

Proposed Rule Change by National Association of Securities Dealers
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires <input type="text"/>			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

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

Description
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to amend the Restated Certificate of Incorporation of NASD to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. and to conform the Certificate to the amended NASD By-Laws

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

First Name Last Name
 Title
 E-mail
 Telephone Fax

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

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

Date
 By Senior Vice President and Deputy General Counsel
 (Name) (Title)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

Add Remove View

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

Exhibit 1 - Notice of Proposed Rule Change

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

Add Remove View

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

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

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to make certain amendments to the Restated Certificate of Incorporation of NASD (the “Certificate”) to reflect the governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. and to conform the Certificate to the amended NASD By-Laws. The amendments to the Certificate also reflect NASD’s change in corporate name to Financial Industry Regulatory Authority, Inc. (“FINRA”) as of the closing of the Transaction (as defined in the proposed rule change).

The text of the proposed rule change is set forth in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Governors of NASD at its meeting on June 18, 2007, which authorized the filing of the rule change with the SEC. No other action by NASD is necessary for the filing of the proposed rule change.

The effective date of the proposed rule change will be the closing of the Transaction (as defined in the proposed rule change). The proposed rule change will not become effective if the Transaction does not close.

¹ 15 U.S.C. 78s(b)(1).

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

(a) Purpose

On November 28, 2006, NASD and the NYSE Group, Inc. (“NYSE Group”) announced a plan to consolidate their member regulation operations into a combined organization (the “Transaction”) that will be the sole U.S. private-sector provider of member firm regulation for securities firms that conduct business with the public. This consolidation will streamline the broker-dealer regulatory system, combine technologies, permit the establishment of a single set of rules and group examiners with complementary areas of expertise in a single organization—all of which will serve to enhance oversight of U.S. securities firms and help ensure investor protection. Moreover, the new organization will be committed to reducing regulatory costs and burdens for firms of all sizes through greater regulatory efficiency.

On January 19, 2007, NASD held a special meeting of the members of NASD eligible to vote on amendments to the NASD By-Laws. A quorum of members entitled to vote on the matter was present, in person or by proxy, at such meeting, and a majority of the quorum approved the amendment to the NASD-By-Laws. On March 19, 2007, NASD filed with the Commission a proposed rule change to amend the NASD By-Laws to implement the governance and related changes to accommodate the consolidation of the member regulatory functions of NASD and NYSE Regulation, Inc.²

The purpose of this proposed rule change is to make the necessary amendments to

² See Securities Exchange Act Release No. 55495 (March 20, 2007), 72 FR 14149 (March 26, 2007) (SR-NASD-2007-023).

the Certificate to reflect the governance and related changes in connection with the Transaction, the related changes to the NASD By-Laws, and NASD's change in corporate name to FINRA as of the date of closing of the Transaction.³

As noted in Item 2 of this filing, the effective date of the proposed rule change will be the closing of the Transaction. The proposed rule change will not become effective if the Transaction does not close.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁴ including Section 15A(b)(2) of the Act,⁵ in that it will permit FINRA to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by FINRA members and persons associated with members with the Act, the rules and regulations thereunder, and FINRA rules.

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

³ Article XXII, Section 3 of the amended By-Laws addresses the term of office of Governors for a transitional period commencing on the date of closing of the Transaction and ending on the third anniversary of the date of closing. Among other things, Article XXII, Section 3 provides that “. . . in the event the remaining term of office of any Large Firm, Mid Size Firm or Small Firm Governor position that becomes vacant is for more than 12 months, *nominations shall be made as set forth above in this paragraph*, but such vacancy shall be filled by the members entitled to vote thereon at a meeting thereof convened to vote thereon (emphasis added).” Article Eleventh of the Certificate does not reiterate the applicable nomination process in such instances, insofar as the text solely restates those persons entitled to make nominations as reflected elsewhere in Article Eleventh. In short, in filling any such vacancies, the nominations will be made in accordance with the provisions of Article XXII, Section 3 of the amended By-Laws.

⁴ 15 U.S.C. 78o-3.

⁵ 15 U.S.C. 78o-3(b)(2).

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.⁶

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.⁷

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

NASD requests the Commission to find good cause pursuant to Section 19(b)(2) of the Act⁸ for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. Because the Commission is considering the related changes to the NASD By-Laws pursuant to SR-NASD-2007-023, and the Certificate must be filed with the Secretary of State of the State of Delaware on the date of closing of the Transaction, NASD requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

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

Not applicable.

⁶ 15 U.S.C. 78a.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 15 U.S.C. 78s(b)(2).

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of proposed changes to the Restated Certificate of Incorporation of NASD.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2007-053)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Restated Certificate of Incorporation of National Association of Securities Dealers, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

NASD is proposing to make certain amendments to the Restated Certificate of Incorporation of NASD (the “Certificate”) to reflect the governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. and to conform the Certificate to the amended NASD By-Laws. The amendments to the Certificate also reflect NASD’s change in corporate name to Financial Industry Regulatory Authority, Inc. (“FINRA”) as of the closing of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Transaction (as defined in the proposed rule change). The text of the proposed rule change is set forth in Exhibit 5.

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

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On November 28, 2006, NASD and the NYSE Group, Inc. ("NYSE Group") announced a plan to consolidate their member regulation operations into a combined organization (the "Transaction") that will be the sole U.S. private-sector provider of member firm regulation for securities firms that conduct business with the public. This consolidation will streamline the broker-dealer regulatory system, combine technologies, permit the establishment of a single set of rules and group examiners with complementary areas of expertise in a single organization—all of which will serve to enhance oversight of U.S. securities firms and help ensure investor protection. Moreover, the new organization will be committed to reducing regulatory costs and burdens for firms of all sizes through greater regulatory efficiency.

On January 19, 2007, NASD held a special meeting of the members of NASD eligible to vote on amendments to the NASD By-Laws. A quorum of members entitled

to vote on the matter was present, in person or by proxy, at such meeting, and a majority of the quorum approved the amendment to the NASD-By-Laws. On March 19, 2007, NASD filed with the Commission a proposed rule change to amend the NASD By-Laws to implement the governance and related changes to accommodate the consolidation of the member regulatory functions of NASD and NYSE Regulation, Inc.³

The purpose of this proposed rule change is to make the necessary amendments to the Certificate to reflect the governance and related changes in connection with the Transaction, the related changes to the NASD By-Laws, and NASD's change in corporate name to FINRA as of the date of closing of the Transaction.⁴

The effective date of the proposed rule change will be the closing of the Transaction. The proposed rule change will not become effective if the Transaction does not close.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of

³ See Securities Exchange Act Release No. 55495 (March 20, 2007), 72 FR 14149 (March 26, 2007) (SR-NASD-2007-023).

⁴ Article XXII, Section 3 of the amended By-Laws addresses the term of office of Governors for a transitional period commencing on the date of closing of the Transaction and ending on the third anniversary of the date of closing. Among other things, Article XXII, Section 3 provides that “. . . in the event the remaining term of office of any Large Firm, Mid Size Firm or Small Firm Governor position that becomes vacant is for more than 12 months, *nominations shall be made as set forth above in this paragraph*, but such vacancy shall be filled by the members entitled to vote thereon at a meeting thereof convened to vote thereon (emphasis added).” Article Eleventh of the Certificate does not reiterate the applicable nomination process in such instances, insofar as the text solely restates those persons entitled to make nominations as reflected elsewhere in Article Eleventh. In short, in filling any such vacancies, the nominations will be made in accordance with the provisions of Article XXII, Section 3 of the amended By-Laws.

Section 15A of the Act,⁵ including Section 15A(b)(2) of the Act,⁶ in that it will permit FINRA to carry out the purposes of the Act, to comply with the Act, and to enforce compliance by FINRA members and persons associated with members with the Act, the rules and regulations thereunder, and FINRA rules.

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.⁷

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

Written comments were neither solicited nor received.

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

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act⁸ for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(2).

⁷ 15 U.S.C. 78a.

⁸ 15 U.S.C. 78s(b)(2).

filing thereof because the Commission is considering the related changes to the NASD By-Laws pursuant to SR-NASD-2007-023, and the Certificate must be filed with the Secretary of State of the State of Delaware on the date of closing of the Transaction.

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2007-053 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NASD-2007-053. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2007-053 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Nancy M. Morris

Secretary

⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

**RESTATED CERTIFICATE OF INCORPORATION
OF
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

The present name of the corporation is National Association of Securities Dealers, Inc. ([“NASD]the “Corporation”). [NASD]The Corporation was originally incorporated as a nonstock corporation under the name of Investment Bankers Conference, Inc., and its original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on September 3, 1936. This Restated Certificate of Incorporation of [NASD]the Corporation, which both restates and further amends the provisions of [NASD]the Corporation’s Certificate of Incorporation as heretofore amended, was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

Name

First: The name of the [corporation is National Association of Securities Dealers]Corporation is Financial Industry Regulatory Authority, Inc.

Delaware Office and Agent

Second: The registered office of [NASD]the Corporation in the State of Delaware is located at 1308 Delaware Avenue, in the City of Wilmington, County of New Castle. The name and address of its registered agent is Corporate Creations Network Inc., 1308 Delaware Avenue, Wilmington, Delaware 19806.

Objects or Purposes

Third: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, and, without limiting the generality of the foregoing, the business or purposes to be conducted or promoted shall include the following:

(1) To promote through cooperative effort the investment banking and securities business, to standardize its principles and practices, to promote therein high standards of commercial honor, and to encourage and promote among members observance of federal and state securities laws;

(2) To provide a medium through which its membership may be enabled to confer, consult, and cooperate with governmental and other agencies in the solution of problems affecting investors, the public, and the investment banking and securities business;

(3) To adopt, administer, and enforce rules of fair practice and rules to prevent fraudulent and manipulative acts and practices, and in general to promote just and equitable principles of trade for the protection of investors;

(4) To promote self-discipline among members, and to investigate and adjust grievances between the public and members and between members;

(5) To establish, and to register with the Securities and Exchange Commission as, a national securities association pursuant to Section 15A of the Securities Exchange Act of 1934, as amended, and thereby to provide a medium for effectuating the purposes of said Section; and

(6) To transact business and to purchase, hold, own, lease, mortgage, sell, and convey any and all property, real and personal, necessary, convenient, or useful for the purposes of [NASD]the Corporation.

The objects and purposes specified in the foregoing clauses shall, except where otherwise expressed, not be limited or restricted by reference to, or inference from, the terms of any other clause in this Restated Certificate of Incorporation, but the objects and purposes specified in each of the foregoing clauses of this Article shall be regarded as independent objects and purposes.

Form of Organization

Fourth: [NASD]The Corporation shall be a membership corporation and shall have no capital stock. [NASD]The Corporation is not organized and shall not be conducted for profit, and no part of its net revenues or earnings shall inure to the benefit of any individual, subscriber, contributor, or member.

Except as may be otherwise provided by the General Corporation Law of the State of Delaware or this Restated Certificate of Incorporation, the members of [NASD]the Corporation shall have no voting rights. Notwithstanding the foregoing, Small Firm Members shall be entitled to vote for the election of Small Firm Governors, Mid-Size Firm Members shall be entitled to vote for the election of Mid-Size Firm Governors, Large Firm Members shall be entitled to vote for the election of Large Firm Governors and the members shall be entitled to vote [for the election of Governors and] on any amendment to the By-Laws of [NASD]the Corporation, in each case, in accordance with the procedures for such a vote as provided in the By-Laws.

Except as may be otherwise provided by the General Corporation Law of the State of Delaware, other applicable law or this Restated Certificate of Incorporation, the conditions, method of admission, qualifications and classifications of membership, the limitations, rights, powers and duties of members, the dues, assessments, and contributions of members, the method of expulsion from and termination of membership, and all other matters pertaining to the membership and the conduct, management, and control of the business, property, and affairs of [NASD]the Corporation shall be provided from time to time in the By-Laws of [NASD]the Corporation and the [NASD] Rules of the Corporation.

Indemnification; Liability

Fifth: (a) [NASD]The Corporation shall indemnify, and hold harmless, to the fullest extent permitted by the General Corporation Law of the State of Delaware as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Governor, officer, employee, or National Adjudicatory Council or committee member of [NASD]the Corporation, or is or was a Governor, officer, or employee of [NASD]the Corporation who is or was serving at the request of [NASD]the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:

(i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of [NASD]the Corporation) against expenses (including attorneys' fees and

disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) any threatened, pending, or completed action or suit by or in the right of [NASD]the Corporation to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

(b) [NASD]The Corporation shall advance expenses (including attorneys' fees and disbursements) to persons described in Article Fifth (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article Fifth or otherwise.

(c) [NASD]The Corporation may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by the General Corporation Law of the State of Delaware as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of [NASD]the Corporation or is or was an agent of [NASD]the Corporation who is or was serving at the request of [NASD]the Corporation as a director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in Article Fifth (a).

(d) [NASD]The Corporation may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article Fifth or otherwise.

(e) Notwithstanding the foregoing or any other provision of this Restated Certificate of Incorporation, no advance shall be made by [NASD]the Corporation to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Governors who have not been named parties to the action, even though less than a quorum, or, if there are no such Governors or if such Governors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) the person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of [NASD]the Corporation; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to [NASD]the Corporation.

(f) The indemnification provided by this Article Fifth in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another

capacity while holding such office, and shall continue as to a person who has ceased to be a Governor, officer, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.

(g) Notwithstanding the foregoing, but subject to Article Fifth (j), [NASD]the Corporation shall be required to indemnify any person identified in Article Fifth (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

(h) [NASD]The Corporation's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) Any repeal or modification of the foregoing provisions of this Article Fifth shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

(j) If a claim for indemnification or advancement of expenses under this Article Fifth is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by [NASD]the Corporation, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, [NASD]the Corporation shall have the burden of proving that the

indemnified person is not entitled to the requested indemnification or advancement of expenses under the General Corporation Law of the State of Delaware.

(k) [NASD]The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a Governor, officer, employee, agent, or National Adjudicatory Council or committee member of [NASD]the Corporation, or is or was serving at the request of [NASD]the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not [NASD]the Corporation would have the power to indemnify such person against such liability hereunder.

(l) A Governor shall not be liable to [NASD]the Corporation or its members for monetary damages for breach of fiduciary duty as a Governor, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as it presently exists or may hereafter be amended.

Perpetual Existence

Sixth: [NASD]The Corporation shall have perpetual existence.

Members' Liability

Seventh: The private property of the members shall not be subject to the payment of corporate debts to any extent whatever.

Governors

Eighth: (a) To the fullest extent permitted by Sections 141(a), 141(j), and 215 of the General Corporation Law of the State of Delaware and other applicable law, the business and affairs of [NASD]the Corporation shall be managed and the election of Governors shall be conducted in the manner provided in this Restated Certificate of Incorporation and the By-Laws of [NASD]the Corporation. To the extent there is any inconsistency between the provisions of this Restated Certificate of Incorporation and the By-Laws relating to such matters and the General Corporation Law, the provisions of this Restated Certificate of Incorporation and the By-Laws shall govern to the fullest extent permitted by the General Corporation Law and other applicable law. To the fullest extent permitted by the General Corporation Law of the State of Delaware and other applicable law, the Board of Governors may delegate such powers, authority, and functions as it shall determine from time to time, in a manner not inconsistent with the “Plan of Allocation and Delegation of Functions by NASD to Subsidiaries,” approved by the Securities and Exchange Commission, as amended from time to time.

[NASD](b) The Corporation shall be managed under the direction of a Board of Governors having such powers and duties as shall be provided from time to time in this Restated Certificate of Incorporation or the By-Laws of [NASD]the Corporation. The Board of Governors shall be the governing body of [NASD]. The members]the Corporation. Each member of the Board of Governors who is to be elected by members of the Corporation shall be elected by a plurality of the votes of the members of [NASD]the Corporation present in person or represented by proxy at the annual meeting of the members of [NASD]the Corporation and entitled to vote [thereat (as provided in the By-Laws of NASD)]for such category of Governors. Elections shall be by written

ballot. Any Governor so elected by members of the Corporation must be nominated by the [National] Nominating Committee or certified by the Secretary of [NASD]the Corporation (as provided in the By-Laws of [NASD]the Corporation) and must satisfy the other qualifications for Governors set forth in this Restated Certificate of Incorporation or the By-Laws or established by resolution of the Board of Governors from time to time, which qualifications shall be consistent with the “Plan of Allocation and Delegation of Functions by NASD to Subsidiaries[.]”. The By-Laws may also provide for such assistants to the Board of Governors, and such officers, agents, and employees, as may be deemed necessary to administer affairs of [NASD]the Corporation.

[The]From and after the Transitional Period, the Board of Governors shall consist of (i) the Chief Executive Officer of [NASD, (ii) if the Board of Governors determines, from time to time, in its sole discretion, that the appointment of a second officer of NASD to the Board of Governors is advisable, a second officer of NASD, (iii) the President of NASD Regulation, Inc., (iv) the Chair of the National Adjudicatory Council of NASD, and (v) Governors elected by the members of NASD]the Corporation, (ii) a number of Public Governors determined by the Board of Governors, (iii) a Floor Member Governor, an Independent Dealer/Insurance Affiliate Governor and an Investment Company Affiliate Governor and (iv) three Small Firm Governors, one Mid-Size Firm Governor and three Large Firm Governors. The number of Public Governors shall exceed the number of Industry Governors.

[The Chief Executive Officer and, if appointed, the second officer of NASD, and the President of NASD Regulation shall serve as Governors until a successor is elected, or until death, resignation, or removal (or, in addition, in the case of a second officer of

NASD, until the Board of Governors, in its sole discretion, determines that such appointment is no longer advisable).]

[The Chair of the National Adjudicatory Council shall serve as a Governor for a term of one year]

The Chief Executive Officer shall serve as a Governor until a successor is elected, or until death, resignation, or removal.

Public Governors and the Floor Member Governor, the Independent Dealer/Insurance Affiliate Governor and the Investment Company Affiliate Governor (the “Appointed Governors”) shall be appointed by the Board of Governors from candidates recommended to the Board by the Nominating Committee of the Board of Governors.

As of the first annual meeting of members following the Transitional Period, the Appointed Governors shall be divided by the Board of Governors into three classes, as equal in number as possible, with the first class holding office until the first succeeding annual meeting of members, the second class holding office until the second succeeding annual meeting of members and the third class holding office until the third succeeding annual meeting of members, or until a successor is duly appointed and qualified, or until death, resignation, disqualification, or removal. Each class shall initially contain as equivalent a number as possible of Appointed Governors who were members of the NYSE Group Committee during the Transitional Period or are successors to such Governor positions, on the one hand, and Appointed Governors who were members of the NASD Group Committee during the Transitional Period or are successors to such Governor positions, on the other hand, to the extent the Board of Governors determines

that such persons are to remain Governors after the Transitional Period. No Appointed Governor may serve more than two consecutive terms. If an Appointed Governor is appointed to fill a vacancy of such a Governor position for a term of less than one year, the Governor may serve up to two consecutive terms following the expiration of the Governor's initial term. At each annual election following the first annual meeting of members following the Transitional Period, Appointed Governors shall be appointed by the Board of Governors for a term of three years to replace those whose terms expire.

As of the first annual meeting of members following the Transitional Period, the Large Firm Governors, the Mid-Size Firm Governor and the Small Firm Governors shall be divided into three classes, as equal in number as possible, with the first class, being comprised of one Large Firm Governor and one Small Firm Governor, holding office until the first succeeding annual meeting of members, the second class, being comprised of one Large Firm Governor, one Mid-Size Firm Governor and one Small Firm Governor, holding office until the second succeeding annual meeting of members and the third class, being comprised of one Large Firm Governor and one Small Firm Governor, holding office until the third succeeding annual meeting of members, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A [Chair of the National Adjudicatory Council]Governor elected by members of the Corporation may not serve more than two consecutive terms [as a Governor, unless a Chair of the National Adjudicatory Council is appointed to fill a term of less than one year for such office. In such case, the Chair may serve an initial term as Governor and up to two consecutive terms as a Governor following the expiration of the initial term. After

serving as a Chair of the National Adjudicatory Council, an individual may serve as a Governor elected by NASD members].

[The Governors elected by the members of NASD shall be divided into three classes and shall hold office for a term of not more than three years, such term to be fixed by the Board at the time of the nomination or certification of each such Governor, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Governor elected by the members of NASD may not serve more than two consecutive terms. If a Governor is elected by the Board to fill a term of less than one year, the Governor may serve up to two consecutive terms following the expiration of the Governor's initial term.] If a Governor is elected to fill a vacancy of such a Governor position for a term of less than one year, the Governor may serve up to two consecutive terms following the expiration of the Governor's initial term. At each annual election following the first annual meeting of members following the Transitional Period, Large Firm Governors, Small Firm Governors and the Mid-Size Firm Governor shall be elected for a term of three years to replace those whose terms expire.

In the event of any vacancy among the Large Firm Governors, the Mid-Size Firm Governor or the Small Firm Governors, such vacancy shall only be filled by the Large Firm Governor Committee in the case of a Large Firm Governor vacancy, the Board of Governors in the case of a Mid-Size Firm Governor vacancy or the Small Firm Governor Committee in the case of a Small Firm Governor vacancy; provided, however, that in the event the remaining term of office of any Large Firm, Mid-Size Firm or Small Firm Governor position that becomes vacant is for more than 12 months, such vacancy shall be

filled by the members of the Corporation entitled to vote thereon at a meeting thereof convened to vote thereon.

(c) In furtherance and not in limitation of the powers granted by the General Corporation Law of the State of Delaware, the Board of Governors is expressly authorized unless the By-Laws otherwise provide, to make, alter, or repeal the By-Laws of [NASD]the Corporation.

In the event of the refusal, failure, neglect, or inability of any member of the Board of Governors to discharge such member's duties, or for any cause affecting the best interest of [NASD]the Corporation the sufficiency of which the Board of Governors shall be the sole judge, the Board shall have the power, by the affirmative vote of two-thirds of the Governors then in office, to remove such member and declare such member's position vacant and that, subject to this Restated Certificate of Incorporation, it shall be filled in accordance with the provisions of the By-Laws; provided, that during the Transitional Period, (i) a Governor that is a member of the NYSE Group Committee may only be removed by the affirmative vote of a majority of the Governors who are members of the NYSE Group Committee and (ii) a Governor that is a member of the NASD Group Committee may only be removed by the affirmative vote of a majority of the Governors who are members of the NASD Group Committee.

[NASD]The Corporation may, in its By-Laws, confer powers upon its Board of Governors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon them by the General Corporation Law of the State of Delaware.

Meetings and Offices

Ninth: Both members and the Board of Governors shall have power, if the By-Laws so provide, to hold their meetings and to have one or more offices within or without the State of Delaware and to keep the books of [NASD]the Corporation (subject to the provision of the statutes), outside the State of Delaware at such places as may be from time to time designated by the Board of Governors.

Right to Amend Certificate of Incorporation

Tenth: [NASD]The Corporation reserves the right to amend, alter, change, or repeal any provisions contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon members herein are granted subject to this reservation.

Transitional Governance

Eleventh: Notwithstanding anything herein to the contrary, to the extent there is any inconsistency between the other provisions of this Restated Certificate of Incorporation, including, without limitation, Paragraph (b) of Article Eighth, and this Article Eleventh, the provisions of this Article Eleventh shall govern as of Closing and for the Transitional Period to the fullest extent permitted by applicable law:

(a) The Corporation shall be managed under the direction of a Board of Governors having such powers and duties as shall be provided from time to time in this Restated Certificate of Incorporation or the By-Laws of the Corporation; provided, however, that (i) during the Transitional Period, the Board of Governors, after consultation with the Chief Executive Officer of the Corporation, shall have the exclusive authority to appoint any Lead Governor of the Corporation, (ii) during the Transitional Period, the Board of Governors, after receiving the recommendation of the Chief

Executive Officer, shall have the exclusive authority to appoint the Chair of the Finance Committee and (iii) during the Transitional Period, the Nominating Committee of the Board of Governors will be jointly populated by the Chief Executive Officer and the Chief Executive Officer of NYSE Regulation, Inc. as of Closing (or his duly appointed or elected successor as Chair of the Board of Governors), subject to ratification of the appointees by the Board of Governors. Any Governor elected by members of the Corporation must be nominated by the Nominating Committee or certified by the Secretary of the Corporation (as provided in the By-Laws of the Corporation) and must satisfy the other qualifications for Governors set forth in this Restated Certificate of Incorporation or the By-Laws or established by resolution of the Board of Governors from time to time, which qualifications shall be consistent with the “Plan of Allocation and Delegation of Functions by NASD to Subsidiaries”; provided, however, that, in the case of the first annual meeting of members following the Closing, nominations shall be by the Board of Directors of NYSE Group, Inc. with respect to Large Firm Governors, jointly by the Board of Directors of NYSE Group, Inc. and the Board of Governors in office prior to the Closing with respect to the Mid-Size Firm Governor and by the Board of Governors in office prior to the Closing with respect to Small Firm Governors, instead of the Nominating Committee.

(b) Upon the Closing, the term of office of each Governor in office immediately prior to the Closing who is not to be a Governor as of Closing pursuant to the immediately succeeding paragraph shall automatically, and without any further action, terminate, and such persons shall no longer be members of the Board of Governors.

(c) As of Closing, and for the Transitional Period, the Board of Governors shall consist of 23 authorized members, consisting of (i) the Chief Executive Officer of the Corporation, (ii) the Chief Executive Officer of NYSE Regulation, Inc., (iii) eleven Public Governors, (iv) a Floor Member Governor, an Independent Dealer/Insurance Affiliate Governor and an Investment Company Affiliate Governor and (v) three Small Firm Governors, one Mid-Size Firm Governor and three Large Firm Governors; provided, however that the Board of Governors shall not include such Small Firm Governors, Mid-Size Firm Governor or Large Firm Governors, but rather shall include three persons, who immediately prior to the Closing are Industry Governors, selected by the Board of Governors in office prior to the Closing, three persons, who immediately prior to the Closing qualified as Industry Governors pursuant to the By-Laws in existence prior to the Closing, selected by the Board of Directors of NYSE Group, Inc. and one person, who immediately prior to the Closing qualified as an Industry Governor pursuant to the By-Laws in existence prior to the Closing, selected by the Board of Directors of NYSE Group, Inc. and the Board of Governors in office prior to the Closing jointly, until the election of such Small Firm Governors, Mid-Size Firm Governor or Large Firm Governors at the first annual meeting of members following the Closing (which shall be held as soon as practicable after the Closing).

The Chief Executive Officer shall serve as a Governor until a successor is elected, or until death, resignation, or removal.

The Chief Executive Officer of NYSE Regulation, Inc. as of Closing shall serve as a Governor during the Transitional Period, until death, resignation, or removal; provided, however, in the event of a vacancy during the Transitional Period with respect

to this Governor position by virtue of death, resignation or removal, the then Chief Executive Officer of NYSE Regulation, Inc. shall serve as a Governor for the remainder of the Transitional Period, until death, resignation or removal; provided, further however, a person who becomes a Governor pursuant to the immediately preceding proviso shall not be qualified to serve as Chair of the Board of Governors.

Effective as of Closing, the Board of Directors of NYSE Group, Inc. shall appoint the NYSE Public Governors, the Board of Governors in office prior to the Closing shall appoint the NASD Public Governors and the Board of Directors of NYSE Group, Inc. and the Board of Governors in office prior to the Closing jointly shall appoint the Joint Public Governor.

The Public Governors appointed in accordance with the preceding paragraph shall hold office for the Transitional Period, or until death, resignation, disqualification, or removal. In the event of any vacancy among the NYSE Public Governors, the Joint Public Governor or the NASD Public Governors during the Transitional Period, such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, the NYSE Group Committee in the case of a vacant NYSE Public Governor position, such vacancy shall only be filled by the Board of Governors, and nominations for persons to fill such vacancy shall be made by the Nominating Committee, in the case of a vacant Joint Public Governor position or such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, the NASD Group Committee in the case of a vacant NASD Public Governor position.

Effective as of Closing, the Board of Directors of NYSE Group, Inc. shall appoint the Floor Member Governor, the Board of Governors in office prior to the Closing shall

appoint the Independent Dealer/Insurance Affiliate Governor and the Board of Directors of NYSE Group, Inc. and the Board of Governors in office prior to the Closing jointly shall appoint the Investment Company Affiliate Governor.

The Floor Member Governor, the Investment Company Affiliate Governor and the Independent Dealer/Insurance Affiliate Governor appointed in accordance with the preceding paragraph shall hold office for the Transitional Period, or until death, resignation, disqualification, or removal. In the event of any vacancy among the Floor Member Governor, the Investment Company Affiliate Governor or the Independent Dealer/Insurance Affiliate Governor during the Transitional Period, such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, the NYSE Group Committee in the case of a Floor Member Governor vacancy, such vacancy shall only be filled by the Board of Governors, and nominations for persons to fill such vacancy shall be made by the Nominating Committee, in the case of an Investment Company Affiliate Governor vacancy or such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, the NASD Group Committee in the case of an Independent Dealer/Insurance Affiliate Governor vacancy.

Three Large Firm Governors, three Small Firm Governors and one Mid-Size Firm Governor shall be elected as Governors at the first annual meeting of members following the Closing (the “Initial Member Elected Governors”). The Initial Member Elected Governors shall hold office until the first annual meeting of members following the Transitional Period, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal.

In the event of any vacancy among the Large Firm Governors, the Mid-Size Firm Governor or the Small Firm Governors during the Transitional Period, such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, the NYSE Group Committee in the case of a Large Firm Governor vacancy, such vacancy shall only be filled by the Board of Governors, and nominations for persons to fill such vacancy shall be made by the Nominating Committee, in the case of a Mid-Size Firm Governor vacancy or such vacancy shall only be filled by, and nominations for persons to fill such vacancy shall be made by, the NASD Group Committee in the case of a Small Firm Governor vacancy; provided, however, that in the event the remaining term of office of any Large Firm, Mid-Size Firm or Small Firm Governor position that becomes vacant is for more than 12 months, such vacancy shall be filled by the members of the Corporation entitled to vote thereon at a meeting thereof convened to vote thereon.

(d) The annual meeting of members shall be on such date and at such place as the Board of Governors shall designate; provided, however, that, except for the first annual meeting following the Closing at which Large Firm Governors, the Mid-Size Firm Governor and Small Firm Governors shall be elected, there shall be no annual meetings of members during the Transitional Period.

(e) Upon the expiration of the Transitional Period, the term of office of the Chief Executive Officer of NYSE Regulation, Inc. as a member of the Board shall automatically, and without any further action, terminate, such person shall no longer be a member of the Board of Governors and the authorized number of members of the Board of Governors shall automatically be reduced by one.

Definitions

Twelfth: For purposes hereof:

A) “bank” shall mean:

(1) a banking institution organized under the laws of the United States;

(2) a member bank of the Federal Reserve System;

(3) any other banking institution, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87-722 (12 U.S.C. § 92a), and which is supervised and examined by a State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of the Securities Exchange Act of 1934, as amended (the “Act”); and

(4) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (1), (2), or (3) of this definition;

- B) “broker” shall mean any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;
- C) “Closing” shall mean the closing of the consolidation of certain member firm regulatory functions of NYSE Regulation, Inc. and the Corporation;
- D) “controlling” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of any corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity;
- E) “dealer” shall mean any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for such individual’s or entity’s own account, through a broker or otherwise, but does not include a bank, or any person insofar as such person buys or sells securities for such person’s own account, either individually or in some

fiduciary capacity, but not as part of a regular business;

F) “Floor Member Governor” shall mean a member of the Board of Governors appointed as such who is a person associated with a member (or a firm in the process of becoming a member) which is a specialist or floor broker on the New York Stock Exchange trading floor;

G) “Independent Dealer/Insurance Affiliate Governor” shall mean a member of the Board of Governors appointed as such who is a person associated with a member which is an independent contractor financial planning member firm or an insurance company, or an affiliate of such a member;

H) “Industry Governor” shall mean the Floor Member Governor, the Independent Dealer/Insurance Affiliate Governor and the Investment Company Affiliate Governor and any other Governor (excluding the Chief Executive Officer of the Corporation and, during the Transitional Period, the Chief Executive Officer of NYSE Regulation, Inc.) who:

(1) is or has served in the prior year as an officer, director (other than as an independent director), employee or controlling person of a broker or dealer; or

(2) has a consulting or employment relationship with or provides professional services to a self regulatory organization registered under the Act or has had any such relationship or provided any such services at any time within the prior year;

I) “Investment Company Affiliate Governor” shall mean a member of the Board of Governors of the Corporation appointed as such who is a person associated

with a member which is an “investment company” as such term is defined in The Investment Company Act of 1940, as amended, or an affiliate of such a member;

J) “Joint Public Governor” shall mean the one Public Governor to be appointed as such by the Board of Directors of NYSE Group, Inc. and the Board of Governors in office prior to the Closing jointly;

K) “Large Firm Governors” shall mean the members of the Board of Governors of the Corporation to be elected by Large Firm Members, provided, however, that in order to be eligible to serve, a Large Firm Governor must be an Industry Governor and must be registered with a member which is a Large Firm Member;

L) “Large Firm Governor Committee” shall mean a committee of the Board of Governors comprised of all of the Large Firm Governors;

M) “Large Firm Member” shall mean any broker or dealer admitted to membership in the Corporation which, at the time of determination, has 500 or more registered persons;

N) “Mid-Size Firm Governor” shall mean the member of the Board of Governors of the Corporation to be elected by Mid-Size Firm Members, provided, however, that in order to be eligible to serve, a Mid-Size Firm Governor must be an Industry Governor and must be registered with a member which is a Mid-Size Firm Member;

O) “Mid-Size Firm Member” shall mean any broker or dealer admitted to membership in the Corporation which, at the time of determination, has at

least 151 and no more than 499 registered persons;

P) “NASD Group Committee” shall mean a committee of the Board of Governors comprised of the five Public Governors and the Independent Dealer/Insurance Affiliate Governor appointed as such by the Board of Governors in office prior to Closing, and the Small Firm Governors which were nominated for election as such by the Board of Governors in office prior to Closing, and in each case their successors;

Q) “NASD Public Governors” shall mean the five Public Governors to be appointed as such by the Board of Governors in office prior to the Closing effective as of Closing;

R) “NYSE Group Committee” shall mean a committee of the Board of Governors comprised of the five Public Governors and the Floor Member Governor appointed as such by the Board of Directors of NYSE Group, Inc., and the Large Firm Governors which were nominated for election as such by the Board of Directors of NYSE Group, Inc., and in each case their successors;

S) “NYSE Public Governors” shall mean the five Public Governors to be appointed as such by the Board of Directors of NYSE Group, Inc. effective as of Closing;

T) “person associated with a member” shall mean:

(1) a natural person who is registered or has applied for registration under the Rules of the Corporation;

(2) a sole proprietor, partner, officer, director, or branch manager of a

member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the Corporation under the By-Laws of the Corporation or the Rules of the Corporation; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member;

U) “Public Governor” shall mean any Governor who is not the Chief Executive Officer of the Corporation or, during the Transitional Period, the Chief Executive Officer of NYSE Regulation, Inc., who is not an Industry Governor and who otherwise has no material business relationship with a broker or dealer or a self regulatory organization registered under the Act (other than serving as a public director of such a self regulatory organization);

V) “Rules of the Corporation” or “Rules” shall mean the numbered rules set forth in the manual of the Corporation beginning with the Rule 0100 Series, as adopted by the Board of Governors of the Corporation pursuant to the By-Laws of the Corporation, as hereafter amended or supplemented;

W) “Small Firm Governors” shall mean the members of the Board of Governors of the Corporation to be elected by Small Firm Members, provided, however, that in order to be eligible to serve, a Small Firm Governor must be registered with a member which is a Small Firm Member and must be an Industry Governor;

X) “Small Firm Governor Committee” shall mean a committee of the Board of Governors comprised of all the Small Firm Governors;

Y) “Small Firm Member” shall mean any broker or dealer admitted to membership in the Corporation which, at the time of determination, has at least 1 and no more than 150 registered persons; and

Z) “Transitional Period” shall mean the period commencing on the date of the Closing and ending on the third anniversary of the date of the Closing.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been signed under the seal of [NASD] the [27th] Corporation the ____ day of [January 2005.] ____ 2007.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

By: _____

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary

* * * * *