

U.S. FUTURES EXCHANGE, L.L.C.

LIMITED LIABILITY COMPANY

AGREEMENT

AND

BYLAWS

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LIMITED LIABILITY COMPANY

AGREEMENT AND BYLAWS

OF

U.S. FUTURES EXCHANGE, L.L.C.

LIMITED LIABILITY COMPANY AGREEMENT AND BY-LAWS (this “Agreement”) OF U.S. FUTURES EXCHANGE, L.L.C., a Delaware limited liability company (the “Exchange” or the “Company”), entered into as of the 7th day of July, 2003 by U.S. Exchange Holdings, Inc., as the sole member and Shareholder of the Company.

WHEREAS, on July 7, 2003, the Company was formed pursuant to the Delaware Limited Liability Company Act (the “Delaware Act”) by the filing of a Certificate of Formation conforming to the requirements of the Delaware Act in the office of the Secretary of State of the State of Delaware.

NOW, THEREFORE, intending that this Agreement constitute the “limited liability company agreement” of the Company, and in consideration of the respective covenants and agreements contained herein, U.S. Exchange Holdings, Inc. and the Company hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 **Definitions.** In this Agreement, the following terms shall, unless the context otherwise indicates, have the meaning set forth below:

“**Act**” means the Commodity Exchange Act, as in effect from time to time.

“**Affiliate**” means, with respect to any Person, any other Person who controls, is controlled by, or is under common control with, such Person.

“**Affiliated Person**” means:

(a) With respect to any Entity, any Person who Controls, is Controlled by or is under common Control with such Entity, and, without limiting the generality of the foregoing, any partner, trustee, officer, director or employee (whether or not having Control) of such Entity; and

(b) With respect to any individual, any Person of which such individual is a partner, member, trustee, officer, director or employee or has Control, and any Person who Controls, is Controlled by, or is under common Control with such Person.

“**Agreement**” means this Limited Liability Company Agreement and Bylaws among the Shareholders of the Exchange, as amended from time to time.

“**Board**” means the Board of Directors of the Exchange, who shall constitute the “managers” of the Exchange within the meaning of the Delaware Act.

“**Bylaws**” means, with respect to any Entity, the bylaws or similar code of such Entity, and the interpretations, resolutions, policies, procedures, orders and directives of the Entity thereof or thereunder, as in effect from time to time; and if no other Entity is specified, shall mean this Agreement.

“**Business Day**” means any day on which the Exchange is open for trading.

“**Capital Contribution**” means, with respect to any Shareholder, the aggregate amount of money and the Gross Asset Value of any assets contributed by such Shareholder to the Exchange pursuant to Section 3.5 or from time to time.

“**Clearing Organization**” means any Person designated by the Exchange to clear transactions effected on or subject to the Rules of the Exchange.

“**Code**” means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

“**Commission**” means the Commodity Futures Trading Commission or any successor agency.

“**Commodity**” means any “commodity” within the meaning of the Act.

“**Commission Regulation**” means any rule, regulation, or order of the Commission, as in effect from time to time (including any successor provision), and any interpretation thereof by the Commission or its staff.

“**Contracts**” means a Futures Contract or an Option.

“**Control**” means the power to direct or cause the direction of the management or policies of a Person, whether through ownership of securities, by contract or otherwise.

“**Delaware Act**” means the Limited Liability Company Act of the State of Delaware.

“**Depreciation**” means, for each Fiscal Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such Fiscal Year or other period; provided, however, that if the Gross Asset Value of an asset differs from its adjusted basis for U.S. federal income tax purposes at the beginning of such Fiscal Year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the U.S. federal income tax depreciation, amortization or other cost recovery deduction with respect to such asset for such Fiscal Year or other period bears to such beginning adjusted tax basis; and provided further that, if the U.S. federal income tax depreciation, amortization or other cost recovery deduction for such Fiscal Year or other period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selection by a majority in interest of the Shareholders.

“**Director**” means a person appointed or elected to the Board in or pursuant to Section 5.2 or Section 5.4.

“**Encumbrance**” means any security interest, pledge, mortgage, lien, charge, adverse claim of ownership or use, or other encumbrance of any kind.

“**Entity**” means any Person other than an individual.

“**Exchange**” means U.S. Futures Exchange, L.L.C. Unless otherwise provided in this Agreement or the Rules, any reference to an action required or permitted to be taken by “the Exchange” pursuant to this Agreement or the Rules shall include an action to be taken by any duly authorized officer, agent or employee of the Exchange.

“**Exchange Act**” means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Exchange Trading System**” means the Exchange’s electronic system for trading Contracts.

“**Fair Market Value**” of Shares or other property, as the case may be, shall mean the value as reasonably determined by the Board or as otherwise provided in this Agreement.

“**Fiscal Year**” shall have the meaning set forth in Section 12.1.

“**Futures Contract**” means a contract for the purchase or sale of a Commodity for future delivery traded on or subject to the Rules of the Exchange.

“**Governmental Agency**” means the Commission, the Securities and Exchange Commission and any other agency, federal or state, domestic or foreign, regulating trading in commodities, securities, futures contracts, options, currencies or other financial instruments.

“**Member**” means any Person admitted to membership in the Exchange as provided in the Rules of the Exchange. A Member shall not be a “member” of the Exchange within the meaning of the Delaware Act, unless such Member is also a Shareholder.

“**Member Affiliate**” means, with respect to any Shareholder, a Member that is an Entity that is an Affiliate of such Shareholder.

“**Officials**” shall have the meaning set forth in Section 10.4(a).

“**Option**” means an option to purchase or sell a Futures Contract, which option is traded on or subject to the Rules of the Exchange.

“**Percentage Interest**” means, with respect to each Shareholder, the percentage of issued and outstanding Shares held by such Shareholder.

“**Person**” means an individual, sole proprietorship, corporation, partnership, limited liability company, association, firm, trust, or other entity, as the context may require.

“**Rules**” means, with respect to any Entity, the rules of such Entity and the interpretations, resolutions, orders, directives and procedures of the Entity thereunder, as in effect from time to time, and, if no other Entity is specified, means the Rules of the Exchange.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Shareholder**” means holder of record of Shares. A Shareholder shall be a “member” of the Exchange within the meaning of the Delaware Act, but shall not be a Member of the Exchange within the meaning of the Bylaws and Rules, unless it has been admitted as such.

“**Shares**” means shares in the Exchange that establish such rights and obligations of the holder thereof as set forth in Section 3.2(b) and other provisions of this Agreement.

“**Tax Matters Member**” means the Member designated as the “tax matters partner” for the Exchange under Section 12.5 of this Agreement.

“**Treasury Regulations**” means the Treasury regulations promulgated under the Code as may be amended and succeeded from time to time.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The word “will” shall be construed to have the same meaning and effect as the word “shall.”

ARTICLE II

ORGANIZATION

Section 2.1 **Name.** The name of the Exchange shall be “U.S. Futures Exchange, L.L.C.” or such other name as the Board may determine. The Exchange may cause appropriate trade name and similar statements to be filed and published under the name as set forth in this Section, or such other names as the Exchange may have or use in any jurisdiction from time to time.

Section 2.2 **Principal Place of Business and Registered Office and Agent.** The principal place of business of the Exchange shall be such place as the Board may designate from time to time. The address of the Company's registered office in the State of Delaware, City of Wilmington, County of New Castle, is The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19808. The name of the Company's registered agent at such office is The Corporation Trust Company.

Section 2.3 **Qualification in Other Jurisdictions.** The Board shall cause the Exchange to be qualified to do business or registered under assumed or fictitious names, statutes or similar laws in any jurisdiction in which such qualification or registration is required or

desirable, and shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary to effect such qualification or registration.

Section 2.4 **Term**. The term of the Exchange shall commence upon the execution of this Agreement, and shall continue in full force and effect until the Exchange is dissolved in accordance with the provisions of this Agreement or the Delaware Act.

Section 2.5 **Purposes**. The Exchange's business and general purpose is to engage in any lawful act or activity for which a limited liability company may be organized under the Delaware Act.

Section 2.6 **No State Law Partnership**. The Shareholders intend that the Exchange shall not be a partnership (including, without limitation, a general partnership or a limited partnership) or joint venture, and that no Shareholder or Director shall be a partner or joint venturer of any other Shareholder or Director with respect to the business of the Exchange, for any purposes other than U.S. federal, state and local tax purposes, and this Agreement shall not be construed to suggest otherwise. The Shareholders intend that the Exchange shall be a partnership or disregarded entity for U.S. federal, state and local tax purposes and agree not to take any position or make any election, in a tax return or otherwise, inconsistent with the treatment of the Exchange as a partnership or a disregarded entity for such purposes.

ARTICLE III

SHAREHOLDERS

Section 3.1 **Names and Addresses**. The name and address and number of Shares of each class of Shares held by each Shareholder shall be set forth in the books and records of the Exchange.

Section 3.2 **Number and Classes of Shares**.

(a) There shall be 1,000 Shares.

(b) In addition to any voting rights provided by the Delaware Act, the holder of the outstanding Shares shall be entitled to elect Directors and to remove any Director at any time, with or without cause, and shall have the right to vote on any matter considered by the Shareholders.

(c) Shares of any class may be issued and held in fractional amounts.

(d) Notwithstanding any other provision in this Agreement to the contrary, the voting power of the Shareholders shall be proportionate to their Percentage Interests.

Section 3.3 **Admission of Shareholders.**

(a) U.S. Exchange Holdings, Inc., a Delaware corporation, be the sole initial Shareholder. Additional Shareholders shall be Persons admitted as such by resolution of the Board.

Section 3.4 **Limitation of Liability.** Except as required by law and as otherwise provided in this Agreement, the debts, obligations and liabilities of the Exchange, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Exchange, and no Shareholder, Member or Director shall be obligated personally for any such debt, obligation or liability of the Exchange solely by reason of being a Shareholder, Member or Director of the Exchange.

Section 3.5 **No Capital Calls; Right to Accept Additional Capital Contributions**

(a) Members and Shareholders shall not be subject to calls for capital. The Exchange shall have the right to accept Capital Contributions to be made by any Shareholder as the Board may approve. The Company and the Board hereby acknowledge and approve that upon full execution hereof the Shareholder shall make a Capital Contribution to the Company of One Million Dollars (\$1,000,000).

(b) Shareholders shall be permitted to participate proportionally in any additional Capital Contributions approved by the Board.

(c) Additional capital contributions approved by the Board shall result in a proportionate reduction in the Percentage Interests of a Shareholder who declines to participate in such additional capital contributions pursuant to paragraph (b) of this Section.

Section 3.6 **Time and Place of Meetings.** All meetings of Shareholders of the Exchange shall be held at such time and place, either within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 3.7 **Annual Meeting.** There shall be an annual meeting of each class of Shareholders of the Exchange, to be held at such date, time and place, either within or without the State of Delaware, as shall be determined by the Board and stated in the notice of meeting.

Section 3.8 **Notices.** Whenever under the provisions of this Article Shareholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. The notice of any meeting shall be given not less than 10 nor more than 30 days before the date of the meeting to each Shareholder entitled to vote at such meeting. Notice may be given by personal delivery, by mail, by telefacsimile or by electronic mail to such address or telefacsimile number as may appear on the records of the Exchange. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the Shareholder at such Shareholder's address as it appears on the records of the Exchange. An affidavit of the Secretary or an Assistant Secretary

of the Exchange that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated.

Section 3.9 **Quorum.**

(a) Except as otherwise provided by this Agreement or by law, the Shareholder shall constitute a quorum at any meeting at which Directors are to be elected, except that where a separate vote by a class is required, the holder of the Shares entitled to vote thereat of that class shall be required to constitute a quorum.

(b) If a quorum shall not be present in person or represented by proxy at any meeting of the Shareholders at which Directors are to be elected, the Shareholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting, until such holder of the Shares entitled to vote shall be present or represented by proxy. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Shareholder of record entitled to vote thereat. At the adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally called.

Section 3.10 **Voting.** At every meeting of the Shareholders at which Directors are elected, each Shareholder having the right to vote shall be entitled to vote in person or by proxy. The election of Directors pursuant to Section 5.2 shall be authorized by a majority of the votes cast by the Shareholders entitled to vote thereon.

Section 3.11 **Votes per Share.** Except as otherwise provided by this Agreement or by law, the Shareholders of record shall be entitled to a number of votes equal to the number of Shares standing in his, her or its name on the books of the Exchange as of the relevant record date.

Section 3.12 **Shareholder List.** A complete list of the Shareholders entitled to vote at any meeting of Shareholders arranged in alphabetical order with the address of each and the number of Shares held by each, shall be prepared by a designated officer of the Company. Such list shall be open to the examination of any Shareholder for any purpose germane to the meeting during ordinary business hours for a period of at least 10 days prior to the meeting. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any Shareholder who is present.

Section 3.13 **Proxies.** Every Shareholder entitled to vote at a meeting of Shareholders at which Directors are elected or to express consent or dissent without a meeting may authorize any person or persons to act for such Shareholder by proxy. Every proxy must be signed by the Shareholder or the Shareholder's attorney-in-fact. No proxy shall be valid after the expiration of three years from the date thereof unless the proxy provides for a longer period. Every proxy shall be revocable at the pleasure of the Shareholder executing the proxy, except as otherwise provided by law and except that a proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power.

Section 3.14 **Written Consent in Lieu of a Meeting.** Any action required or permitted to be taken at any meeting of the Shareholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth such election in lieu of an annual meeting shall be given by the holders of the Shares.

Section 3.15 **Record Date.** In order that the Exchange may determine the Shareholders entitled to notice of or to vote at any meeting of Shareholders or any adjournment thereof, or entitled to express consent to the election of Directors in writing without a meeting, or entitled to receive payment of any distribution, or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not be more than 30 days before the date of such meeting, nor more than 30 days prior to any other action.

Section 3.16 **Shareholders of Record.** The Exchange shall be entitled to treat the holder of record of any Share or Shares as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such Share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of the State of Delaware.

Section 3.17 **Transfers.**

(a) Shares may be sold, pledged, transferred or otherwise disposed of at any time on notice to the Exchange.

(b) Notwithstanding any other provision in this Agreement to the contrary, no transfer of Shares shall be permitted if (in the opinion of counsel) such transfer, taken alone or in conjunction with other transactions, would cause the Exchange to lose its status as a partnership or disregarded entity for U.S. federal income tax purposes, or would cause the Exchange to be classified as a “publicly-traded partnership” under Section 7704 of the Code. In addition, no Person may be admitted as a Shareholder of the Exchange if (in the opinion of counsel) the admission of such Person as a Shareholder would cause the Exchange to be treated as other than a partnership or disregarded entity for U.S. federal income tax purposes.

Section 3.18 **Termination of Shareholdings.**

(a) No Shareholder may surrender its Shares to the Exchange or withdraw from membership within the meaning of the Delaware Act at any time except with the prior consent of the Board.

(b) Upon the surrender of all its Shares to the Exchange and withdrawal from membership within the meaning of the Delaware Act by a Shareholder for any reason, the then balance in its capital account shall be promptly paid to it, less any amounts then owing to the Exchange by such Shareholder and/or its Member Affiliate.

ARTICLE IV

DISTRIBUTIONS

Section 4.1 **Distributions.** The Exchange may, at any time and from time to time, make a distribution to the Shareholders as decided by the Board. All distributions shall be made in proportion to the Percentage Interest of the Shareholders.

Section 4.2 **Violative Distributions.** Notwithstanding any provision in this Agreement to the contrary, neither the Exchange nor the Directors on behalf of the Exchange may make a distribution to any Shareholder on account of such Shareholder's Shares if such distribution would violate the Delaware Act.

ARTICLE V

DIRECTORS

Section 5.1 **Duties, Powers and Eligibility.**

(a) Except as otherwise specifically provided in this Agreement, the Rules, or applicable law, all powers of the Exchange shall be held at any time, and all decisions respecting any matter set forth herein or otherwise affecting or arising out of the conduct of the business of the Exchange shall be made, by the Board, without the vote or approval of any Shareholders or Members. The Board shall have all the powers and duties of managers of a limited liability company as set forth in the Delaware Act, including without limitation the right to authorize any Director, officer or other Person to act on behalf of the Exchange. Any action taken by the Board or any Director, officer or other Person duly authorized in accordance with this Agreement shall constitute the act of, and shall serve to bind, the Exchange. Subject to the provisions of this Agreement, the Board may create, and delegate any part or all of its powers and authority to, such committees as the Board may deem appropriate.

(b) Except as otherwise provided in this Agreement or authorized by the Board, no Director, manager or officer of the Exchange, and no other Person, shall have the authority or power, directly or indirectly, to act as agent of the Exchange for any purpose, engage in any transaction, make any commitment, enter into any contract or incur any obligation (whether as principal, surety or agent) in the name of the Exchange or in any other way bind the Exchange or hold itself out as acting for or on behalf of the Exchange. Any attempted action in contravention of this Section shall be null, void *ab initio* and not binding upon the Exchange, unless ratified or authorized in writing by the Board. Notwithstanding the foregoing, the Directors, managers and officers of the Exchange shall have authority and power set forth in Section [Emergency provisions] of the Rules.

(c) Without limiting the generality of the foregoing paragraph (a), the Board shall have the power to:

(i) Take such steps as may be necessary in order to make effective the final orders or decisions entered pursuant to the provisions of Section 6(c) of the Act, and comply in all respects with all requirements applicable to the Exchange under the Act;

(ii) Designate any Person as a Clearing Organization to clear transactions effected on or subject to the Rules of the Exchange;

(iii) Impose dues or other charges upon Members of the Exchange;

(iv) Impose such fees or charges for Contracts effected on or subject to the Rules of the Exchange, and waive or reduce such fees or charges under such circumstances, as the Board in its discretion may deem appropriate;

(v) Adopt, amend and repeal such Rules as the Board may in its discretion deem necessary or appropriate in the best interests of the Exchange; *provided, however*, that no such Rule may be inconsistent with any provision of this Agreement;

(vi) Render interpretations of this Agreement and the Rules, which shall be binding on all Persons who are subject thereto or who directly or indirectly trade on or subject to the Rules; and

(vii) Waive or extend the time for compliance with any of the provisions of the Rules in any case where the Board in its discretion deems necessary or appropriate.

(d) Each Director shall be at least 18 years of age and shall not be ineligible to serve pursuant to Section 5.6(a).

Section 5.2 **Number; Election; Tenure.**

(a) Commencing on the date hereof, there shall be one Director. The initial Director, who shall remain in office until his successor is duly elected and qualified, or until his earlier resignation or removal, shall be Michael McErlean.

(b) Commencing at the first annual meeting of Shareholders following the date hereof, and except as otherwise provided by this Agreement or by law, Directors shall be elected each year at the annual meeting of Shareholders.

(c) Except as otherwise provided in this Agreement or by law, each Director shall hold office until the annual meeting of Shareholders next succeeding his or her election and until his or her successor is elected and has qualified, or until his or her earlier resignation or removal.

Section 5.3 **Resignation and Removal.**

(a) A Director may resign at any time by giving written notice to the Board or to the President of the Exchange. Such resignation shall take effect upon receipt thereof by the Board or by the President, unless otherwise specified therein. The acceptance of a resignation shall not be necessary to make it effective.

(b) Any one or more of the Directors elected by any class of Shareholders may be removed, either with or without cause, at any time by the affirmative vote of the holder of the Shares of such class at any meeting called for such purpose.

(c) A Director who becomes ineligible to serve on the Board pursuant to Section 5.6 shall be automatically removed upon the occurrence of such ineligibility without any act of the Shareholders or the Board.

Section 5.4 **Vacancies.**

(a) A vacancy occurring among the Directors elected by the Shareholders for any reason and newly created directorships resulting from an increase in the authorized number of Directors to be elected by the Shareholders may be filled by majority vote of the Directors elected by the Shareholders then in office, although less than a quorum, or by the sole remaining Director elected by the Shareholders, or by the Shareholders.

(b) Any individual appointed by the Board to fill a vacancy as a Director shall hold office for the balance of the term of the Director whose position such successor is filling.

Section 5.5 **Compensation.** Each Director shall receive for services rendered as a Director of the Exchange such compensation, if any, as may be fixed by the Board. Nothing herein contained shall be construed to preclude any Director from serving the Exchange in any other capacity and receiving compensation therefor.

Section 5.6 **Eligibility for Service on Boards and Committees.**

(a) No individual shall be eligible to serve on the Board, any arbitration panel, oversight panel, or any disciplinary committee of the Exchange if such individual:

(i) was found within the prior three years by a final decision in any action or proceeding brought by the Commission, any other Governmental Agency or any self-regulatory organization to have committed a disciplinary offense;

(ii) entered into a settlement agreement within the prior three years in which any of the findings or, in the absence of such findings, any of the acts charged (and not withdrawn) included a disciplinary offense;

(iii) currently is suspended from trading on any contract market, is suspended or expelled from membership in any self-regulatory organization, is serving any sentence or probation or owes any portion of a fine imposed pursuant to either:

(A) a finding by a final decision in any action or proceeding brought by the Commission, any other Governmental Agency or any self-regulatory organization that such person committed a disciplinary offense; or

(B) a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged (and not withdrawn) included a disciplinary offense;

(iv) currently is subject to an agreement with the Commission or any self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;

(v) currently is subject to, or has had imposed on such person, within the prior three years, a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in Section 8a(2)(D)(ii) through (iv) of the Act; or

(vi) currently is subject to a denial, suspension or disqualification from serving on a disciplinary committee, arbitration panel or governing board of any “self-regulatory organization” as that term is defined in Section 3(a)(26) of the Securities Exchange Act of 1934.

(b) Any individual who is a member of the Board, an arbitration panel or a disciplinary committee shall immediately notify the President of any final decision which subjects such person to disqualification pursuant to paragraph (a) of this Section.

(c) Terms used in this Section and not defined in this Agreement shall have the meanings set forth in Section 1.63(a) of the Commission Regulations.

Section 5.7 **Improper Use or Disclosure of Material, Non-Public Information.**

(a) No member of the Board or any committee established by the Exchange shall use or disclose, for any purpose other than the performance of such person’s official duties as a member of the Board or such committee, any material non-public information obtained by such person as a result of such person’s participation on the Board or on any such committee; *provided, however,* that if any such person who effects any transactions after having received any such material, non-public information so obtained can show that such transaction was effected in the ordinary course of such person’s business, such person shall not be deemed to have used such information in violation of this Section, unless it can be shown that such person would not have effected such transaction in the absence of such information.

(b) For the purposes of this Section, the terms “material” and “non-public information” shall each have the meaning set forth in Section 1.59(a) of the Commission Regulations.

ARTICLE VI

MEETINGS OF THE BOARD

Section 6.1 **Time and Place.** Meetings of the Board shall be held at such times and places, within or without the State of Delaware, and within or without the United States of America, as shall be determined by the Board or otherwise in accordance with this Agreement.

Section 6.2 **Annual Meeting.** An annual meeting of the Board shall be held promptly after each annual meeting of Shareholders on such day and at such time as the Board may fix, for the purpose of organization, the election of officers and any other proper purpose.

Section 6.3 **Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall, from time to time, be determined by the Board.

Section 6.4 **Special Meetings.** Special meetings of the Board may be called at any time by the Chairman of the Board, the President, the Secretary, or any three members of the Board. At any special meeting of the Board, only the matters stated in the notice of the meeting may be acted upon at such meeting, unless an action on any matter is consented to by all of the members of the Board.

Section 6.5 **Quorum and Voting.**

(a) A majority of the entire Board shall constitute a quorum at any meeting of the Board.

(b) The act of a majority vote of the Directors present at any duly constituted meeting, if a quorum is present, shall be the act of the Board, except as may otherwise be specifically provided by law or this Agreement. If at any meeting of the Board there shall be less than a quorum present, the Director or Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall have been obtained.

(c) The Board shall adopt conflict of interest rules satisfying the requirements of the Act.

Section 6.6 **Notices.**

(a) All meetings of the Board or any committee shall be held on notice to the members thereof. Special meetings of the Board or any committee shall be held upon not less than one hour's notice stating the purpose, place, date and hour of the meeting and specifying the person or persons at whose direction the meeting is called, except that notice by mail shall be given not less than five Business Days prior to the date of the meeting.

(b) At any special meeting of the Board or any committee, only the matters stated in the notice of the meeting may be acted upon at such meeting, unless an action on any other matter is consented to by all of the members of the Board or such committee.

(c) A notice pursuant to this Section may be given orally or in writing, by personal delivery, by mail, by telephone, by telefacsimile or by electronic mail to such address, telephone or facsimile number as may be listed on the records of the Exchange.

Section 6.7 **Written Consents in Lieu of a Meeting.** Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if all Directors voting on such action consent to such action in writing, and such writing or writings are filed with the minutes of the proceedings of the Board.

Section 6.8 **Telephonic Participation in Meetings.** The Board may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at such meeting.

Section 6.9 **Rules of Order.** Unless otherwise provided by the Board, all meetings of the Board shall be conducted in accordance with the then current edition of *Robert's Rules of Order*.

ARTICLE VII

COMMITTEES

Section 7.1 **Designation and Powers.** The Board may in its discretion appoint one or more committees of the Board consisting of one or more of the Directors of the Exchange, and may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in a resolution of the Board or in this Agreement, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange. In the absence or disqualification of any such member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another Director to act at the meeting in place of any such absent or disqualified member.

Section 7.2 **Meetings of Committees.**

(a) Meetings of any committee may be held at any time or place as shall be determined by resolution of the committee or upon the call of the President, the chairman of the committee or any three members of the committee. Notice of any meeting of a committee shall be given as provided in Section 6.6.

(b) A majority of the entire committee shall constitute a quorum at any meeting of a committee. The act of a majority of the members of a committee shall be the act of the committee, except as may be specifically provided by law, this Agreement or the Rules.

(c) Any action required or permitted to be taken at any meeting of a committee may be taken without a meeting if all members of the committee consent to such action in writing.

(d) Any member of a committee may participate in a meeting of the committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at such meeting.

(e) Unless otherwise provided by the committee, all meetings of the committee shall be conducted in accordance with the then current edition of *Robert's Rules of Order*.

ARTICLE VIII

NOTICES

Section 8.1 **Delivery of Notices.** Notices to Shareholders, Directors and committee members shall be given as provided in Section 6.6. Notice by mail shall be deemed to be given at the time when deposited in the United States mail, postage prepaid, and addressed to Shareholders, Directors or committee members at their respective addresses appearing on the books of the Exchange, unless any such Shareholder, Director or committee member shall have filed with the Secretary of the Exchange a written request that notices intended for him or her be mailed or delivered to some other address, in which case the notice shall be mailed to or delivered at the address designated in such request.

Section 8.2 **Waiver of Notice.** Whenever notice is required to be given by this Agreement or applicable law, a waiver thereof in writing, signed by the Person or Persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance of a Person at a meeting of Shareholders, Directors or any committee, as the case may be, shall constitute a waiver of notice of such meeting, except where the Person is attending for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of Shareholders, Directors or any committee need be specified in any waiver of notice.

ARTICLE IX

OFFICERS

Section 9.1 **Officers.** The Board shall appoint a Chairman of the Board and may appoint a President who is the Chief Executive Officer of the Company and such other officers as the Board may from time to time determine. Except for the Chairman of the Board, no officer need be a member of the Board. Any number of offices may be held by the same individual, except that the office of Secretary may not be held by the Chairman of the Board or the President. Each officer other than the Chairman of the Board shall be a full-time employee of the Exchange and/or any Affiliate thereof.

Section 9.2 **Other Officers and Agents.** The Board may also appoint such agents as the Board may at any time or from time to time determine, such agents to serve for such terms and to exercise such powers and perform such duties as shall be specified at any time or from time to time by the Board.

Section 9.3 **Tenure; Resignation; Removal; Vacancies.** Each officer of the Exchange shall hold office until his or her successor is elected and qualified, or until his or her earlier resignation or removal; provided, that if the term of office of any officer shall have been fixed by the Board, he or she shall cease to hold such office no later than the date of expiration of such term regardless of whether any other person shall have been elected or appointed to succeed

him or her. Any officer may be removed at any time, with or without cause (including, without limitation, in the event that the Board reasonably determines that the officer is unable to carry out such officer's duties as a result of mental or physical incapacity), by the Board; provided that any such removal shall be without prejudice to the rights, if any, of the officer so employed under any employment contract or other agreement with the Exchange. An officer may resign at any time upon written notice to the Board. If the office of any officer becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the Board may appoint a successor or successors to hold office for such term as may be specified by the Board.

Section 9.4 **Compensation.** Except as otherwise provided by this Agreement, the compensation of all officers of the Exchange appointed by the Board shall be fixed by the Board.

Section 9.5 **Authority and Duties.** There is delegated to the officers of the Exchange such rights and powers to manage and control the business and affairs of the Exchange as are prescribed in this Agreement or the Rules or by the Board. In addition to the rights and powers hereinafter specifically prescribed for the respective officers, the Board may from time to time delegate to any of the officers such additional rights and powers as the Board may see fit, and the Board may from time to time delegate any or all of the rights and powers hereinafter specifically prescribed for any officer upon any other officer or officers.

Section 9.6 **Chairman of the Board.** The Chairman of the Board, who shall be a Director, shall preside at all meetings of the Shareholders and at all meetings of the Board. He or she shall be a member *ex officio* of all committees of the Board and shall perform such other duties as may be assigned from time to time by the Board.

Section 9.7 **President.** The President, if there be one, shall be the chief executive officer of the Exchange and shall have general charge of the business, affairs and property of the Exchange, and shall have control over the officers, agents and employees of the Exchange, subject to the direction of the Board. Without limiting the generality of the foregoing, the President shall have the authority to: (a) hire and dismiss employees of the Exchange and to establish their qualifications, duties and compensation; (b) execute and deliver contracts, instruments and other documents on behalf of the Exchange; and (c) perform such other duties as may be specifically assigned to him or her from time to time by the Board. The President shall see that all resolutions and orders of the Board are carried into effect, and in connection with the foregoing, shall be authorized to delegate to the other officers such of his or her powers and such of his or her duties as he or she may deem to be advisable.

Section 9.8 **Vice President.** The Vice President, if there be one, or if there be more than one, the Vice Presidents, shall perform such duties as may be assigned to them from time to time by the Board or as may be designated by the President, if there be one. In case of the absence or disability of the President the duties of the office shall be performed by the Vice President, or if there be more than one Vice President, by such Vice President as the Board or President shall designate.

Section 9.9 **Chief Financial Officer.** The Chief Financial Officer, if there be one, shall have the custody of the Exchange's funds and securities, shall keep full and accurate accounts of receipts and disbursements in the books and records of the Exchange and shall deposit all monies and other valuable effects in the name and to the credit of the Exchange in such depositories as may be selected by the Chief Financial Officer or the Board. The Chief Financial Officer shall also perform such other duties as may be specifically assigned to him or her from time to time by the Board or by the President, if there be one.

Section 9.10 **Secretary.** The Secretary, if there be one, shall attend all meetings of the Board and all meetings of the Shareholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for any committee when required. He or she shall give, or cause to be given, notice of all meetings of the Shareholders, the Board and any committee. The Secretary shall perform such other duties as may be assigned to him or her from time to time by the Board or by the President, if there be one.

Section 9.11 **Restrictions on Trading and Disclosure by Employees.**

(a) No employee of or consultant to the Exchange shall:

(i) trade for such person's own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information; or

(ii) disclose for any purpose inconsistent with the performance of such person's official duties as an employee of or consultant to the Exchange any material non-public information obtained through special access related to the performance of such duties.

(b) The President (or, in the case of the President, the Chairman of the Board) may grant exemptions from the provisions of paragraph 9.11(a)(i) to employees on a case-by-case basis under circumstances which are not contrary to the purposes of this Section, the Act, Commission Regulation 1.59, the public interest, or just and equitable principles of trade. Such circumstances may include, but are not necessarily limited to:

(i) Participation in pooled investment vehicles where the employee of the Exchange has no direct or indirect control over transactions executed by the pool;

(ii) Service as an executor or administrator of an estate;

(iii) Service in any other fiduciary capacity, such as an officer of a charitable organization, in which the employee receives no pecuniary benefit from the trading of commodity interests;

(iv) Trading in commodity interests traded on any contract market other than the Exchange or cleared by any clearing organization other than the Clearing Organization under circumstances in which the employee's access to material non-public

information as to those commodity interests is sufficiently minimal or attenuated so as to be insignificant; and

(v) Such other circumstances as the President (or, in the case of the President, the Chairman of the Board) may determine.

Participation in an Exchange-sponsored savings or retirement plan shall not be deemed to constitute trading directly or indirectly in a commodity interest, notwithstanding such plan's use of pooled funds which utilize commodity interests or the trading thereof.

(c) Any employee exempted under paragraph (b) must:

(i) Furnish to the Exchange at the President's request (or, in the case of the President, to the Chairman of the Board at his or her request) account statements and other documents relevant to the trading activities that are so exempted; and

(ii) Inform the President (or, in the case of the President, the Chairman of the Board) within one Business Day of any material change of information that may affect the employee's qualification for such exemption.

(d) No employee of the Exchange may disclose to any other Person any material non-public information obtained as a result of employment by the Exchange; provided, however, that this Section shall not prohibit disclosures made by such an employee in the course of such employee's duties, or disclosures made to any other self-regulatory organization, a court of competent jurisdiction or any representative of any agency or department of the federal or state government acting in his or her official capacity.

(e) Terms used in this Section and not defined in this Agreement shall have the meanings set forth in Section 1.59(a) of the Commission Regulations.

(f) If the President (or, in the case of the President, the Chairman of the Board), in his or her sole discretion, finds that any employee has committed a violation of this Section, such employee shall be subject to such sanctions, including but not limited to demotion, suspension or discharge, as the President (or, in the case of the President, the Board), in his, her or its sole discretion, deems appropriate.

ARTICLE X

EXCULPATION AND INDEMNIFICATION

Section 10.1 **Exculpation; Litigation.**

(a) EXCEPT IN INSTANCES WHERE THERE HAS BEEN A FINDING OF FRAUD OR WILLFUL OR WANTON MISCONDUCT, IN WHICH CASE THE PARTY FOUND TO HAVE ENGAGED IN SUCH CONDUCT CANNOT AVAIL ITSELF OF THE PROTECTIONS IN THIS SECTION, NEITHER THE EXCHANGE (INCLUDING ANY AFFILIATES OF THE EXCHANGE), ITS SHAREHOLDERS OR ITS MEMBERS, NOR

ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, SHALL BE LIABLE TO ANY PERSON, INCLUDING BUT NOT LIMITED TO A CUSTOMER, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES), ARISING FROM (i) ANY FAILURE OR MALFUNCTION, INCLUDING BUT NOT LIMITED TO ANY INABILITY TO ENTER OR CANCEL ORDERS, OF THE EXCHANGE TRADING SYSTEM OR ANY EXCHANGE SERVICES OR FACILITIES USED TO SUPPORT THE EXCHANGE TRADING SYSTEM, OR (ii) ANY FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY OR TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF THE EXCHANGE TRADING SYSTEM OR ANY EXCHANGE SERVICES OR FACILITIES USED TO SUPPORT THE EXCHANGE TRADING SYSTEM. THE FOREGOING SHALL APPLY REGARDLESS OF WHETHER A CLAIM ARISES IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. THE FOREGOING SHALL NOT LIMIT THE LIABILITY OF ANY MEMBER, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS FOR ANY ACT, INCIDENT, OR OCCURRENCE WITHIN THEIR CONTROL.

(b) THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS PROVIDED BY THE EXCHANGE (INCLUDING ANY AFFILIATES OF THE EXCHANGE) TO ANY PERSON, RELATING TO THE EXCHANGE TRADING SYSTEM, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR USE.

(c) ANY ACTIONS, SUITS OR PROCEEDINGS AGAINST THE EXCHANGE, ANY AFFILIATES OF THE EXCHANGE OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS OR EMPLOYEES MUST BE BROUGHT WITHIN TWO YEARS FROM THE TIME THAT A CAUSE OF ACTION HAS ACCRUED. ANY PARTY BRINGING ANY SUCH ACTION, SUIT OR PROCEEDING CONSENTS TO JURISDICTION IN THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE SUPREME COURT OF NEW YORK COUNTY, NEW YORK, AND WAIVES ANY OBJECTION TO VENUE THEREIN. THIS PROVISION SHALL IN NO WAY CREATE A CAUSE OF ACTION AND SHALL NOT AUTHORIZE AN ACTION THAT WOULD OTHERWISE BE PROHIBITED BY THIS AGREEMENT OR THE RULES OF THE EXCHANGE.

(d) ANY MEMBER OR AFFILIATE OF A MEMBER OR EMPLOYEE OF ANY OF THEM, WHICH OR WHO COMMENCES ANY ACTION OR PROCEEDING, WHETHER IN COURT, ARBITRATION OR ANY OTHER FORUM, AGAINST THE EXCHANGE, ANY MEMBERS OF THE BOARD OR ANY COMMITTEE, OR ANY OFFICERS, EMPLOYEES OR AGENTS OF THE EXCHANGE, ARISING OUT OF OR IN ANY WAY CONNECTED TO ANY TRANSACTIONS EFFECTED ON THE EXCHANGE OR THE CONDUCT OF THE EXCHANGE'S AFFAIRS, WHICH OR WHO FAILS TO PREVAIL IN SUCH ACTION OR PROCEEDING SHALL REIMBURSE ON DEMAND THE EXCHANGE AND ANY SUCH MEMBER OF THE BOARD OR COMMITTEE, OFFICER, AGENT OR EMPLOYEE FOR ANY AND ALL REASONABLE EXPENSES AND

DISBURSEMENTS (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COSTS) INCURRED BY IT OR ANY OF THEM IN THE DEFENSE OF SUCH ACTION OR PROCEEDING.

(e) IN ANY ACTION, SUIT OR PROCEEDING UNDER OR IN CONNECTION WITH THIS AGREEMENT, EACH PARTY WAIVES ANY RIGHT IT MIGHT HAVE TO A TRIAL BY JURY.

Section 10.2 **Indemnification.**

(a) **Actions, Suits or Proceedings Other Than by or in the Right of the Exchange.** The Exchange shall indemnify any current or former Director or officer of the Exchange, and may at the discretion of the Board indemnify any current or former employee or agent of the Exchange, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Exchange) by reason of the fact that such person is or was a Director, officer, employee or agent of the Exchange, or is or was serving at the request of the Exchange as a director, officer, employee or agent (including trustee) of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans) to the fullest extent permissible under the Delaware Act, as then in effect, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Exchange, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful; except that any funds paid or required to be paid to any person as a result of the provisions of this Section shall be returned to the Exchange or reduced, as the case may be, to the extent that such person receives funds pursuant to an indemnification from any such other limited liability company, corporation, partnership, joint venture, trust or enterprise. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person seeking indemnification did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Exchange, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

(b) **Actions or Suits by or in the Right of the Exchange.** The Exchange shall indemnify any current or former Director or officer of the Exchange, and may at the discretion of the Board, indemnify any current or former employee or agent of the Exchange who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit, by or in the right of the Exchange to procure a judgment in its favor by reason of the fact that such person is or was a Director, officer, employee or agent of the Exchange, or is or was serving at the request of the Exchange as a director, officer, employee or agent (including trustee) of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans) to the fullest extent permitted under the Delaware Act, as then in effect, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action

or suit, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Exchange; except that (i) no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Exchange unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper; and (ii) any funds paid or required to be paid to any person as a result of the provisions of this Section shall be returned to the Exchange or reduced, as the case may be, to the extent that such person receives funds pursuant to an indemnification from any such other limited liability company, corporation, partnership, joint venture, trust or enterprise.

(c) **Indemnification for Expenses of Successful Party.** To the extent that a Director, officer, employee or agent of the Exchange has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraph (a) or (b) of this Section, or in defense of any claim, issue or matter therein, such person shall be indemnified by the Exchange against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

(d) **Determination of Right to Indemnification.** Any indemnification under paragraph (a) or (b) of this Section (unless ordered by a court) shall be made by the Exchange only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in paragraphs (a) and (b) of this Section. Such determination shall be made (i) by the Board by a majority vote of the Directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) if there are no such Directors, or if such Directors so direct, by independent legal counsel in a written opinion, or (iii) by the holder of the Shares.

(e) **Advancement of Expenses.** Expenses (including attorneys' fees) incurred by an officer or Director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Exchange in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Exchange as authorized in this Section. Such expenses (including attorneys' fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

(f) **Other Rights.** The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under this Agreement, any agreement, vote of Shareholders or disinterested Directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office. Nothing contained in this Agreement shall prevent the Board from approving the indemnification of or advancement of expenses for any Person against and for any liability, cost or expense (including attorneys' fees) incurred by such Person in

connection with defending any claim or any civil, criminal, administrative or investigative action, suit or proceeding arising out of any alleged act or omission by or on behalf of the Exchange, to the extent the Board considers it in the best interests of the Exchange to do so.

(g) **Insurance.** By action of the Board, notwithstanding an interest of the directors in the action, the Exchange may purchase and maintain insurance, in such amounts as the Board deems appropriate, on behalf of any person who is or was a Director, officer, employee or agent of the Exchange, or is or was serving at the request of the Exchange as a director, officer, employee or agent (including trustee) of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans), 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 the Exchange shall have the power to indemnify such person against such liability under the provisions of this Section.

Section 10.3 **Enforcement.**

(a) The right to be indemnified or to the advancement or reimbursement of expenses pursuant to this Article:

(i) is a contract right pursuant to which the individual entitled thereto may bring suit as if the provisions hereof or of any such resolution were set forth in a separate written contract between the Exchange and such individual, and

(ii) shall continue to exist after any rescission or restrictive modification hereof or of any such resolution or agreement with respect to events occurring prior thereto.

(b) If a request to be indemnified or for the advancement or reimbursement of expenses pursuant to this Article is not paid in full by the Exchange within 30 days after a written claim has been received by an officer of the Exchange therefor and the claimant thereafter brings suit against the Exchange to recover the unpaid amount of the claim which is successful in whole or in part, the Exchange shall be obligated to pay the claimant the expenses, including attorneys' fees and expenses, of prosecuting such claim.

Section 10.4 **Indemnification by Members.**

(a) If any action or proceeding is brought or threatened against the Exchange or any individual entitled to be indemnified by the Exchange pursuant to this Article (such individuals being collectively referred to as "**Officials**"), claiming, directly or indirectly, in whole or in part, that the Exchange or such Official has failed, neglected or omitted to prevent, detect or require any conduct by a Member or an Affiliated Person of a Member, which conduct is alleged to constitute a violation of any federal or state law, any Commission Regulation, any rule of any self-regulatory organization, this Agreement, or any Rule, such Member shall indemnify and hold harmless the Exchange and each such Official from and against all loss, liability, damage and expense (including but not limited to attorneys' fees, legal expenses, judgments and amounts paid in settlement) incurred by the Exchange or such Official in or in connection with any such action or proceeding.

(b) If any action or proceeding is brought against the Exchange or an Official which could result in indemnification by a Member pursuant to paragraph (a) of this Section:

(i) The Exchange or such Official, as the case may be, shall promptly give such Member notice thereof in writing.

(ii) Neither the Exchange nor any such Official may settle a claim to the extent it seeks the recovery of money damages without the prior consent of such Member; provided that if such Member does not consent to any proposed settlement within 10 days following the date it receives written notice of the terms of such settlement, the Exchange or such Official may require such Member to post such security for the payment of its indemnification obligations to the Exchange or such Official as the Exchange or such Official deems necessary, but not in excess of the money damages claimed plus interest and anticipated expenses.

Section 10.5 **Exculpation and Reimbursement of Exchange.** Any Member which institutes an action or proceeding against the Exchange, or any of the officers, Directors, committee members, agents or employees of the Exchange, and which fails to prevail in such action or proceeding, shall reimburse the Exchange and such officer, Director, committee member, agent or employee, for any and all costs or expenses (including but not limited to attorneys' fees, legal expenses and amounts paid by way of indemnifying any officers, Directors, employees or other persons by the Exchange) incurred in connection with the defense of such action or proceeding.

ARTICLE XI

DISSOLUTION AND WINDING UP

Section 11.1 **Dissolution and Winding Up.** The Exchange shall be dissolved and its affairs wound up if and only if so authorized by a vote of the holder of the Shares. Such dissolution and winding up shall be carried on by such Person or Persons and in such manner as such holder may provide. As part of the winding up of the affairs of the Exchange, the assets of the Exchange shall be distributed, as realized, in the following order and priority:

(a) First, to creditors of the Exchange (including Shareholders that are creditors to the extent otherwise permitted by law), in satisfaction of the liabilities of the Exchange (whether by payment or establishment of reserves), other than liabilities for distributions to Shareholders or former Shareholders under Sections 18-601 or 18-604 of the Delaware Act;

(b) Second, to Shareholders or former Shareholders in satisfaction (whether by payment or establishment of reserves) of liabilities under Sections 18-601 or 18-604 of the Delaware Act; and

(c) Third, to the Shareholders in accordance with the then remaining positive balances in their capital accounts, in proportion to the amount of such balances after giving effect

to all contributions, allocations (including allocations in respect of the distribution of assets under this Section 11.1) and prior distributions.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 12.1 **Fiscal Year.** The fiscal year of the Exchange for accounting and tax purposes (the “Fiscal Year”) shall be from January 1 through December 31 of each calendar year except as otherwise fixed by the Board or required by the Code.

Section 12.2 **Amendments of this Agreement.** This Agreement may be amended, in whole or in part, by majority vote of the Board as a whole.

Section 12.3 **Governing Law, Severability.**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREOF. In particular, it shall be construed to the maximum extent possible to comply with all of the terms and conditions of the Delaware Act. If, nevertheless, it shall be determined by a court of competent jurisdiction that any provision or wording of this Agreement shall be invalid or unenforceable under the Delaware Act or other applicable law, such invalidity or unenforceability shall not invalidate the entire agreement. In that case, this Agreement shall be construed so as to limit any term or provision so as to make it enforceable or valid within the requirements of any applicable law, and, in the event such term or provision cannot be so limited, this Agreement shall be construed to omit such invalid or unenforceable provisions. If it shall be determined by a court of competent jurisdiction that any provision relating to the distributions and allocations of the Exchange is invalid or unenforceable, this Agreement shall be construed or interpreted so as (i) to make it enforceable or valid or (ii) to make the distributions and allocations as closely equivalent to those set forth in this Agreement as is permissible under applicable law.

Section 12.4 **Power of Attorney and Other Authorizations.** Each Shareholder does hereby constitute and appoint each Person specifically authorized by the Board to act as its true and lawful representative and attorney-in-fact, in its name, place and stead, with full power of substitution, to make, execute, sign, deliver and file, as appropriate, (a) any amendment of the Certificate of Formation, (b) any amendments to this Agreement made in accordance with the terms hereof, and (c) all such other instruments, documents and certificates which may from time to time be required under or by the laws of the United States of America, the State of Delaware or any other jurisdiction or any political subdivision or agency thereof, (i) to effectuate, implement and continue the valid and subsisting existence or qualification to do business of the Exchange, (ii) to dissolve the Exchange, (iii) in connection with any tax returns, filings or related matters, or (iv) for any other purpose consistent with this Agreement and the transactions contemplated hereby. Such representative and attorney-in-fact shall not, however, have any right, power or authority to amend or modify this Agreement when acting in such capacities. The power of attorney granted hereby is coupled with an interest and shall (a) survive

and not be affected by the subsequent dissolution, death, incapacity, disability, termination or bankruptcy of such Shareholder or the transfer of all or any portion of such Shareholder's Shares, and (b) extend to such Shareholder's successors, assigns and legal representatives.

Section 12.5 **Tax Matters Member.** The Shareholder shall be the "tax matters partner" of the Exchange pursuant to Section 6231(a)(7) of the Code until a successor shall be named by the Directors (the "**Tax Matters Member**"). The Tax Matters Member shall oversee and handle all matters relating to the taxation of the Exchange. The Tax Matters Member shall have no additional liability under this Agreement for actions taken or not taken in the capacity as tax matters partner for the Exchange.

Section 12.6 **Preparation and Filing Tax Returns.** The Tax Matters Member shall arrange for the preparation and filing of all required tax returns of the Exchange and shall cause the Exchange to make or refrain from making any and all federal, state, local or foreign income or other tax elections for the Exchange that the Tax Matters Member deems necessary or advisable.

Section 12.7 **Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties thereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document.

Section 12.8 **Successors and Assigns.** Subject to the restrictions on transfer set forth herein, this Agreement, and each and every provision hereof, shall be binding upon and shall inure to the benefit of the Shareholders and their respective successors, successors-in-title, executors, administrators, representatives, heirs and assigns. Each and every successor-in-interest to any Shareholder, whether such successor acquires such interest by way of gift, purchase, foreclosure or by any other method, shall hold such interest subject to all of the terms and provisions of this Agreement.

Section 12.9 **No Waiver.** The failure of any Shareholder or the Directors to insist upon strict performance of any covenant or obligation hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such Shareholder's or the Directors' right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation hereunder, shall constitute a consent to or waiver of any other breach or default in the performance of the same or any other obligation hereunder.

Section 12.10 **Further Assurances.** Each party hereto agrees to execute, acknowledge, deliver, file, record and publish such further agreements, certificates, amendments of certificates, instruments or documents as may be required by law or may, in the opinion of the Board be necessary or desirable to carry out the provisions of this Agreement and the Rules.

Section 12.11 **Remedies.**

(a) No remedy conferred by any of the provisions of this Agreement and the Rules is intended to be exclusive of any other remedy which is otherwise available at law, in equity, by statute or otherwise, and each and every other remedy shall be cumulative and shall be

in addition to every remedy given hereunder or now or hereafter existing at law, in equity, by statute or otherwise. The election of any one or more of such remedies by any of the parties hereto shall not constitute a waiver by such party of the right to pursue any other available remedy.

(b) Without prejudice to any other rights or remedies which any party may have, the parties acknowledge and agree that damages would not be an adequate remedy for any breach by any other party of the provisions of this Agreement and, to the fullest extent permitted by law, the parties shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of any such provision by such other party or any other relevant Person and, to the fullest extent permitted by law, no proof of special damages shall be necessary for the enforcement by the parties of the rights under this Agreement and the Rules.

Section 12.12 **Captions.** Section titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

**As amended and approved
September 12, 2003**

By:

Michael McErlean
Member of the Board of Directors
U.S. Futures Exchange, L.L.C.