

**STATE of DELAWARE
LIMITED LIABILITY COMPANY
CERTIFICATE of FORMATION**

First: The name of the limited liability company is Nadex Sub, LLC

Second: The address of its registered office in the State of Delaware is 2711
Centerville Rd, Suite 400 in the City of Wilmington.
Zip code 19808. The name of its Registered agent at such address is
Corporation Service Company

Third: (Use this paragraph only if the company is to have a specific effective date of dissolution: "The latest date on which the limited liability company is to dissolve is _____.")

Fourth: (Insert any other matters the members determine to include herein.)

In Witness Whereof, the undersigned have executed this Certificate of Formation this
12 day of August, 2010.

By: 
Authorized Person (s)

Name: Ian Polakoff

Delaware

PAGE 1

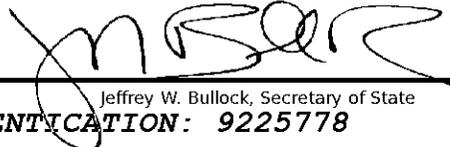
The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "NADEX SUB, LLC", CHANGING ITS NAME FROM "NADEX SUB, LLC" TO "NADEX CLEARING, LLC", FILED IN THIS OFFICE ON THE THIRTEENTH DAY OF DECEMBER, A.D. 2011, AT 5:55 O'CLOCK P.M.

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Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 9225778

DATE: 12-14-11

**CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF FORMATION
OF
NADEX SUB, LLC**

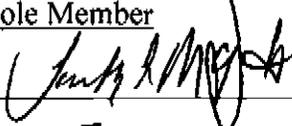
FIRST: The name of the limited liability company is Nadex Sub, LLC (the "Company").

SECOND: Article FIRST of the Certificate of Formation of the Company is hereby amended to read in its entirety as follows:

"FIRST: The name of the limited liability company is Nadex Clearing, LLC (the "Company")."

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Amendment to the Certificate of Formation this 13th day of December, 2011.

NORTH AMERICAN DERIVATIVES EXCHANGE, INC.,
its Sole Member

By: 

Name: TIMOTHY G McDeerina

Title: Authorized Person / CORPORATE SECRETARY

LIMITED LIABILITY COMPANY AGREEMENT

OF

NADEX CLEARING, LLC

This Limited Liability Company Agreement of Nadex Clearing, LLC (the “**Company**”) is entered into as of December 13, 2011 by North American Derivatives Exchange, Inc., a Delaware corporation (the “**Initial Member**”), and those Members executing this Agreement from time to time in accordance with the terms hereof.

RECITALS

A. The Company was formed pursuant to a Certificate of Formation (the “**Certificate**”) filed with the Secretary of State of the State of Delaware on August 12, 2010, and has been operating pursuant to the Act and an oral limited liability company agreement. The original name of the Company was “Nadex Sub, LLC,” which was changed to “Nadex Clearing, LLC” on December 13, 2011.

B. The Initial Member wishes to enter into this Agreement to govern the management and operation of the Company upon the terms and subject to the conditions set forth herein.

AGREEMENT

ARTICLE I

ORGANIZATION AND PURPOSE

Section 1.01. **Certain Definitions.** Capitalized terms used in this Agreement shall have the meanings set forth in this **Section 1.01**, unless otherwise defined elsewhere.

“**Act**” means the Delaware Limited Liability Company Act, 6 Del.C. § 18-101 et seq., as amended and as may be amended, and any successor to such statute.

“**Affiliate**” with respect to any Person, means any other Person directly or indirectly controlling, controlled by or under common control with the subject Person.

“**Agreement**” means this Limited Liability Company Agreement of Nadex Clearing, LLC, as it may from time to time be amended, supplemented or restated.

“**Allocation Period**” means each Fiscal Year or such other period(s) as may be determined by the Board, except that (i) if an additional Capital Contribution is made during a Fiscal Year or an additional Interest is issued during a Fiscal Year, the Allocation Period for all Members shall close as of the end of business on the date immediately prior to the date of the additional Capital Contribution or issuance of such additional Interest, and (ii) if any Interest is repurchased during a Fiscal Year, then the Allocation Period for all Members shall close as of the end of business on the applicable repurchase date.

“**Applicable Law**” means (i) the provisions of all applicable statutes and laws of the United States of America (including the CEA), the states thereof (including the Act), and all other countries in which the Company or its Affiliates are then doing business and (ii) the constitution, by-laws, rules, regulations, orders, regulatory circulars, customs and usage of any United States, state or foreign

governmental, regulatory or self-regulatory authority, in each case having jurisdiction over the Company or any of its Affiliates (including the CFTC).

“**Board**” shall have the meaning set forth in **Section 3.01(a)** of this Agreement.

“**Business Day**” means any day other than Saturday, Sunday and a day on which commercial banks are authorized or required to close in Chicago, Illinois.

“**Capital Account**” means, with respect to each Member, the account established and maintained for the Member on the books of the Company in compliance with Regulation § 1.704-1(b)(2)(iv). For this purpose, the Company may, upon the occurrence of any of the events specified in Regulation § 1.704-1(b)(2)(iv)(f), increase or decrease the Capital Accounts in accordance with rules of such regulation and Regulation § 1.704-1(b)(2)(iv)(g) to reflect a revaluation of Company property (including, but not limited to, as a result of an adjustment of the Gross Asset Value of the Company property pursuant to **subparagraph (b)(iii)** of the definition of “Gross Asset Value”). Without limiting the generality of the foregoing, each Member’s Capital Account shall be (i) increased by (x) the amount of money contributed by such Member to the Company, (y) the Gross Asset Value of the property contributed by such Member to the Company (net of liabilities that the Company is considered to assume or take subject to pursuant to Section 752 of the Code), and (z) allocations to such Member of profits, income and/or gain in accordance with **Article V** of this Agreement; and (ii) decreased by (x) the amount of money distributed to such Member, (y) the Gross Asset Value of any property distributed to such Member (net of any liabilities that such Member is considered to assume or take subject to pursuant to Section 752 of the Code), and (z) allocations to such Member of losses in accordance with **Article V** of this Agreement and other items of loss and deduction, but excluding (for federal income tax purposes) items of loss or deduction as described in Section 1.704-1(b)(4)(i) of the Regulations.

“**Capital Contribution**” means, with respect to any Member, the aggregate amount of cash and the Gross Asset Value of any other asset contributed or deemed contributed to the capital of the Company by or on behalf of such Member reduced by the amount of any liability assumed by the Company relating to the property and any liability to which such property is subject.

“**CEA**” means the Commodity Exchange Act, as amended.

“**CFTC**” means the U.S. Commodity Futures Trading Commission.

“**Certificate**” shall have the meaning set forth in the recitals of this Agreement.

“**Charter**” shall have the meaning set forth in **Section 3.01(f)(i)** of this Agreement.

“**Code**” means the United States Internal Revenue Code of 1986, as amended.

“**Company**” shall have the meaning set forth in the preamble to this Agreement.

“**Company Assets**” means all assets, whether tangible or intangible and whether real, personal or mixed, at any time owned by the Company.

“**Covered Interest**” shall have the meaning set forth in **Section 7.02** of this Agreement.

“**Fiscal Year**” means each twelve-month period (or portion thereof) beginning on June 1 and ending on May 31 of each year.

“Gross Asset Value” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the fair market value of such asset, as determined by the Board in its reasonable discretion;

(b) The Gross Asset Values of all Company Assets shall be adjusted by the Board to equal their respective fair market values (unless otherwise determined by the Board in its reasonable discretion) as of the following:

(i) The acquisition of additional Interests by any new or existing Member in exchange for more than a *de minimis* Capital Contribution or for the provision of services, if the Board reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(ii) The distribution by the Company to a Member of more than a *de minimis* amount of Company property as consideration for an Interest if the Board reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; and

(iii) The liquidation of the Company within the meaning of Regulation § 1.704-1(b)(2)(ii)(g).

(c) The Gross Asset Value of any Company Assets distributed to any Member shall be the gross fair market value of such asset, as determined by the Board in its reasonable discretion, on the date of such distribution; and

(d) The Gross Asset Values of Company Assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Section 734(b) or Section 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining capital accounts pursuant to Regulation § 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted pursuant to this **subparagraph (d)** to the extent that the Board determines that an adjustment pursuant to **subparagraph (b)** is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this **subparagraph (d)**.

“Indemnified Parties” shall have the meaning set forth in **Section 6.01** of this Agreement.

“Independent Director” means a director that meets the requirements for a “public director” pursuant to the CEA and applicable CFTC regulations.

“Initial Directors” shall have the meaning set forth in **Section 3.01(b)** of this Agreement.

“Initial Member” shall have the meaning set forth in the preamble to this Agreement.

“Interest” means a limited liability company interest in the Company entitling the holder thereof to receive a share of distributions and profits and losses of the Company in accordance with the terms of and subject to all conditions under this Agreement.

“Majority-in-Interest of the Members” means Members whose aggregate Percentage Interest exceeds 50% of the aggregate Percentage Interest of all Members.

“**Member**” means the Initial Member and any other Person admitted to the Company as a Member pursuant to the terms of this Agreement.

“**Membership Rights**” means all of the rights of a Member in the Company subject to the terms and conditions of this Agreement, including a Member’s: (i) Interests; (ii) right to inspect the Company’s books and records; and (iii) right to vote on matters coming before the Members (if any).

“**Percentage Interest**” means, with respect to any Member as of any determination date, the percentage set forth opposite such Member’s name on Schedule A hereto, as such Schedule A may be amended from time to time in accordance herewith.

“**Person**” means any individual, partnership, corporation, limited liability company, trust or other legal entity.

“**Product and Membership Subcommittee**” shall have the meaning set forth in **Section 3.01(f)(iii)** of this Agreement.

“**Regulation**” means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

“**Risk Management Committee**” shall have the meaning set forth in **Section 3.01(f)(ii)** of this Agreement.

“**Rules**” means the Rules of the Company.

“**Tax Matters Partner**” shall have the meaning set forth in **Section 8.03** of this Agreement.

“**Transferred Interests**” shall have the meaning set forth in **Section 7.04** of this Agreement.

“**Voluntary Withdrawal**” means a Member’s resignation from the Company by such Member’s express will or other voluntary act.

Section 1.02. Formation. The Company was formed as a limited liability company by the execution and filing of the Certificate with the Secretary of State of the State of Delaware on August 12, 2010. The original name of the Company was “Nadex Sub, LLC,” which was changed to “Nadex Clearing, LLC” on December 13, 2011. The Board, in its individual capacity and as agent for the Members, shall accomplish all filing, recording, publishing and other acts necessary or appropriate for compliance with all the requirements for the formation and continued existence of the Company as a limited liability company under the Act and under all other laws of the State of Delaware or such other jurisdictions in which the Board determines that the Company may conduct business. The rights and duties of the Board, Members and Members shall be as provided in this Agreement and, to the extent not inconsistent with the terms of this Agreement, in the Act.

Section 1.03. Name. The name of the Company is “Nadex Clearing, LLC”, as such name may be modified from time to time by the Board. The Board shall notify the Members of any such name change. All business and affairs of the Company shall be conducted solely under, and all Company Assets shall be held solely in, such name unless otherwise determined by the Board.

Section 1.04. Term. The term of the Company shall be deemed to have commenced on the filing of the Certificate and shall continue in perpetuity, unless sooner dissolved upon the occurrence of any of the events specified in **Section 9.01** of this Agreement.

Section 1.05. **Purposes and Scope of Business.** The business and purposes of the Company shall be to engage in any lawful act or activity for which a limited liability company may be organized under the Act, including, without limitation, to act as a central counterparty to clear futures and option contracts executed through North American Derivatives Exchange, Inc.

Section 1.06. **Principal Office.** The principal place of business and office of the Company shall be at 311 S. Wacker Drive, Ste. 2675, Chicago, IL 60606 or at such other location as may be determined by the Board. The Board may change the location of the principal place of business of the Company and shall notify the Members of such change. In addition, the Company may maintain such other offices as the Board may deem advisable at any other place or places within or without the United States.

Section 1.07. **Registered Agent and Office.** The Company's initial registered office and registered agent shall be as set forth in the Certificate, until such time as either are changed in accordance with the Act.

Section 1.08. **No State Law Partnership.** The Members intend that the Company shall not be a partnership (including, without limitation, a limited partnership) and that no Member shall be a partner of any other Member, for any purposes other than federal, state and local tax purposes, and the provisions of this Agreement shall not be construed otherwise.

Section 1.09. **Members.** The name, present mailing address, taxpayer identification number, Capital Contribution and Percentage Interest of each Member is set forth on Schedule A, as such Schedule A may be amended from time to time by the Board in accordance with the terms of this Agreement.

ARTICLE II

INTERESTS AND CAPITAL CONTRIBUTIONS

Section 2.01. **Interests.** Interests are owned by the Member(s) as set forth on Schedule A attached hereto, as amended from time to time in accordance herewith. Subject to **Section 3.02**, the Board may issue additional Interests from time to time, which additional Interests may be issued in one or more outstanding classes or series of Interests or in one or more new classes or series, the rights, powers, preferences, obligations, qualifications, limitations and restrictions of which shall be established by the Board. Such additional Interests may (i) rank senior to, junior to, or pari passu with, outstanding Interests as to the payment or the distribution of assets on liquidation, (ii) bear a stated distribution or allocation and/or rank senior to, junior to, or pari passu with, outstanding Interests as to distributions of cash flow and/or allocations of profits and losses, (iii) be redeemable by the holder thereof, (iv) have voting or other rights with respect to the management of the Company which rank senior to, junior to, or pari passu with, outstanding Interests, and/or (v) otherwise have rights, powers or preferences which are senior (or otherwise superior) to, junior to, or pari passu with, any outstanding Interests. In addition, subject to **Section 3.02**, the Board may from time to time issue options and/or warrants to purchase Interests, with such terms as the Board may determine. The Board shall have the right to amend this Agreement (including Schedule A hereto) without the consent of any Member to reflect the adjusted Percentage Interests of the Members and the relative rights, powers, preferences, obligations, qualifications, limitations and restrictions of the Interests in connection with the issuance of additional Interests and/or options or warrants to purchase Interests. The establishment or existence of a class or series of Interest with preferential terms or the granting of preferential terms to one or more Members or class of Members shall not entitle any other Member or class of Members to similar terms.

Section 2.02. **Initial Contributions.** As of the date hereof, the Member has made a Capital Contribution as set forth opposite such Member's name on Schedule A.

Section 2.03. **Additional Capital Contributions.** Subject to **Section 3.02**, if at any time the Board deems it desirable to accept additional Capital Contributions to properly carry out the Company's business and operations, the Board shall have the right to (i) accept additional Capital Contributions from Members or other Persons and issue additional Interests, warrants and/or options to purchase Interests in connection therewith as provided in **Section 2.01**, and (ii) admit the Persons making such Capital Contributions hereunder as additional Members. In addition, the Company may obtain funds through loans having such terms and conditions as the Board may determine in its reasonable discretion. In connection with such loans, but subject to **Section 3.02**, the Company may issue Interests, warrants and/or options to purchase Interests pursuant to **Section 2.01**, upon such terms and conditions as the Board may determine in its reasonable discretion. No Member shall be obligated to make any additional Capital Contribution or loan to the Company except as otherwise agreed by the Company and the applicable Member.

Section 2.04. **Return of Capital Contributions.** No Member shall be entitled to receive any interest on its Capital Contributions. The Members shall not have the right to demand return of their Capital Contributions, nor shall the Members have the right to demand and receive property other than cash in return for their Capital Contributions.

Section 2.05. **Capital Accounts.** A separate Capital Account shall be maintained for each Member on the books of the Company and shall be adjusted from time to time pursuant to the terms of this Agreement.

Section 2.06. **Loans.** The Board may permit any Member, at any time, to make or cause a loan to be made to the Company in any amount and on those terms upon which the Company and such Member agree.

ARTICLE III

MANAGEMENT OF THE COMPANY

Section 3.01. **Management by Board of Directors.**

(a) Authority of Board of Directors. The business and affairs of the Company shall be managed under the direction of a Board of Directors of the Company (the "**Board**"), which shall collectively constitute the "manager" of the Company within the meaning of the Act (it being understood, however, that no individual Director shall have the power or authority to bind the Company unless otherwise authorized by the Board). Except as otherwise specifically provided herein, the Board shall have full, exclusive and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company and to take all such actions as it deems necessary or appropriate to accomplish the purposes of the Company as set forth herein. Except as otherwise provided herein or expressly authorized by the Board, no Member of the Company, and no other Person, shall have the authority or power, directly or indirectly, to act as agent of the Company 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 Company or in any other way bind the Company or hold itself out as acting for or on behalf of the Company. Any attempted action in contravention of this **Section 3.01** shall be null, void *ab initio* and not binding upon the Company, unless ratified or authorized in writing by the Board.

(b) Number; Election; Tenure. Commencing on the date of this Agreement, the Board shall consist of three (3) directors (the “**Initial Directors**”). The Initial Directors shall be appointed by the Initial Member; provided, however, that prior to the Company operating as a CFTC-registered derivatives clearing organization, the Board shall be expanded to consist of five (5) directors and shall thereafter include no fewer than two (2) Independent Directors as initially determined by the Initial Member. Except as previously stated and subject to Applicable Law, the number of Directors constituting the Board may be increased or decreased from time to time by a Majority-in-Interest of the Members; provided, however, that (x) the Board shall consist of no fewer than five (5) individuals (“**Directors**”), (y) the number of Directors shall be increased by one (1) Director each and every time the Board acts pursuant to **Section 2.03** of this Agreement to admit an additional Member or to increase the Percentage Interest of an existing Member such that following such admission or increase, such Member holds in the aggregate a Percentage Interest of ten percent (10%) or more greater than the Percentage Interest held by such Member immediately prior to such issuance or admission (each such additional Director, an “**Additional New Member Director**”) and (z) the number of Directors shall be increased by one (1) Director when the Percentage Interest of the Initial Member is reduced to or below seventy-five percent (75%), and by one (1) additional Director when the Percentage Interest of the Initial Member is reduced to or below fifty (50%) (each such additional Director, an “**Additional Initial Member Director**”), in each case as a result of the admission of one or more additional Members or the increase of the Percentage Interest of existing Members, other than the Initial Member, pursuant to **Section 2.01**. Each Additional New Member Director shall be appointed by the Member prompting such appointment and each Additional Initial Member Director shall be appointed by the Initial Member. Notwithstanding anything to the contrary in the foregoing, in connection with any appointment of an Additional New Member Director and/or an Additional Initial Member Director, the Board shall further increase the number of Directors and appoint Independent Directors, if necessary, to ensure that at all times at least thirty-five percent (35%) of the Directors shall be Independent Directors.

(c) Resignation. Each Director shall hold office until his or her successor is appointed and has qualified, or until his or her earlier resignation or removal. A Director may resign at any time by giving written notice to the Board. A resignation shall be effective upon receipt thereof by the Board unless the notice specifies a future date. The acceptance of a resignation shall not be necessary to make it effective. Any one or more of the Directors (i) shall automatically, without any further action by the Board, be removed from such position due to such Director’s death, and (ii) may be removed from such position either with or without cause, at any time by the consent of a Majority-in-Interest of the Members.

(d) Vacancy. Any vacancies occurring on the Board shall be filled by a Majority-in-Interest of the Members; provided that (i) any vacancy occurring with respect to a Director position created pursuant to **Section 3.01(b)(y)** or (z) shall be filled by the Member entitled to appoint such Director, and (ii) at all times at least thirty-five percent (35%) of the Directors shall be Independent Directors .

(e) Meetings of the Board.

(i) Time and Place. Meetings of the Board shall be held at the principal place of business of the Company or at any other place that at least two-thirds (2/3) of the Directors determine. At any meeting, any Director may participate by telephone or similar communication equipment, provided each Director who is participating in the meeting can hear each of the other Directors who are participating in the meeting. Persons present by telephone or similar communication equipment shall be deemed to be present “in person” for the purposes of the meeting. Meetings shall be held in accordance

with a schedule established by the Board. In addition, at any time one-third (1/3) of the Directors may call a meeting of the Board upon at least one (1) Business Day's prior notice to the other Directors, provided such notice may be waived by all of the Directors for any individual meeting. Attendance of a Director at a meeting shall constitute a waiver of notice of the meeting, except where such Director attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened and notes such objection on the record. If a Director is unable to attend a meeting of the Board, such Director shall have the right to designate another Person to attend such meeting of the Board in a non-participating, non-voting observer capacity. Notwithstanding any other provision of this Agreement to the contrary, a notice pursuant to this Section may be given orally or in writing, by personal delivery, by mail, by telephone, by facsimile or by electronic mail to such address, telephone or facsimile number as may be listed on the records of the Company.

(ii) Quorum and Voting. Each Director shall have one (1) vote in all matters requiring a vote of the Board. A majority of the entire Board shall constitute a quorum at any meeting of the Board. The act of a majority of the Directors at any duly constituted meeting, if a quorum is present, shall be the act of the Board. If at any meeting of the Board there shall be less than a quorum present, the Director(s) present thereat may adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall have been obtained. Any meeting not resumed, or if resumed not completed, during the originally scheduled time for such meeting, shall be deemed concluded at the end of such scheduled time; provided that this provision may be waived by all of the Directors present at any such meeting. All actions and decisions of the Board, once approved in accordance herewith, shall be binding on the Company and all Members.

(iii) 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, without prior notice and without a vote, if a consent or consents in writing, setting forth the action(s) so taken, shall be signed by each Director.

(f) Committees.

(i) Designations and Powers. The Board may in its sole discretion, but subject to any requirements under Applicable Law, including, but not limited to, the CEA and CFTC regulations promulgated thereunder, (x) appoint one or more committees of the Board consisting of one or more of the Directors of the Company or other individuals and authorize and adopt a charter for such committee setting forth such committee's powers, authorities and responsibilities (a "Charter"), (y) designate one or more Directors or other individuals as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and (z) appoint a chairman of any such committee. The number of Directors or other individuals serving on any committee may, subject to any requirements under Applicable Law, including, but not limited to, the CEA and CFTC regulations promulgated thereunder, be increased or decreased from time to time by the Board. 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 Company.

(ii) Risk Management and Audit Committee. The Board shall appoint a Risk Management and Audit Committee (the “**Risk Management Committee**”), which shall consist of such number of persons (who may or may not be Directors) as established by resolution adopted by the Board. The Risk Management Committee shall have those powers, authorities and responsibilities delegated to it in by the Board in its Charter.

(iii) Product and Membership Subcommittee. The Board shall appoint a subcommittee of the Risk Management Committee (the “**Product and Membership Subcommittee**”), which shall consist of such number of persons (who may or may not be Directors) as established by resolution adopted by the Board; provided, that (x) at all times the Product and Membership Subcommittee Committee shall consist of not less than thirty-five percent (35%) Independent Directors. The Product and Membership Subcommittee shall have those powers, authorities and responsibilities delegated to it in by the Board in its Charter.

(iv) Nominating Committee. The Board shall appoint a Nominating Committee (the “**Nominating Committee**”) which shall consist of such number of Directors as established by resolution adopted by the Board; provided, that not less than fifty-one percent (51%) of the Nominating Committee shall at all times consist of Independent Directors, one of whom shall be the Chairman of the Committee. The Nominating Committee shall have those powers, authorities and responsibilities delegated to it in by the Board in its Charter.

(v) Meetings of Committees. Meetings of any committee may be held at any time or place as shall be determined by resolution of the committee, the chairman of the committee or any two (2) members of the committee. Notice of any meeting of a committee shall be given in the same manner as notice of any meeting of the Board as provided in **Section 3.01(e)(i)**. 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 at any duly constituted meeting, if a quorum is present, shall be the act of the committee. Any action required or permitted to be taken at any meeting of a committee may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by all of the members of such committee. Any member of a committee may participate by telephone or similar communications equipment, provided each member who is participating in the meeting can hear each of the other members who are participating in the meeting. Persons present by telephone or similar communications equipment shall be deemed to be present “in person” for the purposes of the meeting.

(vi) Reports to the CFTC. In the event that the Board rejects a recommendation or supersedes any action of the Risk Management Committee, or the Board or Risk Management Committee rejects any recommendation or supersedes any action of the Product and Membership Subcommittee, the Company shall prepare and submit to the CFTC a report detailing (w) the recommendation or action of the Product and Membership Subcommittee, (x) the rationale for such recommendation or action, (y) the rationale of the Board or the Risk Management Committee, as applicable, for rejecting such recommendation or superseding such action, and (z) the course of action the Board or the Risk Management Committee, as applicable, decided to take contrary to such recommendation or action.

Section 3.02. **Required Member Consent.** The Board shall not take any of the following actions without the prior consent of a Majority-in-Interest of the Members:

- (a) Any material change to the business of the Company;
- (b) The issuance of any Interests, securities convertible into Interests or options and/or warrants to purchase Interests, or the admission of any Person as a Member of the Company;
- (c) The consummation of any transaction involving the sale of all or substantially all of the Company's assets or securities, whether by merger or otherwise, or the conversion of the Company to a corporation; or
- (d) The dissolution of the Company.

Section 3.03. **Officers.**

(a) Appointment of Officers. The Board shall appoint officers of the Company who shall serve at the pleasure of the Board. The officers of the Company may include a President, a Chief Compliance Officer, a Chief Risk Officer and such other officers as the Board may establish by resolution.

(b) Removal; Resignation. Any officer may be removed, with or without cause, by the Board or by such other officer, if any, upon whom such power of removal may be conferred by the Board. Any officer may resign at any time by giving written notice to the Board. Any resignation shall take effect at the time of the receipt of such notice or at any later time specified in such notice. Unless otherwise specified in such notice, acceptance of the resignation shall not be necessary to make it effective.

(c) Vacancies. Any vacancy in any office because of death, resignation, removal, disqualification or other cause shall be filled by the Board. The President may make temporary appointments to a vacant office (other than the office of President) pending action by the Board.

(d) President. The President, subject to the control and direction of the Board, shall be the principal executive officer and shall in general supervise and control all of the day-to-day business and affairs of the Company. The President shall have the authority, subject to such rules as may be prescribed from time to time by the Board, to appoint such agents and employees of the Company as he or she shall deem necessary, to prescribe their powers, duties and compensation, and to delegate authority to them. Such agents and employees shall hold office at the discretion of the President and the Board. The President shall have the authority to sign, execute and acknowledge, on behalf of the Company, all deeds, mortgages, bonds, contracts, leases and all other agreements, documents and instruments necessary or proper to be executed in the course of the Company's regular business, or which shall be authorized by the Board.

(e) Chief Compliance Officer. The Chief Compliance Officer shall have the authority to and shall be responsible for developing and enforcing, in consultation with the Board of Directors or the President, appropriate compliance policies and procedures reasonably designed to fulfill the duties set forth in the CEA and the regulations of the CFTC.

(f) Chief Risk Officer. The Chief Risk Officer shall be responsible for identifying and mitigating the Company's credit and market risk exposures, shall coordinate responses to regulatory reviews. The Chief Risk Officer shall report to the Risk Management Committee (in addition to

reporting to the President). The Chief Risk Officer shall provide updates the Board, President and operations and legal teams of the Company regarding regulatory and risk developments.

Section 3.04. Compensation and Reimbursement of Directors. No Director or Member shall be entitled to be compensated for any services provided to the Company, except as authorized in writing by the Board. The Company shall reimburse each of the Directors for reasonable business expenses incurred by any such Director on behalf of the Company, which expenses will be treated as expenses of the Company.

ARTICLE IV

DISTRIBUTIONS

Section 4.01. Distributions. Subject to Applicable Law, the Board shall have the right, in its sole discretion and at such time(s) as determined by the Board, to make distributions of available cash to the Members in proportion to each Member's respective Percentage Interest as of the applicable distribution date.

Section 4.02. Limitations on Distributions. Notwithstanding anything to the contrary contained herein, no distribution of available cash pursuant to **Section 4.01** shall be declared or made, which shall impair the capital of the Company, nor shall any distribution of available cash be made to any Member, unless (i) the value of the assets of the Company remaining after such distribution is at least equal to the aggregate of its debts and liabilities, including capital and (ii) payment thereof would not violate (a) any restrictions contained in credit facilities to which the Company or its Affiliates may be a party from time to time or (b) Applicable Law. The Board's good faith determination of the restrictions and limitations set forth in the preceding sentence shall be final and conclusive as to all Members.

Section 4.03. Withholding Taxes. Notwithstanding anything to the contrary contained in this Agreement, in the event that any state, local or other income tax imposed on the Company as an entity is reduced by reason of the holding of an Interest by any Member, no part of the expense of the Company for such tax shall be allocated to such Member. In addition, if the Company is obligated under Applicable Law to pay any amount to a governmental agency because of a Member's status as a Member of the Company for federal or state withholding or other taxes, such amount shall be treated as an advance against and reduce the distributions which would otherwise be made to such Member pursuant to this **Article IV**. An amount shall be considered withheld by the Company if remitted to a governmental agency without regard to whether such remittance occurs at the same time as the distribution or allocation to which it relates; provided, however, that an amount actually withheld from a specific distribution or designated by the Board as withheld from a specific allocation shall be treated as if distributed at the time such distribution or allocation occurs. Each Member shall indemnify the Company and the other Members for any liability they may incur for underwithholding of taxes in respect of such Member; moreover, each Member hereby agrees that none of the Company, the Board or any other Member shall be liable for any excess taxes withheld and that, in the event of overwithholding, a Member's sole recourse shall be to apply for a refund from the appropriate governmental authority.

ARTICLE V

PROFITS AND LOSSES

Except as otherwise required by Section 704 of the Code and the regulations thereunder, all profits and losses for any Fiscal Year or other Allocation Period shall be allocated to the Capital Accounts of the Members pro rata based on their respective Percentage Interests.

ARTICLE VI

INDEMNIFICATION

Section 6.01. **Indemnification.** The Company shall, to the fullest extent permitted by the Act, indemnify and hold harmless the Members, Directors and officers and their respective partners, shareholders, managers, members, officers, trustees, advisory board, directors, employees, attorneys and agents and other Affiliates (collectively, the “**Indemnified Parties**”) from and against any loss, expense, damage or injury suffered or sustained by them by reason of any acts, omissions or alleged acts or omissions arising out of the their activities on behalf of the Company or in furtherance of the interests of the Company, including, but not limited to, any judgment, award, settlement, reasonable attorneys’ fees and other costs or expenses incurred in connection with the investigation and defense of any actual or threatened action, proceeding or claim, unless the acts, omissions or alleged acts or omissions upon which such actual or threatened action, proceeding or claim is based arose out of such Indemnified Party’s gross negligence or were performed or omitted fraudulently or in bad faith by such Indemnified Party. If any claim for indemnification is based on a claim by a third party (a “**Third Party Claim**”), the Indemnified Party in question shall give prompt written notice thereof to the Company and shall permit the Company to defend and/or settle such Third Party Claim, so long as it does so diligently and in good faith; provided, however, that no compromise or settlement of any claim may be effected by the Company without the Indemnified Party’s consent (which will not be unreasonably withheld, conditioned or delayed), unless the sole relief provided is monetary damages that are paid in full by the Company. Any such indemnification shall only be from the assets or insurance of the Company and no Member shall be required to contribute capital to the Company to satisfy any such indemnification. Any such indemnification shall be paid by the Company in advance of the final disposition of any such action, proceeding or claim upon receipt of an undertaking by or on behalf of the Indemnified Party seeking advancement to repay the amount advanced should it ultimately be determined that the Indemnified Party was not entitled to be indemnified hereunder or under the Act.

Section 6.02. **Exculpation.** Except as otherwise required by non-waivable provisions of Applicable Law or as expressly set forth in this Agreement, no Member shall have any personal liability whatsoever in such Member’s capacity as a Member in excess of its Capital Contribution, whether to the Company, to any of the other Members, to the creditors of the Company or to any other third party, for the debts, liabilities, commitments or any other obligations of the Company or for any losses of the Company, other than arising out of a breach of this Agreement by such Member, actions by such Member prohibited by this Agreement or as provided in any other written agreement between the Company and such Member. None of the Members or Directors shall be personally liable for the return of any portion of the Capital Contributions (or any return thereon) of the Members and the return, if any, of such Capital Contributions (or any return thereon) shall be made solely from assets of the Company. None of the Members, Directors or officers shall be required to pay to the Company or any Member any deficit in any Member’s Capital Account upon dissolution of the Company or otherwise. None of the Members or the Directors shall be liable, responsible or accountable, in damages or otherwise, to any Member or to the Company for any act performed by such Member or Director within the scope of the authority conferred on the Members and the Directors by this Agreement, except for gross negligence, fraud, bad faith or a material breach of this Agreement.

Section 6.03. **Persons Entitled to Indemnification.** Any Person who is within the definition of “Indemnified Parties” at the time of any action or inaction in connection with the business of the Company shall be entitled to the benefits of this **Article VI** as an “Indemnified Parties” with respect thereto, regardless of whether such Person continues to be within the definition of “Indemnified Parties” at the time of such Indemnified Party’s claim for indemnification or exculpation hereunder.

Section 6.04. **Amendment.** No amendment or repeal of this **Article VI** that adversely affects the rights of any Indemnified Party under this **Article VI** with respect to his or her acts or omissions at any time prior to such amendment or repeal shall apply to any Indemnified Party without his or her prior written consent.

Section 6.05. **Survival.** This **Article VI** shall survive any termination of this Agreement.

ARTICLE VII

WITHDRAWAL OF MEMBERS

Section 7.01. **Voluntary Withdrawal of Members.** No Member shall have the right or power to Voluntarily Withdraw from the Company. Any attempted Voluntary Withdrawal shall be void *ab initio* and of no force or effect, and any Member who shall attempt to Voluntarily Withdraw shall be in intentional material breach of this Agreement. In any event, no Member who shall Voluntarily Withdraw shall be entitled to receive, in liquidation of its Interest, pursuant to the Act or otherwise, the fair value of such Member's Interest as of the date of any Voluntary Withdrawal.

Section 7.02. **Right of Repurchase of Covered Interest.** Notwithstanding anything to the contrary contained herein, all of the Interest beneficially owned by each Member (the "**Covered Interest**") shall be subject to the Company's right of repurchase on the terms and conditions specified in this **Article VII**. Subject to the other provisions of this **Article VII**, in the event a Member is a Clearing Member and such Member is in Default (as each such term is defined in the Rules), the Company shall have the right, but not the obligation, to purchase all or any portion of such Member's Covered Interest for an aggregate price equal to the lesser of (i) the balance of such Member's Capital Account (or in the event of the purchase of a portion of such Member's Covered Interest, the portion of such Member's Capital Account attributable to the Covered Interest being repurchased) as of the last day of the month preceding the month in which such Default occurs and (ii) the balance of such Member's Capital Account (or in the event of the purchase of a portion of such Member's Covered Interest, the portion of such Member's Capital Account attributable to the Covered Interest being repurchased) as of the last day of the month in which such Default occurs. The foregoing option shall be exercisable by the Company by written notice to such terminated Member at any time.

Section 7.03. **Payment Terms.**

(a) Subject to the other provisions of this **Article VII**, the aggregate purchase price for any Covered Interest to be purchased pursuant to **Section 7.02** may be paid in cash at the closing of such purchase or may be paid by delivery of an unsecured promissory note subordinated and junior in right of payment to all other indebtedness of the Company, with customary terms and conditions, payable in three (3) equal annual installments, with the first installment due on the first anniversary of the closing, the second annual installment due on the second anniversary date of the closing and the third annual installment due on the third anniversary date of the closing. Interest shall accrue from the date of the closing on the balance of the purchase price remaining unpaid from time to time at the "Applicable Federal Rate" (as defined in the Code) in effect at the time of purchase, and accrued interest shall be payable on the first anniversary of the issuance of such promissory note and subsequently together with each annual installment of the purchase price. All or part of the purchase price may be prepaid at any time without penalty or premium. As a condition to the issuance of the subordinated promissory note described above, the payee thereunder agrees to promptly execute, verify, deliver and file any (i) subordination, intercreditor or similar agreement requested by any holder of other indebtedness of the Company and (ii) any other agreement, document or instrument

thereafter requested by any holder of other indebtedness of the Company from time to time in connection with such subordination.

(b) Notwithstanding anything above to the contrary, where a contingent debt, obligation or liability (including, but not limited to, with respect to any damages, costs or expenses anticipated by the Board, in its sole discretion, to be incurred by the Company in connection with a Member's breach of this Agreement) exists with respect to the period of time during which the redeeming Member was a Member, the Board may establish a reserve from such purchase price in such amount as the Board determines in its sole discretion to satisfy such contingent debt, obligation or liability, the balance of which reserve (if any) after offset against any such debt, obligation or liability shall be distributed as provided in this **Section 7.03** only upon the termination for such contingency as determined by the Board in its sole discretion. Without limiting any other equitable relief and other remedies the Company may have under this Agreement at law, equity or otherwise for any breach of this Agreement, the Board may offset any payment for Covered Interests to be purchased from any Member pursuant to **Section 7.02** against any damages, costs or expenses incurred by the Company in connection with a Member's breach of this Agreement and/or against any amounts owed by the applicable Member to the Company pursuant to the Rules.

Section 7.04. Closing. Subject to the other provisions of this **Article VII**, any Covered Interests to be purchased pursuant to **Section 7.02** shall be purchased and sold at such place and time as the Company designates; provided that such closing shall take place within thirty (30) days after the date that the Company exercises its option to purchase such Covered Interest pursuant to **Section 7.02**. The Company shall give the applicable removed Member at least five (5) Business Days' prior written notice of the time, date and place of closing. At the closing, each such Person shall deliver to the Company duly endorsed transfer documents reasonably required by the Company to transfer all of the Covered Interest to be purchased by the Company pursuant to **Section 7.02** (the "**Transferred Interests**"), free and clear of all claims, liens or encumbrances from any third party, together with such other documentation as the Company may reasonably require, including an agreement containing representations and warranties with respect to due authority, enforceability, no conflicts or violations, no required consents or approvals and valid title to the Transferred Interests, free and clear of all claims, liens or encumbrances of third parties. Any Member that has been subject to a redemption notice with respect to such Member's Covered Interest shall be deemed to have Voluntarily Withdrawn as of the applicable date that the price of the Transferred Interest to be redeemed is based on (i.e., end of the month).

Section 7.05. Failure to Transfer Interests. If any Person required to sell Transferred Interests pursuant to **Section 7.02** fails, for any reason, to tender the documents or instruments required for the purchase and sale of such Transferred Interests at the time and place specified by the Company pursuant to **Section 7.04** or revokes any such document or instrument, such Person shall, automatically without any further action on such Person's part, be deemed to have assigned all of its right, title and interest in and to the Transferred Interests to the Company, and such Person shall cease to have any rights with respect to the Transferred Interests except only to receive the purchase price therefor as computed pursuant to **Sections 7.02** and **7.03** and payable in accordance with **Section 7.03** upon delivery of such instruments and such Transferred Interests shall be deemed cancelled on the Company's books and shall no longer be outstanding.

ARTICLE VIII

ACCOUNTING AND DISTRIBUTIONS; TAX MATTERS

Section 8.01. **Books, Records and Accounting; Bank Accounts.**

(a) **Books and Records.** The Board shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of the transactions with respect to the conduct of the Company's business. The records shall include, but not be limited to, complete and accurate information regarding the state of the business and financial condition of the Company, a copy of the Certificate and this Agreement and all amendments to the Certificate and this Agreement; a current list of the names and last known business, residence, or mailing addresses of all Members, the Company's federal, state or local tax returns and all other records required to be maintained pursuant to this Agreement, the Act or the CEA. Each Member and its duly authorized representatives shall be permitted to inspect the books and records of the Company at any reasonable time during normal business hours; provided, however, that the Board shall have the right in its discretion to keep confidential from the Members, for such period of time as the Board deems appropriate, any information which the Board reasonably believes to be in the nature of trade secrets or other information the disclosure of which the Board in good faith believes is not in the best interest of the Company or its business or that the Company is required by law or agreement with a third party to keep confidential.

(b) **Financial Statements.** The Company shall cause books of account to be maintained reflecting the operations of the Company on an accrual basis. Within ninety (90) days after the end of each Fiscal Year, the Company shall deliver to each Member the balance sheet of the Company as at the end of such fiscal year, and the related statements of income, cash flows and Members' equity of the Company for such fiscal year, prepared in accordance with United States generally accepted accounting principles ("GAAP") and, if so determined by the Board, accompanied by an audit report on such consolidated statements of independent certified public accountants of recognized international standing, which report shall state that such consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Company and any subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP and that the audit by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards.

(c) **Bank Accounts.** All funds of the Company shall be deposited in a bank account(s) maintained in the Company's name. The Board shall determine the institution(s) at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

Section 8.02. **Title to Company Property.** All real and personal property acquired by the Company shall be acquired and held by the Company in its name.

Section 8.03. **Federal Tax Matters.** The Initial Member, so long as it is a Member, shall act as the "tax matters partner" under Section 6231(a)(7) of the Code (the "**Tax Matters Partner**") to the extent a tax matters partner is required by Applicable Law. The Tax Matters Partner shall keep all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Partner. The Company shall pay and be responsible for all reasonable third-party costs incurred by the Tax Matters Partner in performing those duties and any costs and expenses incurred by the Tax Matters Partner in connection with an audit of a Company income tax return. A Member shall be

responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Partner may be removed and replaced at any time upon the approval of a Majority-in-Interest of the Members. The Board shall have the authority to make (and abstain from making) all Company elections permitted under the Code, including, but not limited to, elections of methods of depreciation and elections under Code Section 754.

ARTICLE IX

DISSOLUTION AND TERMINATION

Section 9.01. **Dissolution and Termination of the Company.** Subject to Section 3.02, the Company shall only be dissolved upon the approval of a Majority-in-Interest of the Members.

Section 9.02. **Distributions at Liquidation.** In the event of a dissolution pursuant to Section 9.01, the Company shall cause, as soon as practicable, the winding up of the Company's affairs and the sale and/or distribution of the assets of the Company. The assets of the Company shall be applied in the following order of priority:

(a) first, to pay the costs and expenses of the winding up, liquidation and termination of the Company;

(b) second, to creditors of the Company, in the order of priority provided by law;

(c) third, to establish reserves adequate to meet any and all contingent or unforeseen liabilities or obligations of the Company; provided that at the expiration of such period of time as the Board may deem advisable, the balance of such reserves remaining after the payment of such contingencies or liabilities shall be distributed as hereinafter provided; and

(d) fourth, after allocating profits and losses in accordance with Article V, to the Members pro rata based on each Member's Percentage Interest.

Section 9.03. **No Further Claim.** Upon dissolution, each Member shall look solely to the assets of the Company for the return of its capital, and if the Company's property remaining after payment or discharge of the debts and liabilities of the Company, including debts and liabilities owed to one or more of the Members is insufficient to return the aggregate Capital Contributions of each Member, such Member shall have no recourse against the Company, the Directors or any other Member.

Section 9.04. **Termination.** The Company shall terminate when all property owned by the Company shall have been disposed of and the assets shall have been distributed as provided in Section 9.02. The Board shall then execute and cause to be filed a certificate of dissolution of the Company with the Secretary of State of the State of Delaware.

ARTICLE X

TRANSFERS

Section 10.01. **Assignments.** No Member may assign its Interest in whole or in part without the prior written consent of the Board.

Section 10.02. **Effect of Prohibited Transfers.** Any transfer of an Interest in contravention of any of the provisions of this Agreement shall be void *ab initio* and of no effect, and shall not bind or be recognized by the Company.

ARTICLE XI

MISCELLANEOUS

Section 11.01. **Uniform Commercial Code.** Interests and Membership Rights shall for all purposes be deemed to be a “security” under Articles 8 and 9 of the Uniform Commercial Code as adopted in any applicable jurisdiction.

Section 11.02. **Further Assurances.** Each Member shall execute all such certificates and other documents and shall do all such filing, recording, publishing and other acts as the Board deems appropriate to comply with the requirements of law for the formation and operation of the Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the property of the Company.

Section 11.03. **Notices.** Any notice, demand, consent, election, offer, approval, request, or other communication required or permitted under this Agreement must be in writing and either delivered personally, sent by certified or registered mail, postage prepaid, return receipt requested, or sent by recognized overnight delivery service. Any such notice must be addressed to a Member at the Member’s address set forth on Schedule A attached hereto. Any such notice to the Company must be addressed to the Company’s principal office. Any such notice that is sent by mail will be deemed given: (i) five (5) days to an address within the United States of America, or (ii) seven (7) days to an address outside of the United States of America, after it is mailed. A notice sent by recognized overnight delivery service will be deemed given when received or refused. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees.

Section 11.04. **Modification, Waiver or Termination.**

(a) Subject to **subparagraph (b)** below, and except for any amendment made by the Board otherwise authorized herein, a provision of this Agreement may only be amended or waived from time to time by the written agreement of a Majority-in-Interest of the Members. No failure on the part of a Member or the Company to exercise, and no delay in exercising, any right, power or privilege hereunder operates as a waiver thereof; nor does any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

(b) In addition to any amendments which may be made by the Board otherwise authorized herein, amendments may be made to this Agreement from time to time by the Board, without the consent of any Member, to (i) cure any ambiguity, to correct or supplement any provisions herein which may be inconsistent with any other provision herein, or to add other provisions with respect to matters arising under this Agreement which will not be inconsistent with the provisions of this Agreement; (ii) delete or add any provision to this Agreement required to be so deleted or added by any federal or state agency deemed to be for the benefit or protection of the Members; or (iii) better assure, in the opinion of counsel to the Company, that the Company will continue to be classified as a pass-through entity for purposes of Federal income taxes; provided, however, that no amendment shall be adopted pursuant to this **subparagraph (b)** unless the adoption thereof (x) is for the benefit of or not adverse to the interests of the Members; and (y) does not

adversely affect the limited liability of the Members or the status of the Company as a pass-through entity for federal income tax purposes. Additionally, the Board may, without the consent of the Members, amend Schedule A from time to time to accurately reflect any additional issuance or transfer of Interests or the admission of any new or substituted Members in accordance with the terms contained herein.

Section 11.05. Complete Agreement. This Agreement, together with any written agreement between Members or between the Company and a Member, constitute the complete and exclusive statement of the agreement among the Members with respect to the Interests and the Members with respect to the Membership Rights, and no statement, inducement, representation, warranty or covenant with respect to the subject matter hereof by any party hereto, or by any agent or representative of any party hereto, that is not contained in this Agreement, shall be valid or relied upon by, or binding between, the parties. This Agreement supersedes all prior written and oral statements and any prior representation, statement, condition, or warranty.

Section 11.06. Applicable Law; Venue. Questions concerning the construction, validity and interpretation of this Agreement, and the performance of the obligations imposed by this Agreement, shall be governed by the internal law, not the law of conflicts, of the State of Delaware. Subject to **subparagraph (b)** below, each Member hereby agrees that (a) any and all litigation arising out of this Agreement shall be conducted only in state or Federal courts located in the State of Delaware and (b) such courts shall have the exclusive jurisdiction to hear and decide such matters. Each Member and the Company hereby (i) expressly waives any right to a trial by jury in any action or proceeding to enforce or defend any right, power or remedy under or in connection with this Agreement or arising from any relationship existing in connection with this Agreement, (ii) agrees that any such action shall be tried before a court and not before a jury, and (iii) hereby submits to the personal jurisdiction of such courts and waives any objection such Member may now or hereafter have to venue or that such courts are inconvenient forums.

Section 11.07. Captions; Exhibits. Article, Section and other titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and shall not be construed in any way to define, limit, extend or describe the scope of this Agreement or the intention of the provisions thereof. All exhibits and schedules annexed hereto are herewith expressly made a part of this Agreement, as fully as though completely set forth herein.

Section 11.08. Binding Provisions. This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

Section 11.09. Limitation on Rights of Others. Subject to **Section 6.01**, no person or entity other than a Member is, nor is it intended that any such other person or entity be treated as, a direct, indirect, intended or incidental third-party beneficiary of this Agreement for any purpose whatsoever, nor shall any other Person have any legal or equitable right, remedy or claim under or in respect of this Agreement.

Section 11.10. Gender; Number. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to be or include the other genders or number, as the case may be, whenever the context so indicates or requires.

Section 11.11. Severability of Provisions. Should any provision of this Agreement be held to be unenforceable or enforceable only if modified, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon each Member with

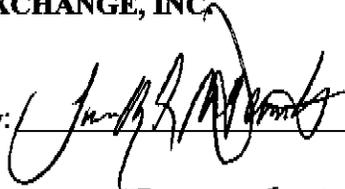
any such modification to become a part hereof and treated as though originally set forth in this Agreement. The Members further agree that any court or arbitrator is expressly authorized to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as it deems warranted to carry out the intent and agreement of the Members as embodied herein to the maximum extent permitted by law. The Members expressly agree that this Agreement as so modified shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been set forth herein.

Section 11.12. **Counterparts, Facsimile; Reproductions.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. This Agreement and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or PDF, shall be treated in all manner and respects and for all purposes as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version hereof delivered in person. At the request of any party hereto, each other party hereto shall re-execute original forms hereof and deliver them to all other parties. No party hereto shall raise the use of a facsimile machine to deliver a signature or the fact that any signature was transmitted or communicated through the use of a facsimile machine as a defense to the formation or enforceability of a contract and each such party forever waives any such defense. Upon execution in accordance herewith, this Agreement may be reproduced by any photographic, photostatic, microfilm, optical disk, micro-card, miniature photographic or other similar process, each of which reproduction of this Agreement shall be deemed an original.

IN WITNESS WHEREOF, the Initial Member has executed this Limited Liability Company Agreement as of the day and year first set forth above.

**NORTH AMERICAN DERIVATIVES
EXCHANGE, INC.**

By: _____



Name: TIMOTHY G. McDERMOTT

Title: CORPORATE SECRETARY

SCHEDULE A

Member	Address	Capital Contribution	Percentage Interest
North American Derivatives Exchange, Inc. EIN: 72-1564636	311 S. Wacker Drive, Ste. 2675, Chicago, IL 60606	\$100.00	100.0%

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "NADEX CLEARING, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FOURTEENTH DAY OF DECEMBER, A.D. 2011.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "NADEX CLEARING, LLC" WAS FORMED ON THE TWELFTH DAY OF AUGUST, A.D. 2010.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.

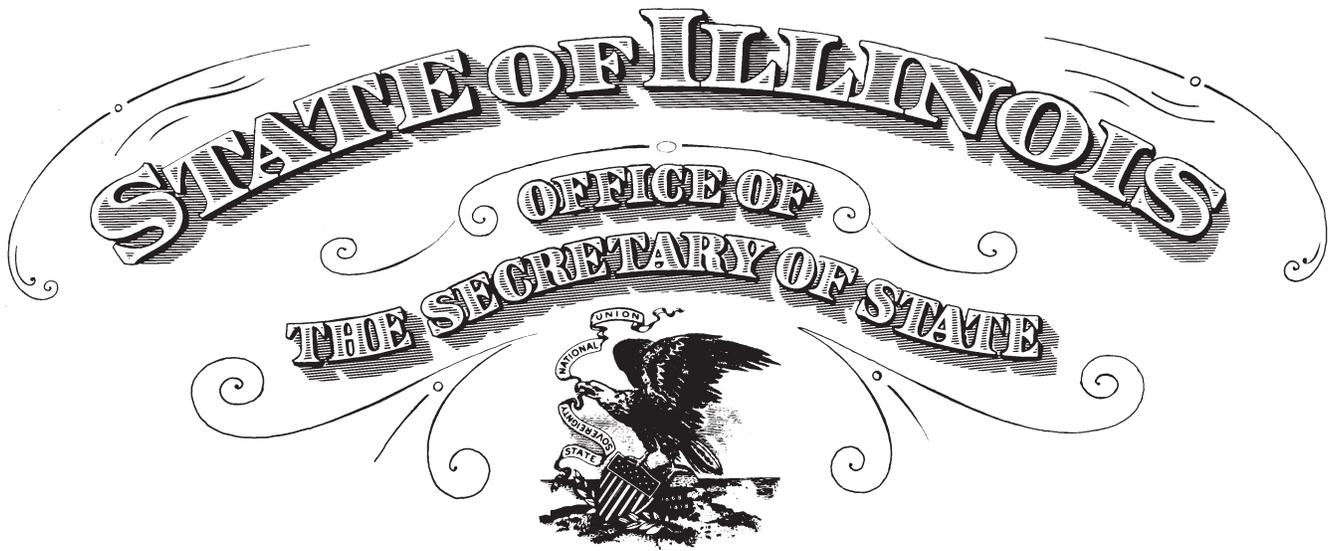
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Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 9226379

DATE: 12-14-11



To all to whom these Presents Shall Come, Greeting:

I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that

NADEX CLEARING, LLC, A DELAWARE LIMITED LIABILITY COMPANY HAVING OBTAINED ADMISSION TO TRANSACT BUSINESS IN ILLINOIS ON DECEMBER 14, 2011, APPEARS TO HAVE COMPLIED WITH ALL PROVISIONS OF THE LIMITED LIABILITY COMPANY ACT OF THIS STATE, AND AS OF THIS DATE IS IN GOOD STANDING AS A FOREIGN LIMITED LIABILITY COMPANY ADMITTED TO TRANSACT BUSINESS IN THE STATE OF ILLINOIS.



In Testimony Whereof, *I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 15TH day of DECEMBER A.D. 2011 .*

Jesse White

Authentication #: 1134901246

Authenticate at: <http://www.cyberdriveillinois.com>

SECRETARY OF STATE