which the Company conducts its business or customarily holds meetings of the Board, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007.

## **Article IX EXCHANGE AUTHORITIES**

### **Section 1. Rules**

To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among Nasdaq Members, to collaborate with governmental and other agencies in the promotion of fair practices and the elimination of fraud, and in general to carry out the purposes of the Company and of the Act, the Board is hereby authorized to adopt such rules and such amendments thereto as it may, from time to time, deem necessary or appropriate, including, but not limited to, rules for the required or voluntary arbitration of controversies between members and between members and customers or others. If any such rules or amendments thereto are approved by the Commission or otherwise become effective as provided in the Act, they shall become effective Nasdaq Rules as of the date of Commission approval or effectiveness under the Act. The Board is hereby authorized, subject to the provisions of these By-Laws and the Act, to administer, enforce, and interpret any Rules adopted hereunder.

Adopted by SEC Release 34-53128 (Jan. 13, 2006); amended by SR-NASDAQ-2007-068 eff. November 30, 2007.

### **Section 2. Disciplinary Proceedings**

(a) The Board is authorized to establish procedures relating to disciplinary proceedings involving Nasdaq Members and their associated persons.

(b) The Board is authorized to impose appropriate sanctions applicable to Nasdaq Members, including censure, fine, suspension, or expulsion from membership, suspension or bar from being associated with all Nasdaq Members, limitation of activities, functions, and operations of a Nasdaq Member, or any other fitting sanction, and to impose appropriate sanctions applicable to persons associated with Nasdaq Members, including censure, fine, suspension, or barring a person associated with a Nasdaq Member from being associated with all Nasdaq Members, limitation of activities, functions, and operations of a person associated with a Nasdaq Member, or any other fitting sanction, for:

**(i)** (i) a breach by a Nasdaq Member or a person associated with a Nasdaq Member of any covenant with the Company or its members;

**(ii)** (ii) violation by a Nasdaq Member or a person associated with a Nasdaq Member of any of the terms, conditions, covenants, and provisions of the By-Laws, the Rules, or the federal securities laws, including the rules and regulations adopted thereunder;

**(iii)** (iii) failure by a Nasdaq Member or person associated with a Nasdaq Member to: (A) submit a dispute for arbitration as may be required by the Rules; (B) appear or produce any document in the Nasdaq Member's or person's possession or control as directed pursuant to the Rules; (C) comply with an award of arbitrators properly rendered, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied; or (D) comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition; or

**(iv)** (iv) failure by a Nasdaq Member or person associated with a Nasdaq Member to adhere to any ruling, order, direction, or decision of or to pay any sanction, fine, or costs imposed by the Board or any entity to which the Board has delegated its powers.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 3. Membership Qualifications**

**(a)** The Board shall have authority to adopt rules and regulations applicable to applicants seeking to become Nasdaq Members, Nasdaq Members, and persons associated with applicants or Nasdaq Members, establishing specified and appropriate standards with respect to the training, experience, competence, financial responsibility, operational capability, and such other qualifications as the Board finds necessary or desirable.

**(b)** The Board may from time to time make such changes in such rules, regulations, and standards as it deems necessary or appropriate.

**(c)** Uniform standards for regulatory and other access issues, such as admission to membership and conditions to becoming a Nasdaq market maker, shall be promulgated and applied on a consistent basis, and the Company shall institute safeguards to ensure fair and evenhanded access to all of its services and facilities.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Section 4. Fees, Dues, Assessments, and Other Charges**

The Board shall have authority to fix and levy the amount of fees, dues, assessments, and other charges to be paid by Nasdaq Members and issuers and any other persons using any



facility or system that the Company operates or controls; provided, however, that such fees, dues, assessments, and other charges shall be equitably allocated among Nasdaq Members and issuers and any other persons using any facility or system that the Company operates or controls.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

#### **Section 5. Authority to Take Action Under Emergency or Extraordinary Market Conditions**

The Board, or such person or persons as may be designated by the Board, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding:

(a) the trading in or operation of the national securities exchange operated by the Company or any other organized securities markets that may be operated by the Company, the operation of any automated system owned or operated by the Company, and the participation in any such system or any or all persons or the trading therein of any or all securities; and

(b) the operation of any or all offices or systems of Nasdaq Members, if, in the opinion of the Board or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.

Adopted by SEC Release 34-53128 (Jan. 13, 2006).

### **Certificate of Formation of The Nasdaq Stock Market LLC**

The Nasdaq Stock Market LLC

This Certificate of Formation of The Nasdaq Stock Market LLC (the "Company"), dated as December 15, 2005, is being duly executed and filed by Joan C. Conley, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.).

FIRST. The name of the limited liability company formed hereby is The Nasdaq Stock Market LLC.

SECOND. The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

THIRD. The name and address of the registered agent for service of process on the Company in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of the date first above written.

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NAME: Joan C. Conley

Authorized Person

**Second Amended Limited Liability Company Agreement Of The Nasdaq Stock Market LLC**

This Second Amended Limited Liability Company Agreement (together with the exhibit and schedules attached hereto, this "Agreement") of The Nasdaq Stock Market LLC (the "Company") is entered into by Nasdaq, Inc. ("Holding Company"). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

WHEREAS, Holding Company desires to form a limited liability company pursuant to the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq., as amended from time to time (the "LLC Act"), by filing a Certificate of Formation of the Company with the office of the Secretary of State of the State of Delaware and entering into this Agreement.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

Section 1. Name.

The name of the limited liability company formed hereby is The Nasdaq Stock Market LLC.

Section 2. Principal Business Office.

The principal business office of the Company shall be located at One Liberty Plaza, New York, New York 10006 or such other location as may hereafter be determined by the Board of Directors.

Section 3. Registered Office.

The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

Section 4. Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

#### Section 5. Member.

The mailing address of the Member is set forth on Schedule B attached hereto. The Member was admitted to the Company as a member of the Company upon its execution of a counterpart signature page to this Agreement.

#### Section 6. Certificates.

Joan C. Conley, as an "authorized person" within the meaning of the LLC Act, has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware (such filing being hereby approved and ratified in all respects). Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, her powers as an "authorized person" ceased, and the Member, each Director and each Officer thereupon became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the LLC Act. The Member, any Director or any Officer, as an authorized person within the meaning of the LLC Act, shall execute, deliver and file, or cause the execution, delivery and filing of, all certificates (and any amendments and/or restatements thereof) required or permitted by the LLC Act to be filed with the Secretary of State of the State of Delaware. The Member, any Director or any Officer shall execute, deliver and file, or cause the execution, delivery and filing of, any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until the cancellation of the Certificate of Formation as provided in the LLC Act. Upon the cancellation of the Certificate of Formation in accordance with the LLC Act, this Agreement and the Company shall terminate.

#### Section 7. Purposes.

The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the LLC Act and engaging in any and all activities necessary or incidental to the foregoing. Without limiting the generality of the foregoing, the nature of the business or purposes to be conducted and promoted shall include (i) supporting the operation, regulation, and surveillance of the national securities exchange operated by the Company, (ii) preventing fraudulent and manipulative acts and practices, promoting just and equitable principles of trade, fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removing impediments to and perfecting the mechanisms of a free and open market and a national market system, and, in general, protecting investors and the public interest, (iii) supporting the various elements of the national market system pursuant to Section 11A of the Exchange Act and the rules thereunder, (iv) fulfilling the Company's self-

regulatory responsibilities as set forth in the Exchange Act, and (v) supporting such other initiatives as the Board may deem appropriate.

#### Section 8. Powers.

The Company, and the Board of Directors and the Officers of the Company on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the LLC Act.

#### Section 9. Management.

(a) Board of Directors. The business and affairs of the Company shall be managed by or under the direction of a Board of Directors. Each Director is hereby designated as a "manager" within the meaning of the LLC Act. The Member may determine at any time in its sole and absolute discretion the number of Directors to constitute the Board. The authorized number of Directors may be increased or decreased by the Member at any time in its sole and absolute discretion, upon notice to all Directors, but no decrease in the number of Directors shall shorten the term of any incumbent Member Representative Director. At least twenty percent (20%) of the Directors shall be Member Representative Directors. All Directors other than the Member Representative Directors shall be elected by the Member in the manner described in the By-Laws. Each Director elected, designated or appointed by the Member shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal. Member Representative Directors shall be elected in accordance with the By-Laws. Each Director shall execute and deliver an instrument accepting such appointment and agreeing to be bound by all the terms and conditions of this Agreement and the By-Laws. A Director need not be a member of the Company.

(b) Powers. The Board of Directors shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. The Board of Directors has the authority to bind the Company. To the fullest extent permitted by applicable law, the By-Laws, and this Agreement, the Board may delegate any of its powers to a committee appointed pursuant to Section 9(g) or to any officer, employee or agent of the Company.

(c) By-Laws. The Company, the Member and the Board of Directors hereby adopt the By-Laws of the Company in the form attached hereto as Exhibit A, as the same may be amended from time to time in accordance with the terms therein and in this Agreement (the "By-Laws"). The Board, each Officer and the Member shall be subject to the express provisions of this Agreement and of the By-Laws. In case of any conflict between the provisions of this Agreement and any provisions of the By-Laws, the provisions of this Agreement shall control.

(d) Meeting of the Board of Directors. The Board of Directors of the Company may hold meetings, both regular and special, within or outside the State of Delaware. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board. Special meetings of the Board may be called by the Chair of the Board,

the Chief Executive Officer, or the President on not less than one day's notice to each Director by telephone, facsimile, mail, telegram or any other means of communication, and special meetings shall be called by the Chair of the Board, the Chief Executive Officer, the President or Secretary in like manner and with like notice upon the written request of at least one-third of the Directors.

(e) Quorum; LLC Acts of the Board. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and, except as otherwise provided in any other provision of this Agreement, the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the Directors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Any action required or permitted to be taken at a meeting of the Board or any committee thereof may be taken without a meeting and without prior notice if written consents (including consents transmitted by electronic transmission), setting forth the action so taken, are executed by all members of the Board or committee, as the case may be.

(f) Electronic Communications. Members of the Board, or any committee designated by the Board, may participate in meetings of the Board, or any committee, by means of telephone conference or other communications equipment that allows all Persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in person at the meeting. If all the participants are participating by telephone conference or other communications equipment, the meeting shall be deemed to be held at the principal place of business of the Company.

(g) Committees.

- i. The Board may designate one or more committees, each committee to consist of one or more of the Directors or other Persons. The By-Laws may establish the initial committees, which may be altered, eliminated or restructured by an amendment to the By-Laws. The Board may designate one or more Directors or other Persons as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.
- ii. Except as otherwise provided by the By-Laws, members of a committee shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a committee may be removed from such committee only by the Board. Vacancies in the membership of any committee shall be filled by the Board.
- iii. Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.
- iv. Unless otherwise required by the By-Laws, a majority of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.
- v. To the extent provided in the resolution of the Board, any committee that consists solely of one or more Directors shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company. Such committee or

committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. In the absence or disqualification of a member of a committee composed solely of Directors, the member or members thereof present at any meeting and not disqualified from voting, whether or not such 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.

(h) Compensation of Directors; Expenses. The Board shall have the authority to fix the compensation of Directors. The Directors may be paid their expenses, if any, of attendance at meetings of the Board and may be paid a fixed sum for attendance at each meeting of the Board, a stated salary as Director or other remuneration. No such payment shall preclude any Director from serving the Company in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

(i) Removal and Resignation of Directors. Unless otherwise restricted by law, any Director may be removed or expelled for cause by the Member, and may be removed by the Board of Directors in the manner provided by the By-Laws. Any vacancy caused by any such removal or expulsion may be filled in the manner provided in the By-Laws. Any Director may resign at any time either upon notice of resignation to the Chair of the Board, the Chief Executive Officer, the President or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

(j) Directors as Agents. To the extent of their powers set forth in this Agreement, the Directors are agents of the Company for the purpose of the Company's business, and the actions of the Directors taken in accordance with such powers set forth in this Agreement shall bind the Company. Notwithstanding the last sentence of Section 18-402 of the LLC Act, except as provided in this Agreement or in a resolution of the Directors, a Director may not bind the Company.

#### Section 10. Officers.

(a) Except as provided herein, the Board may, from time to time as it deems advisable, select natural persons who are employees or agents of the Company and designate them as officers of the Company (the "Officers") and assign titles (including, without limitation, President, Vice President, Secretary and Treasurer) to any such person. Any number of offices may be held by the same person. The Board may appoint such other Officers and agents as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board. The salaries of all Officers and agents of the Company shall be fixed by or in the manner prescribed by the Board. The Officers of the Company shall hold office until their successors are chosen and qualified. Any Officer may be removed at any time, with or without cause, by the Board. Any vacancy occurring in any office of the Company shall be filled by the Board.

(b) Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Board not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business, and the actions of the Officers taken in accordance with such powers shall bind the Company.

(c) Duties of Board and Officers. Except to the extent otherwise modified herein, each Director and Officer shall have a fiduciary duty of loyalty and care similar to that of directors and officers of business corporations organized under the General Corporation Law of the State of Delaware.

#### Section 11. Limited Liability.

Except as otherwise expressly provided by the LLC Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Member nor any Director shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member or Director of the Company.

#### Section 12. Capital Contributions.

The Member has contributed to the Company the amounts set forth in the books and records of the Company.

#### Section 13. Additional Contributions.

The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time upon the consent of such Member. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise the books and records of the Company. The provisions of this Agreement, including this Section 13, are intended to benefit the Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third-party beneficiary of this Agreement), and the Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

#### Section 14. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

#### Section 15. Distributions.

Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Board. Notwithstanding any provision to the contrary contained in this Agreement, (i) the Company shall not be required to make a distribution to the Member on account of its interest in the Company if such distribution would violate the LLC Act or any other applicable law or is otherwise required to fulfill the regulatory functions or responsibilities of the Company, and (ii)

Regulatory Funds shall not be used for nonregulatory purposes, but rather shall be used to fund the legal, regulatory and surveillance operations of the Company and the Company shall not make a distribution to the Member using Regulatory Funds.

#### Section 16. Books and Records.

The Board shall keep or cause to be kept within the United States complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Board. The Member and its duly authorized representatives shall have the right to examine the Company books, records and documents during normal business hours. The Company, and the Board on behalf of the Company, shall not have the right to keep confidential from the Member any information that the Board would otherwise be permitted to keep confidential from the Member pursuant to Section 18-305(c) of the LLC Act. The Company's books of account shall be kept using the method of accounting determined by the Member. The Company's independent auditor shall be an independent public accounting firm selected by the Board.

Other than as provided in this Section 16 with respect to the Securities and Exchange Commission, all confidential information pertaining to the self-regulatory function of the Company (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Company shall: (i) not be made available to any persons other than to those officers, directors, employees and agents of the Company that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Company and the officers, directors, employees and agents of the Company; and (iii) not be used for any non-regulatory purposes. Nothing in this LLC Agreement shall be interpreted as to limit or impede the rights of the Securities and Exchange Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit and impede the ability of any officers, directors, employees or agents of the Company to disclose such confidential information to the Securities and Exchange Commission.

#### Section 17. Reports.

The Board shall, after the end of each fiscal year, use reasonable efforts to cause the Company's independent accountants, if any, to prepare and transmit to the Member as promptly as possible any such tax information as may be reasonably necessary to enable the Member to prepare its federal, state and local income tax returns relating to such fiscal year.

#### Section 18. Other Business.

Unless otherwise restricted by law, the Member, and any Officer, Director, employee or agent of the Company and any Affiliate of the Member may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.



## Section 19. Exculpation and Indemnification.

(a) Neither the Member nor any Officer, Director, employee or agent of the Company nor any employee, representative, agent or Affiliate of the Member (collectively, the "Covered Persons") shall be liable to the Company or any other Person who is bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 19 by the Company shall be provided out of and to the extent of Company assets only, and the Member shall not have personal liability on account thereof.

(c) To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 19.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person who is bound by this Agreement for its good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or any other Covered Person.

(f) The foregoing provisions of this Section 19 shall survive any termination of this Agreement.

## Section 20. Assignments.

The Member may not transfer or assign in whole or in part its limited liability company interest in the Company, unless such transfer or assignment is filed with and approved by the Securities and Exchange Commission pursuant to the rule filing procedure under Section 19 of the Exchange Act.

## Section 21. Dissolution.

(a) The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following: (i) the consent of the Member and a majority of the whole Board, (ii) the termination of the legal existence of the Member or the occurrence of any other event that terminates the continued membership of the Member in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the LLC Act or (iii) the entry of a decree of judicial dissolution under Section 18-802 of the LLC Act.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member shall not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the LLC Act.

(d) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the LLC Act.

## Section 22. Benefits of Agreement; No Third-Party Rights.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons and, to the extent provided in Article II of the By-Laws, Nasdaq Members) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (other than the Covered Persons and, to the extent provided in Article II of the By-Laws, Nasdaq Members).

## Section 23. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 24. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 25. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement constitutes a legal, valid and binding agreement of the Member and is enforceable against the Member, in accordance with its terms.

Section 26. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 27. Amendments.

This Agreement may be modified, altered, supplemented or amended by a resolution adopted by the Board and a written agreement executed and delivered by the Member.

Section 28. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (i) in the case of the Company, to the Company at its address in Section 2, (ii) in the case of the Member, to the Member at its address as listed on Schedule B attached hereto and (iii) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Second Amended Limited Liability Company Agreement as of the 9th day of July, 2009.

MEMBER:

Nasdaq, Inc.

By:

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Name: Joan C. Conley

Title: Senior Vice President and Corporate Secretary

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## SCHEDULE A Definitions

### A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

"LLC Act" has the meaning set forth in the preamble to this Agreement.

"Affiliate" has the meaning ascribed to that term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of this Agreement.

"Agreement" means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated, supplemented or otherwise modified from time to time.

"Bankruptcy" means, with respect to any Person, if (A) such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties; or (B) (i) 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or (ii) within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101 (1) and 18-304 of the LLC Act.

"Board" or "Board of Directors" means the Board of Directors of the Company.

"By-Laws" has the meaning set forth in Section 9.

"Certificate of Formation" means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on December 15, 2005, as amended or amended and restated from time to time.

"Company" means The Nasdaq Stock Market LLC, a Delaware limited liability company.

"Covered Persons" has the meaning set forth in Section 19.

"Directors" means the Persons elected/appointed to the Board of Directors from time to time in accordance with this Agreement and the By-Laws, in their capacity as managers of the Company.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Member" means Nasdaq, Inc., as the sole member of the Company.

"Member Representative Director" means a Director who has been elected or appointed in accordance with the procedures established by Article II of the By-Laws.

"Nasdaq Member" means any registered broker or dealer that has been admitted to membership in the national securities exchange operated by the Company. A Nasdaq Member is not a member of the Company by reason of being a Nasdaq Member.

"Officer" means an officer of the Company described in Section 10.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization or other organization, whether or not a legal entity, and any governmental authority.

"Regulatory Funds" means fees, fines, or penalties derived from the regulatory operations of the Company. "Regulatory Funds" shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Company, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Company.

## B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

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## SCHEDULE B Member

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<b>Name</b>	<b>Mailing Address</b>	<b>Limited Liability Company Interest</b>
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Nasdaq, Inc.	One Liberty Plaza New York, New York 10006	100%
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Adopted Dec. 10, 2005; amended Nov. 30, 2007 (SR-NASDAQ-2007-068); amended July 9, 2009 (SR-NASDAQ-2009-042); amended Oct. 18, 2017 (SR-NASDAQ-2017-110); amended Sept. 20, 2019 (SR-NASDAQ-2019-081).

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