

**EXHIBIT 5D – By-Laws of Nasdaq GEMX, LLC**

Text of the proposed rule change.

All text is new.

**BY-LAWS OF NASDAQ GEMX, LLC**

These By-Laws have been established as the By-laws of Nasdaq GEMX, LLC, a Delaware limited liability company (the "*Company*" or the "*Exchange*"), pursuant to the Limited Liability Company Agreement of the Company, dated as of \_\_\_\_\_, 201\_\_ (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 provisions 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" or "Sole LLC Member" means International Securities Exchange Holdings, Inc., a Delaware corporation, as the sole member of the Company.
- (g) "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.
- (h) "day" means calendar day.
- (i) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act.
- (j) "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.

(k) "Election Date" means a date selected by the Board on an annual basis, on which Exchange Members may vote with respect to Member Representative Directors in the event of a contested election.

(l) "Executive Representative" means an individual appointed by an Exchange Member to represent, vote, and act for the Exchange Member in all the affairs of the Exchange; provided, however, that other representatives of an Exchange Member may also serve on the Board or committees of the Exchange or otherwise take part in the affairs of the Exchange. If an Exchange Member is also a member of FINRA, the Exchange Executive Representative shall be the same person appointed to serve as the FINRA Executive Representative. An Exchange Member may change its Executive Representative or appoint a substitute for its Executive Representative upon giving notice thereof to the Exchange Secretary via electronic process or such other process as the Exchange may prescribe. An Executive Representative of an Exchange Member or a substitute shall be a member of senior management and registered principal of the Exchange Member. Each Executive Representative shall maintain an Internet electronic mail account for communication with the Exchange and shall update firm contact information as prescribed by the Exchange. Each Exchange Member shall review and, if necessary, update its Executive Representative designation and contact information in the manner prescribed by the Exchange.

(m) "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.

(n) "Industry member" means a member of any 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.

(o) "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.

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

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

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

(s) "Member Representative member" means a member of any 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.

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

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

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

(w) "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.

(x) "Non-Industry member" means a member of any 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.

(y) "person associated with an Exchange Member" or "associated person of an Exchange Member" means any partner, officer, director, or branch manager of an Exchange 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 Exchange Member, or any employee of such Exchange Member, except that any person associated with an Exchange Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these By-Laws.

(z) "Public Director" means a Director who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA.

(aa) "Public member" means a member of any committee appointed by the Board who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA.

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

(cc) "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.

(dd) "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.

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

[Adopted by SEC Release [\_\_\_\_\_] ([\_\_\_\_\_, 201\_]).

## **Article II ANNUAL ELECTION OF MEMBER REPRESENTATIVE DIRECTORS AND OTHER ACTIONS BY EXCHANGE 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 Exchange Members to nominate candidates for election at the next annual meeting. In the Event of a Contested Election, the Company shall also send Exchange Members the formal notice described in Section 1(c).

(b) An additional candidate may be added to the List of Candidates by any Exchange Member that submits a timely and duly executed written nomination to the Secretary of the Company. To be timely, an Exchange 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 Exchange 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 Exchange Member's notice shall set forth: (i) as to the person whom the Exchange 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 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 Exchange Members; and (iii) the name and address of the Exchange 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. For purposes of determining whether a person has been nominated for election by petition by the requisite percentage, no Exchange Member, alone or together with its affiliates, may account for more than 50% of the signatures endorsing a particular candidate, and any such signatures by such Exchange Member, alone or together with its affiliates, in excess of such 50% limitation shall be disregarded.

(c) If, by the date on which an Exchange 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 Sole LLC 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 Exchange Members who were Exchange Members on the Record Date, by any means, including electronic transmission, as determined by the Board or committee thereof.

[Adopted by SEC Release [\_\_\_\_\_] ([\_\_\_\_\_, 201\_]).

## Section 2. Voting

In the event of a Contested Election, each Exchange 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, an Exchange 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 Exchange 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 Exchange 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 [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

## 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 Sole LLC 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 [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

## Section 4. Member Meetings

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

[Adopted by SEC Release [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

# 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 Sole LLC 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 [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

## 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 [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

### 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, (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 [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

### 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 [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

#### 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 the Company's regulatory and self-regulatory organization responsibilities; assess the Company's regulatory performance; and assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Company's regulatory functions. In furtherance of its functions, the Regulatory Oversight Committee shall (A) review the Company'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 three members, each of whom shall be a Public Director and an "independent director" as defined in Rule 5605 of the Rules of the NASDAQ Stock Market LLC.



[Adopted by SEC Release [\_\_\_\_\_] ([\_\_\_\_\_, 201\_]).

Section 6. Committees Not Composed Solely of Directors

(a) Reserved.

(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 Exchange Members or the Sole LLC 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 any 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.

- (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 Exchange Member. The Board will appoint such individuals after appropriate consultation with representatives of Exchange 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.

[Adopted by SEC Release [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

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

(a) A Director or a committee member shall not directly or indirectly participate in any adjudication of the interests of any party if that Director or 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 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 [\_\_\_\_\_] ([\_\_\_\_\_] \_\_, 201\_)]].

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

The Board may provide for reasonable compensation of the Chair of the Board, the Directors, and the committee members. 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 [\_\_\_\_\_] ([\_\_\_\_\_] \_\_, 201\_)]].

### **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 [\_\_\_\_\_] ([\_\_\_\_\_] \_\_, 201\_)]].

#### 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 [\_\_\_\_\_] ([\_\_\_\_\_] \_\_, 201\_)]].

#### 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 [\_\_\_\_\_] ([\_\_\_\_\_] \_\_, 201\_)].

#### 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 [\_\_\_\_\_] ([\_\_\_\_\_] \_\_, 201\_)].

#### 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 [\_\_\_\_\_] ([\_\_\_\_\_] \_\_, 201\_)].

#### 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 [\_\_\_\_\_] ([\_\_\_\_\_] \_\_, 201\_)].

#### Section 7. Chief Regulatory Officer

An officer of the Company with the position of Executive Vice President or Senior Vice President 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 [\_\_\_\_\_] ([\_\_\_\_\_] \_\_, 201\_)].

#### 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 [\_\_\_\_\_] ([\_\_\_\_\_] \_\_, 201\_)].

#### 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 [\_\_\_\_\_] ([\_\_\_\_\_] \_\_, 201\_)].

#### 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 [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

#### 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 [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

### **Article V RESERVED.**

### **Article VI RESERVED.**

## **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 [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

#### 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 [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

## **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 or a written agreement executed and delivered by the Company Member. Amendments to these By-Laws shall not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Act and the rules promulgated thereunder.

[Adopted by SEC Release [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

### **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 [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

## **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 Exchange 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 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 [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

## Section 2. Disciplinary Proceedings

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

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

- (i) a breach by an Exchange Member or a person associated with an Exchange Member of any covenant with the Company or its members;
- (ii) violation by an Exchange Member or a person associated with an Exchange 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) failure by an Exchange Member or person associated with an Exchange Member to: (A) submit a dispute for arbitration as may be required by the Rules; (B) appear or produce any document in the Exchange 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) failure by an Exchange Member or person associated with an Exchange 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 [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].



### Section 3. Membership Qualifications

(a) The Board shall have authority to adopt rules and regulations applicable to applicants seeking to become Exchange Members, Exchange Members, and persons associated with applicants or Exchange 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 Company 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 [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

### 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 Exchange 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 Exchange Members and issuers and any other persons using any facility or system that the Company operates or controls.

[Adopted by SEC Release [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].

### 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 Exchange 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 [\_\_\_\_\_] ([\_\_\_\_\_, 201\_])].