



**ONEXCHANGE CLEARING CORPORATION**

**BYLAWS**

**Exhibit 3 to Application for Designation  
as a Contract Market**

**ONEXCHANGE CLEARING CORPORATION, INC.**

**BYLAWS**

**ARTICLE I**

**Definitions; Time References**

Section 1.01. Definitions. Unless the context otherwise clearly requires, the following terms as used in these Bylaws shall have the meanings set forth below:

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

**“Affiliate”** means 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; 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.

**“Approved Financial Institution”** means a bank, trust company or other Entity designated as such by the Board pursuant to Rule 5.01 as eligible to issue letters of credit for the benefit of Class B Members.

**“Authorized Trader”** means an individual who is authorized by a Subscriber to enter orders for the Trading Account.

**“Board”** means the board of directors of the Company.

**“Business Day”** means any day on which the Company is open to accept Contracts for clearance.

**“Class A Member”** means the Person who or which has been admitted to Class A membership which initially shall be onExchange, Inc.

**“Class B Member”** means a Person who or which pursuant to the Bylaws has the privilege to clear with the Company Contracts effected on or subject to the Rules of the Exchange, which initially shall be every Subscriber in good standing.

**“Clearing Organization Bylaws”** or **“Bylaws”** means the Bylaws of the Company, as in effect from time to time.

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

**“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.

**“Company”** means onExchange Clearing Corporation, a non-stock corporation existing under the laws of the State of Delaware.

**“Contract”** means a Futures Contract listed and cleared by onExchange.

**“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.

**“Custody Bank”** means a bank or trust company designated by the Company pursuant to Rule 5.01 of the Clearing Organization.

**“Defaulted Obligation”** shall have the meaning set forth in Section 7.02(a).

**“Delaware GCL”** means the General Corporation Law of the State of Delaware.

**“Delivery Margin”** means the amount of cash or collateral a Class B Member is required to maintain with the Company with respect to Contracts that are in delivery under the Rules of the Contract.

**“Disciplinary Offense”** shall have the meaning set forth in Section 4.02(b)(i).

**“Eligible Swap Participant”** means a Person meeting the criteria set forth in Regulation 35.1(b)(2) of the Commission’s Regulations, as amended from time to time.

**“Emergency”** shall have the meaning set forth in Section 9.05(a).

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

**“Exchange”** means onExchange Board of Trade, Inc. Unless otherwise provided in these Bylaws or the Rules, any reference to an action required or permitted to be taken by “the Exchange” pursuant to these Bylaws or the Rules shall include an action to be taken by any duly authorized officer or employee of the Exchange.

**“Final Decision”** shall have the meaning set forth in Section 4.02(b)(ii).

**“Full Trading Authorization and Consent to Jurisdiction”** means the agreement among the Subscriber, its Authorized Trader and the Exchange.

**“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.

**“Governments”** means a security which is a direct obligation of the United States government.

**“Guaranty Fund”** means the guaranty fund established pursuant to Article VII.

**“Margin-Eligible Assets”** means those assets, which may be used by a Class B Member to meet its margin obligations, as set forth in Rule 5.04 of the Clearing Organization.

**“Mark to Settlement”** means the setting of a Contract price to a Settlement Price for the purpose of assessing the amount to be paid or received as Variation Margin by a Class B Member.

**“Material Agreement”** means the Subscriber Agreement, the Full Trading Authorization and Consent to Jurisdiction and any other agreement designated as such by the Board from time to time.

**“Member”** means any Person admitted to any class of membership in the Company as provided in these Bylaws and/or the Rules of the Company. A Member shall be a member as that term is used in the Delaware GCL.

**“Monetary Default”** shall have the meaning set forth in Section 7.02.

**“Original Margin”** means the initial and every subsequent deposit of margin money or other asset each Class B Member is required to make according to the Exchange and/or Company Rules based upon positions carried.

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

**“Physical Emergency”** shall have the meaning set forth in Section 9.05(b).

**“Profits”** and **“Losses”** means, an amount equal to the Company’s taxable income or loss under Section 703(a) of the Code and Treasury Regulation Section 1.703-1 for the Fiscal Year.

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

**“Self-Regulatory Organization”** means the Company and any self-regulatory organization as that term is defined in Section 1.3(e) of the Commission Regulations.

**“Settlement Price”** means the settlement price for any Contract as determined in accordance with the Rules of the Exchange.

**“Subcustodial Account”** means a separate custody account for the deposit of Margin-Eligible Assets of a Class B Member at a Custody Bank

**“Subscriber”** means a Person that is a counterparty to the Exchange’s Subscriber Agreement.

“Subscriber Agreement” means the agreement between a Subscriber and the Exchange.

“Trading Account” means the account of a Subscriber at the Exchange.

“Variation Margin” means the payment made or received by a Class B Member to the Company based on the Marked to Settlement of any position held by the Class B Member.

Section 1.02. Date and Time References. All references to dates, times or time periods in these Bylaws and the Rules shall refer to, or be measured in accordance with, New York City time.

## ARTICLE II

### Members

Section 2.01. Classes of Members. (a) Class A Members. The Class A Members shall be entitled to elect the Company’s Directors and to remove any Director at any time, with or without cause, and shall be entitled to vote upon all matters on which the vote of Members is required or permitted pursuant to applicable law, the Bylaws or otherwise.

(b) Class B Members. The Class B Members shall not be entitled to vote upon any matter.

Section 2.02. Admission of Members. (a) onExchange, Inc. shall be the initial sole Class A Member. Additional Class A Members may be admitted only upon unanimous consent of the Class A Members.

(b) Class B Members shall consist of every Subscriber in good standing with the Exchange and under the Rules.

Section 2.03. Class B Members Bound by the Rules and Bylaws. Class B Members agree, by executing the Subscriber Agreement, to be bound by the Rules of the Company as such Rules may be adopted or amended by the Board from time to time, and by these Bylaws, as in effect from time to time.

Section 2.04. Place of Meetings. Special and annual meetings of the Class A Members shall be held at such date, time and place, within or without the State of Delaware, as may be determined by the Board and stated in the notice of the meeting or in a duly executed waiver of notice.

Section 2.05. Voting. At every meeting of Class A Members, each Class A Member entitled to vote may vote in person or by proxy. Except as provided in these Bylaws or as required by law, all action to be taken by vote of the Class A Members shall be authorized by a majority (or, in the case of the election of Directors, by a plurality) of the votes cast at a meeting of Class A Members by the Class A Members entitled to vote thereon.

Section 2.06. Record Date. To determine the Class A Members entitled to notice of or to vote at any meeting of the Class A Members or any adjournment thereof, or entitled to express consent to action in writing without a meeting, or entitled to receive payment of any distribution, or for any other lawful action, the Board may fix, in advance, a record date which shall be not more than 60 days nor less than 10 days before the date of such meeting. Except as otherwise provided by these Bylaws, each Class A Member of record as of the record date shall be entitled to one vote.

Section 2.07. Member List. A complete list of the Members entitled to vote at any meeting of Members arranged in alphabetical order with the address of each Class A Member of each class held by each, shall be prepared by the Secretary. Such list shall be open to the examination of any Class A Member 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 Class A Member who is present.

Section 2.08. Proxies. Every Class A Member entitled to vote at a meeting of Class A Members or to express consent or dissent without a meeting may authorize any person or persons to act for the Class A Member by proxy. Every proxy must be signed by the Class A Member or the Class A Member'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 Class A Member 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 2.09. Written Consent in Lieu of a Meeting. Any action required or permitted to be taken at any meeting of Class A Members may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken shall be signed by the number of Class A Members that would have been necessary to authorize or take such action at a meeting at which all Class A Members entitled to vote thereon were present and voted. Where action is taken in such manner by less than unanimous written consent, prompt written notice of the taking of such action shall be given to all Class A Members who have not consented in writing thereto and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting.

### ARTICLE III

#### Capital Accounts, Allocations and Distributions

Section 3.01. Capital Accounts. (a) A Capital Account shall be maintained for each Class A Member (regardless of the time or manner in which it acquires its interest in the Company) in accordance with the capital account rules of Section 704(b) of the Code, and the Treasury Regulations thereunder (including particularly Treasury Regulation Section 1.704-1(b)(2)(iv)). The initial value of a Class A Member's Capital Account shall be the amount such Class A Member paid the Company for as its initial capital contribution. Each Class A Member's

Capital Account shall be adjusted for amounts contributed to the Company by the Class A Member, any distributions to the Class A Member, and the allocation of the Company's Profits and Losses.

(b) The Company shall direct its accountants to make all necessary adjustments in each Class A Member's Capital Account, as required by the capital account rules of Section 704(b) of the Code and the Treasury Regulations thereunder.

(c) In the event the Company incurs any nonrecourse liabilities, income and gain shall be allocated in accordance with the "minimum gain chargeback" provisions of Treasury Regulations Section 1.704-1(b)(4)(iv) and 1.704-2, nonrecourse deductions (as defined in Treasury Regulations Section 1.704-2(b)(1)) shall be specially allocated to each Class A Member in proportion to their percentage interests, and partner nonrecourse deductions (as defined in Treasury Regulations Section 1.704-2(i)(2)) shall be specially allocated to the Class A Member who bears the economic risk of loss with respect to the partner nonrecourse debt (as defined in Treasury Regulations Section 1.704-2(b)(4)) to which such partner nonrecourse deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i)(1).

(d) The provisions of this Section and the other provisions of these Bylaws relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Treasury Regulations. The Board shall be authorized to make appropriate amendments to the allocations of items pursuant to this Section if necessary to comply with Section 704 of the Code or applicable Treasury Regulations thereunder.

(e) The Capital Accounts of the Class A Members shall be adjusted in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f) to reflect the fair market value of Company property whenever an additional Class A Member is admitted to the Company and when the Company is liquidated, and shall be adjusted in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(e) in the case of a distribution of any property (other than cash).

Section 3.02. No Right of Withdrawal; No Interest. (a) No Class A Member shall have the right to withdraw or be repaid any part of such Class A Member's capital contributions to the Company or any earnings thereon, except as specifically provided in these Bylaws.

(b) No interest shall be paid to any Class A Member on account of its interest in the capital of or on account of its investment in the Company.

Section 3.03. Allocation of Profit and Loss. (a) Profits and Losses for any Fiscal Year shall be allocated to the Class A Members in proportion to their respective percentage interests.

(b) If there is a change in any Class A Member's percentage interest during a Fiscal Year, each Class A Member's share of Profits and Losses or any item thereof for such Fiscal Year shall be determined by any method prescribed by Section 706(d) of the Code or the



Treasury Regulations thereunder that takes into account the varying interests of the Members in the Company during such Fiscal Year.

(c) For the purposes of determining the Profits, Losses or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Board.

(d) Notwithstanding any provision in this Section, no item of Profit or Loss shall be allocated to a Class A Member to the extent such allocation would cause a negative balance in such Class A Member's Capital Account (after taking into account the adjustments, allocations and distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6)). In the event some but not all of the Class A Members would have such Capital Account deficits as a consequence of such allocation, the limitation set forth in this Section 3.03(d) shall be applied on a Member-by-Member basis so as to allocate the maximum permissible Loss to each Class A Member under Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

(e) If a Class A Member unexpectedly receives any adjustment, allocation, or distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), Profits and Losses shall be specially allocated to such Class A Member in an amount and manner sufficient to eliminate as quickly as possible any deficit balance in its Capital Account in excess of that permitted under Section 3.03(d) created by such adjustments, allocations or distributions. Any special allocations of Profits and Losses pursuant to this Section 3.03(e) shall be taken into account in computing subsequent allocations pursuant to this Article so that the net amount of any items so allocated and all other items allocated to each Class A Member pursuant to this Article shall, to the extent possible, be equal to the net amount that would have been allocated to each such Class A Member pursuant to the provisions of this Article if such unexpected adjustments, allocations or distributions had not occurred.

Section 3.04. Allocation of Tax Items. (a) Except as otherwise provided in this Section, for income tax purposes each item of income, gain, loss and deduction will be allocated generally among the Class A Members in the same manner as its correlative item of Profits and Losses is allocated pursuant to Section 3.03.

(b) If there is a difference between the adjusted tax basis of any Company asset and its fair market value (i) as of the date of contribution of the asset or (ii) as a consequence of an adjustment pursuant to Section 3.03, in each case allocations of depreciation, amortization and gain or loss with respect to such asset, as computed for U.S. federal income tax purposes, shall be made among the Class A Members for U.S. federal income tax purposes in accordance with applicable U.S. federal tax law, rules and regulations.

Section 3.05. Distributions. (a) The Company may, at any time and from time to time, make a distribution to the Class A Members as decided by the Board. All distributions shall be pro rata as between the Class A Members as a class based upon the ratio of the amount of the Class A Members' Capital Accounts over the aggregate amount of all Class A Members' Capital Accounts.

(b) Notwithstanding any provision in these Bylaws to the contrary, neither the Company nor the Board on behalf of the Company may make a distribution to any Class A Member if such distribution would violate the Delaware GCL.

## ARTICLE IV

### Directors

Section 4.01. Duties and Powers. (a) Except as otherwise provided by law or by these Bylaws, the business and affairs of the Company shall be managed by or under the direction of the Board, which shall have all the powers and duties of the governing body of a corporation as set forth in the Delaware GCL. Without limiting the generality of the foregoing, the Board shall have the power to:

(i) adopt, amend and repeal these Bylaws and the Rules, not contrary to the provisions of applicable law, with respect to the conduct of the business and affairs of the Company as will, in its judgment, best promote and safeguard the interests of the Company;

(ii) render interpretations of the Bylaws and the Rules, which shall be binding on all persons having dealings with the Company; and

(iii) adopt fees and charges to be paid to the Company for clearing Contracts and rendering other services.

(b) The fact that certain powers of the Board are specified in the Bylaws does not in any way limit the powers of the Board, whether or not specified in the Bylaws.

Section 4.02. Qualifications of Directors. (a) Each director shall be at least 18 years of age and shall not be ineligible to serve pursuant to paragraph (c) of this Section.

(b) For purposes of paragraph (c) of this Section 4.02, the following definitions shall apply:

(i) [Reserved.]

(ii) "Disciplinary Committee" means any person or panel empowered by a Self-Regulatory Organization to bring disciplinary proceedings, to impose sanctions or to hear appeals thereof.

(iii) "Disciplinary Offense" means:

(A) any violation of the Rules of a Self-Regulatory Organization except those rules relating to (1) decorum or attire, (2) financial requirements, or (3) reporting or recordkeeping, unless resulting in fines aggregating more than \$5,000 in any calendar year;

(B) any rule violation described in subparagraph (b)(iii)(A) of this Section which involves fraud, deceit or conversion or results in a suspension from membership in, or in expulsion from, a Self-Regulatory Organization;

(C) any violation of the Commodity Exchange Act or a Commission Regulation promulgated thereunder;

(D) any failure to exercise supervisory responsibility with respect to acts described in subparagraphs (b)(iii)(A) through (C) of this Section, when such failure is itself a violation of either the Rules of a Self-Regulatory Organization, the Commodity Exchange Act, or a Commission Regulation promulgated thereunder;

(E) any violation of the Rules or Bylaws of the Company or the Exchange; or

(F) a material breach of a Material Agreement.

(iv) "Final Decision" means:

(A) a decision of a Self-Regulatory Organization which cannot be further appealed within the Self-Regulatory Organization, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction; or

(B) any decision by an administrative law judge, a court of competent jurisdiction or the Commission, which has not been stayed or reversed.

(v) "Self-Regulatory Organization" means a "self-regulatory organization" as defined in Commission Regulation 1.3(e), and includes a "clearing organization" as defined in Commission Regulation 1.3(d), except as defined in Section 3.6(d)(vi).

(vi) "Settlement Agreement" means any agreement whereby a person consents to the imposition of sanctions approved by the Board or a Disciplinary Committee or by another Self-Regulatory Organization, a court of competent jurisdiction or the Commission.

(c) No individual shall be eligible to serve on the Board of the Company 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 Commodity Exchange Act; or

(vi) currently is subject to a denial, suspension or disqualification from serving on the 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.

(d) Any individual who is a member of the Board or a Disciplinary Committee shall immediately notify the President of any Final Decision which subjects such person to disqualification pursuant to paragraph (c) of this Section.

Section 4.03. Number, Election, Appointment and Term of Office. (a) The Board shall initially consist of the following three directors: [Richard Jaycobs, \_\_\_\_\_ and \_\_\_\_\_]. Each such initial director shall hold office until the earlier of (i) the date referred to in the first sentence of paragraph (b) of this Section and his or her successor is elected and has qualified; or (ii) his or her resignation or removal.

(b) Except as otherwise provided by the Bylaws or by law, directors shall be elected each year at the annual meeting of Class A Members.

(c) Each director elected at each annual meeting shall hold office until the annual meeting of Class A Members next succeeding his or her election and until his or her successor has been elected and qualified, or until his or her earlier resignation or removal.

Section 4.04. Meetings. (a) An annual meeting of the Board shall be held promptly after each annual meeting of Class A Members on such day and at such time as the Board may fix, for the purpose of electing officers and transacting such other business as may properly come before the meeting.

(b) Regular meetings of the Board may be held at such time and place as may be fixed by the Board.

(c) Special meetings of the Board may be called at any time by the Chairman of the Board, the President, the Secretary, or any two 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.

(d) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting of directors to another time and place, without notice other than announcement at the meeting.

(e) 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, as shall be determined by the Board or otherwise in accordance with these Bylaws.

Section 4.05. Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business or of any specified item of business, except that one-third of the total number of directors shall constitute a quorum for the taking of emergency action pursuant to Article X of the Bylaws.

Section 4.06. Action by the Board. Except as otherwise provided by law or the Bylaws, the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Board.

Section 4.07. Notices. (a) All meetings of the Board 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.

(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 telephone, by telefacsimile or by electronic mail to such address, telephone or facsimile number as may be listed on the records of the Company.

(d) Whenever notice is required to be given by the Bylaws 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 Class A Members, 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 Class A Members, directors or committee need be specified in any waiver of notice.

Section 4.08. Vacancies. A vacancy occurring among the directors for any reason and newly created directorships resulting from an increase in the authorized number of directors to be elected by Class A Members may be filled (a) by majority vote of the directors elected by such Class A Members then in office, although less than a quorum, or (b) by the sole remaining director elected by such Class A Members, or (c) by the Class A Members. 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 4.09. Removal. (a) Any director may be removed with or without cause at any time by the Class A Members.

(b) A director who becomes ineligible to serve on the Board pursuant to Section 4.02(c) shall be automatically removed upon the occurrence of such ineligibility without any act of the Class A Members or the Board.

Section 4.10. Resignation. Any director may resign at any time. A resignation shall be written and shall take effect at the time specified therein. If no time is so specified, a resignation shall take effect at the time of its receipt by the Company. The acceptance of a resignation shall not be necessary to make it effective.

Section 4.11. Committees. (a) The Board may designate from among its members an executive committee and any other committees, each consisting of one or more directors, 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. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these Bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and the affairs of the Company.

(b) Each committee member shall serve at the direction and at the pleasure of the Board.

Section 4.12. 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 two members of the committee, on two Business Days' notice to each member of the committee by mail, or on one hour's notice personally or by telecopy, telephone, telegraph or electronic mail. Meetings of any committee

may be held at any time without notice if all the committee members are present, or if those not present waive notice of the meeting in writing, either before or after the meeting.

(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 otherwise be specifically provided by law, these Bylaws or the Rules.

Section 4.13. Written Consent in Lieu of a Meeting. Any action required or permitted to be taken at any meeting of the Board or any committee may be taken without a meeting if all the members of the Board or the committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of the Board or committee. Such consent may be given by telefacsimile showing the signature of the person or persons giving consent.

Section 4.14. Telephone Participation in Meetings. Any one or more members of the Board or a committee may participate in a meeting of the Board or such committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at a meeting.

Section 4.15. Improper Use or Disclosure of Material, Non-Public Information by Board Member or Committee Member. (a) No member of the Board or of any committee established by the Company 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 obtained through special access related to the performance of such Person's official duties; or

(ii) 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.

(b) For the purposes of this Section 4.15, the terms "material" and "non-public information" each shall have the meaning set forth in Section 1.59(a) of the Commission Regulations.

Section 4.16. Compensation. Each director shall receive for services rendered as a director of the Company such compensation as may be fixed by the Board. Nothing herein contained shall be construed to preclude any director from serving the Company in any other capacity and receiving compensation therefor.

Section 4.17. Consent to Disclosure of Certain Information. A Person by becoming a member of the Board or a member of a committee established by the Board, shall be deemed irrevocably to authorize the Company to obtain such documents and information relating

to such Person's trading in futures contracts, securities or options as the Company may from time to time request for the purpose of monitoring compliance with Rule 1.08, and to agree to furnish the Company with such information relating to any such trading as the Company may from time to time request.

## ARTICLE V

### Officers

Section 5.01. Titles. The officers of the Company shall be a Chairman, one or more Vice Chairmen, a President, one or more Vice-Presidents, a Secretary and a Treasurer. Each officer shall be appointed by the Board. The Board also may appoint such other officers as it may from time to time deem appropriate, who shall have such authority and perform such duties as may be prescribed by the Board.

Section 5.02. Qualifications. The Chairman and each Vice Chairman must be a director of the Company. Each officer other than the Chairman and any Vice Chairman must be an employee of the Company and may be a director. Any two or more offices may be held by the same person.

Section 5.03. Compensation. The Board shall establish the compensation of all officers. The Board may establish the compensation of other employees and agents or may delegate such authority to one or more officers.

Section 5.04. Appointment and Term of Office. Except as otherwise provided by or pursuant to these Bylaws, each officer shall be appointed by the Board to hold office until the next annual meeting of the Board and until the successor of such officer is appointed and qualified.

Section 5.05. Chairman. The Chairman shall preside at all meetings of Members and of the Board and shall have such powers and shall perform such other duties as are set forth in these Bylaws or as may be specified by the Board. The Chairman also shall be a member of all committees of directors.

Section 5.06. Vice Chairman. The Vice Chairman, in the absence or disability of the Chairman, shall have the powers and shall perform the duties of the Chairman. If there is more than one Vice Chairman, the Board shall specify the order in which they shall so act. The Vice Chairman also shall have such powers and shall perform such duties as are set forth in these Bylaws or as may be specified by the Board.

Section 5.07. President. The President shall be the chief executive officer of the Company and shall supervise the business and affairs of the Company, subject to the direction of the Board. The President shall not be a member of the Board, or a Member or an Affiliated Person of a Member.

Section 5.08. Vice President. Except as may otherwise be prescribed by the Board, the Vice President, in the absence or disability of the President, shall have the power and



shall perform the duties of the President. If there is more than one Vice President, the Board shall specify the order in which they shall so act. Each Vice President also shall have such powers and shall perform such duties as may be delegated to such Vice President by the President or prescribed by the Board.

Section 5.09. Secretary. The Secretary shall keep the minutes of all meetings of the Board and Members. The Secretary shall give or cause to be given notice of all meetings of the Board and the Members and all other notices required by law or these Bylaws to be given by the Company. In the event of the absence of the Secretary or the refusal by the Secretary to do so, any such notice may be given by any person so directed by the President or by the directors or by the Members upon whose request the meeting is called. The Secretary shall have charge of the Company's books and records. In general, the Secretary shall perform all duties customarily incident to the office of secretary.

Section 5.10. Treasurer. The Treasurer shall have custody of all funds and securities of the Company. The Treasurer shall enter or cause to be entered in the books of the Company full and accurate accounts of all monies received and paid out on account of the Company and, when required by the Chairman or the President, shall render a statement of the accounts. The Treasurer shall keep or cause to be kept such other books as will show a true record of the expenses, losses, gains, assets and liabilities of the Company. The Treasurer at all reasonable times shall exhibit the books and accounts to any director of the Company upon application at the office of the Company during business hours. In general, the Treasurer shall perform all duties customarily incident to the office of treasurer.

Section 5.11. Restrictions on Trading and Disclosure by Employees and Consultants. (a) No employee of the Company or consultant to the Company shall trade, directly or indirectly, in any commodity interest traded on any contract market operated by the Company or cleared by the Exchange or the Clearing Organization, or in any related commodity interest, or in any commodity interest traded on any other contract market or cleared by any other clearing organization where the employee of the Company or consultant to the Company has access to material non-public information concerning such commodity interest.

(b) The President (or, in the case of the President, the Chairman of the Board) may grant exemptions from the provisions of paragraph (a) to employees and consultants 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) trading in commodity interests traded on any contract market not operated by 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

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

Participation in an Company-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 or consultant exempted under paragraph (b) must:

(i) furnish to the Company 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 or consultant to the Company may disclose to any other Person any material non-public information obtained as a result of employment by the Company; provided, however, that this Section shall not prohibit disclosures made by such an employee or consultant in the course of such employee's or consultant'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 these Bylaws 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.

Section 5.12. Resignation. Any officer may resign at any time. A resignation shall be written and shall take effect at the time specified therein. If no time is so specified, a resignation shall take effect at the time of its receipt by the President or Secretary of the Company. The acceptance of a resignation shall not be necessary to make it effective. No resignation shall discharge any accrued obligation or duty of an officer.

Section 5.13. Removal. Any officer appointed by the Board may be removed as an officer by the Board at any time with or without cause.

Section 5.14. Vacancies. If the office of any officer becomes vacant, the Board may appoint any qualified person to fill such vacancy. Any person so appointed shall hold office for the unexpired term of the predecessor of such person and until the successor of such person is elected or appointed and qualified.

## ARTICLE VI

### Class B Members

Section 6.01. Status of Class B Members. (a) Each Class B Member shall have the privilege of clearing with the Company all Contracts traded on or subject to the Rules of the Exchange.

(b) Each Class B Member shall have the privileges, rights and obligations provided for in and pursuant to the Bylaws and the Rules. Such privileges, rights and obligations may be terminated or altered in any respect at any time as provided in the Bylaws or the Rules.

Section 6.02. Eligibility Requirements. To become and remain a Class B Member, a Person must:

- (a) be a Subscriber of the Exchange in good standing;
- (b) be an Eligible Swap Participant; and
- (c) be in good standing under the Bylaws and the Rules.

Section 6.03. Procedure for Becoming a Class B Member. Any Person desiring to become a Class B Member must file an acceptable Subscriber Agreement with the Exchange in such form as the Exchange may prescribe; shall furnish such documents and information as the Company may request; and shall pay such application fee as the Board may prescribe. The filing of any such application, documents and information, and the action by the Company with respect thereto, shall be as provided in the Rules.

## ARTICLE VII

### Guaranty Fund

Section 7.01. General Guaranty Fund. The Company shall establish and maintain a Guaranty Fund equal to the greater of \$10,000,000 or one percent of the aggregate Original Margin required to be maintained by Class B Members.

(a) Deposits in the Guaranty Fund may be made in the form of cash, letters of credit and/or securities which are direct obligations of the United States Governments, as may from time to time be provided by the Board. Any such securities shall be valued in accordance with such methodology as may be adopted by the Board.

(b) Guaranty Fund deposits shall be held in a bank approved for the purpose by the Company, in an account or accounts separate from all other cash and securities held by the Company. The Company shall have the sole right to withdraw cash or securities from, or to authorize the sale or other disposition of any securities held in, such account or accounts subject to the rights of any assignee, pledgee or holder of a security interest in the Guaranty Fund or any cash or securities therein.

(c) The Guaranty Fund may be applied by the Company:

(i) against any amounts that become due from a Class B Member to the Company for any reason (including Original Margin, Variation Margin and Delivery Margin); and

(ii) to provide such funds, on such terms and conditions, as the Board in its discretion may deem necessary or appropriate.

(d) The Company may at any time and from time to time assign, pledge, repledge or otherwise create a lien on or security interest in, the Guaranty Fund and/or the cash, securities and other property held in the Guaranty Fund to secure the repayment of funds borrowed by the Company (plus interest, fees and other amounts payable in connection therewith). Any such borrowing shall be on terms and conditions deemed necessary or advisable by the Company (including the collateralization thereof) in its sole discretion.

Section 7.02. Monetary Defaults; Use of Guaranty Fund. If any Class B Member fails to deposit with, or pay to, the Company in full any Original Margin, Variation Margin, Delivery Margin or other sum under or in connection with any Contract, when and as required by or pursuant to the Rules of the Exchange or the Rules of the Company, such failure shall constitute a "Monetary Default." A Class B Member shall be deemed to have failed to deposit any asset or pay any sum when and as required if such Class B Member's Approved Financial Institution fails so to transfer such asset or funds when and as instructed by the Company. In the event that at any time a Monetary Default occurs on the part of any Class B Member (the "Defaulting Class B Member"), then:

(a) Such Defaulting Class B Member's Original Margin on deposit with the Company and any of its other assets under the control of the Company shall be applied by the Company to pay the amount owing (the "Defaulted Obligation") as hereinafter set forth.

(b) If the margin and other assets of a Defaulting Class B Member under the control of the Company are in the aggregate less than the Defaulted Obligation, and if the Defaulting Class B Member fails to pay the Company the amount of the deficiency on demand, such Defaulting Class B Member shall continue to be liable therefor, but the amount of the deficiency, until collected from the Defaulting Class B Member, shall be met from the following sources of funds in the order listed <sup>^</sup>:

<sup>^</sup>(i) if the Chairman so determines, a loan on such terms and conditions as the Chairman may determine to be necessary or appropriate (including without limitation granting an assignment, pledge or other lien on or security interest in the Guaranty Fund or the cash, securities and other property held in the Guaranty Fund as provided in Section 7.02);

<sup>^</sup>(ii) the Guaranty Fund; and

<sup>^</sup>(iii) insurance proceeds, if any, received by the Company in connection with the Monetary Default giving rise to the Defaulted Obligation.

(iv) such portion, if any, of the surplus of the Company as the Board determines to be available for such purpose;

Section 7.03. Position Limits. The Board may establish a limit on the open position that any Class B Member or all Class B Members may have open with the Company at any one time, based on such factors as the Board in its discretion considers appropriate. After receiving notice of the imposition of any such limit, a Class B Member shall transfer and/or liquidate any Contracts in excess thereof within such time as the Board or the President may prescribe.

Section 7.04. Original Margin. Each Class B Member shall place in a Subcustodial Account Original Margin, Variation Margin and Delivery Margin in respect of all Contracts carried by the Company for such Class B Member in such amounts, in such forms, and by such times as the Company may require from time to time.

## ARTICLE VIII

### Indemnification; Liability

Section 8.01. Indemnification by Company. (a) The Company shall indemnify any individual who is or at any time was a director or officer of the Company, whether or not then in office, and who was or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal or administrative or investigative (other than an action by or in the right of the Company) by reason of the fact that such individual is or was a director or officer of the Company, or is or was serving any other Entity in any capacity at the request of the Company (including, without limitation, as trustee of an employee benefit plan for employees of the Company or any other Entity) to the fullest extent permissible under applicable law, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and necessarily incurred by such individual in connection with such action, suit or proceeding, if such individual acted in good faith and in a manner such individual reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such individual's 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 Company 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 individual did not act in good faith and in a manner which the individual reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the individual's conduct was unlawful.

(b) The Company shall indemnify any individual 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 Company to procure a judgment in its favor by reason of the fact that the individual is or was a director or officer of the Company or is or was serving at the request of the Company as

a director, officer, employee or agent of another Entity or non-Board committee member (including, without limitation, as trustee of an employee benefit plan for employees of the Company or any other Entity) to the fullest extent permissible under applicable law, against expenses (including attorneys' fees) actually and reasonably incurred by the individual in connection with the defense or settlement of such action or suit if the individual acted in good faith and in a manner the individual reasonably believed to be in or not opposed to the best interests of the Company; except that no indemnification shall be made in respect of any claim, issue or matter as to which such individual shall have been adjudged to be liable to the Company 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 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 Company 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) Any indemnification under paragraphs (a) and (b) of this Section (unless ordered by a court) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because the individual has met the applicable standard of conduct set forth in paragraphs (a) and (b) of this Section. Such determination shall be made (i) 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 Class A Members.

(d) The Company shall advance or promptly reimburse upon request of an individual referred to in paragraphs (a) and (b) of this Section all expenses, including attorneys' fees incurred by such individual in defending any civil, criminal or investigative action, suit or proceeding in advance of the final disposition thereof, upon receipt of a written undertaking by or on behalf of such individual to repay such amount if such individual is ultimately determined not to be entitled to indemnification, or, where indemnification is granted, to the extent the expenses so advanced or reimbursed exceed the amount to which such individual is entitled, provided that such individual shall cooperate in good faith with any request of the Company that common counsel be used by parties to any action, suit or proceeding who are similarly situated unless to do so would be inappropriate because of actual or potential differing interests between such parties.

(e) An individual for whom indemnification or the advancement or reimbursement of expenses is provided for under this Section may elect to have the provisions of this Article interpreted on the basis of the applicable statute in effect (i) at the time of the occurrence of the event or events giving rise to the action, proceeding or investigation, to the extent permitted by statute, or (ii) at the time indemnification or advancement or reimbursement of expenses is provided or sought.

(f) 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 the Bylaws, any agreement or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office.

(g) By action of the Board, notwithstanding an interest of the directors in the action, the Company 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 Company, or is or was serving at the request of the Company as a director, officer, employee or agent (including trustee) of another 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 Company shall have the power to indemnify such person against such liability under the provisions of this Section.

(h) Indemnification may be accorded by the Company and related expenses may be advanced to members of any committee authorized by the Bylaws or the Rules of the Company or established by the Board, and to employees and agents of the Company, to the same extent as is provided to directors and officers of the Company. The foregoing right of indemnification shall not affect any rights to indemnification to which the individuals described in this paragraph may be entitled by contract or otherwise under law.

Section 8.02. 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 Company 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 Section 8.01 is not paid in full by the Company within thirty days after a written claim has been received by an officer of the Company therefor and the claimant thereafter brings suit against the Company to recover the unpaid amount of the claim which is successful in whole or in part, the Company shall be obligated to pay the claimant the expenses, including attorneys' fees and expenses, of prosecuting such claim.

Section 8.03. General. (a) The indemnification and advancement or reimbursement of expenses granted pursuant to the provisions of Section 8.01 shall be in addition to and shall not be exclusive of any other rights to indemnification and advancement or reimbursement of expenses to which any person may otherwise be entitled by statute, these Bylaws, insurance policy, contract or otherwise.

(b) For purposes of this Article, the terms: (i) "the Company" shall include any legal successor to the Company, including any other Entity which acquires, all or substantially all of the assets of the Company in one or more transactions; and (ii) "individual" shall include the personal representative of an individual described in this Article who is deceased or under a disability.

Section 8.04. Exception. Notwithstanding anything in this Article VIII to the contrary, the Exchange shall not indemnify any Person with respect to fines imposed by the Commission under the Act.

## ARTICLE IX

### Emergency Powers

Section 9.01. Exchange-Determined Emergency. If the Exchange determines that there is an Emergency, the Company shall take such action as may be ordered by, or as may be necessary or appropriate to implement emergency action ordered by, the Exchange; unless the Board, by a two-thirds vote of the members of the Board present and voting at any meeting, shall determine that to do so would jeopardize the financial or operational integrity of the Company.

Section 9.02. Company Determined Emergency. Subject to the applicable provision of the Act and the Commission Regulations, if the Board, by a two-thirds vote of the members of the Board present and voting at any meeting, determines that there is an Emergency, it may place into immediate effect a rule which may provide for, or may authorize the Company to undertake, actions necessary or appropriate in the opinion of the Board to meet the Emergency.

Section 9.03. Inconsistent Determinations. In the event of an inconsistency between a determination made by the Exchange as referred to in Section 9.01 and a determination made by the Company pursuant to Section 9.02, the determination so made by the Exchange shall govern; unless the Board, by a two-thirds vote of the members of the Board present and voting at any meeting, shall determine that to do so would jeopardize the financial or operational integrity of the Company.

Section 9.04. Physical Emergency. If, in the judgment of the individuals specified below, the physical functioning of the Company is, or is threatened to be, severely and adversely affected by a Physical Emergency, such persons are authorized to take such action as they deem necessary or appropriate to deal with such Physical Emergency. The persons authorized to take action, pursuant to this Section are any one of the following, in the order of their availability to take such action: (a) the President; (b) any Vice President; (c) the Chairman; (d) any Vice Chairman; and (e) any other officer of the Company.

Section 9.05. Definitions. For purposes of this Article, the following terms shall have the following meanings:

(a) The term "Emergency" means any occurrence or circumstance which the Company determines constitutes an emergency or physical emergency in accordance with the Bylaws or the Rules of the Company, or which the Board, pursuant to Section 9.02, determines requires immediate action and threatens or may threaten such things as the orderly matching, clearing or liquidation of, or delivery or exercise pursuant to, any Contract, including such matters as:

- (i) any Physical Emergency;



(ii) the bankruptcy or insolvency of any Class B Member, or the initiation of any proceedings for the liquidation of any Class B Member, or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a Class B Member which may affect the ability of that Class B Member to perform its obligations to the Company or the Exchange;

(iii) the bankruptcy or insolvency of any Approved Financial Institution, or the initiation of any proceedings for the liquidation, receivership, conservatorship, or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon an Approved Financial Institution which may affect the ability of that Approved Financial Institution to perform its obligations to the Company or the Exchange;

(iv) any circumstance in which it appears that a Class B Member or any other Person has failed to perform Contracts, is insolvent, or is in such financial or operational condition or is conducting business in such a manner that such Person cannot be permitted to continue in business without jeopardizing the Company;

(v) any circumstance or event which suddenly curtails the operations of one or more banks involved in the margining or settlement of Contracts; and

(vi) any other unusual, unforeseeable and adverse circumstance with respect to which it is impracticable for the Company to submit, in a timely fashion, a reviewable rule to the Commission for prior approval.

(b) The term "Physical Emergency" means any circumstance which may have a severe, adverse effect upon the physical functions of the Company including, but not limited to, fire or other casualty, bomb threats, substantial inclement weather, power failures, communication breakdowns, transportation breakdowns and computer malfunctions.

## ARTICLE X

### Miscellaneous

Section 10.01. Fiscal Year. The fiscal year of the Company for accounting and tax purposes shall be fixed by resolution of the Board.

Section 10.02. Offices. The registered office of the Corporation shall be located at Corporation Trust Center, 1209 Orange Street, the City of Wilmington, County of Kent, in the State of Delaware and said corporation shall be the registered agent of this Corporation in charge thereof. The Corporation may have other offices either within or without the State of Delaware at such places as shall be determined from time to time by the Board of Directors or the business of the Corporation may require.

Section 10.03. Captions. Section titles or captions contained in the Bylaws and Rules are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of the Bylaws and Rules or the intent of any provision.

## ARTICLE XI

### Amendments

Section 11.01. Amendments. (a) The vote of at least a majority of the Class A Members, issued and outstanding and entitled to vote, shall be necessary at any meeting of stockholders to amend or repeal these Bylaws or to adopt new by-laws. These Bylaws may also be amended or repealed, or new by-laws adopted, at any meeting of the Board of Directors by the vote of at least a majority of the entire Board; provided that any by-law adopted by the Board may be amended or repealed by the stockholders in the manner set forth above.

(b) Any proposal to amend or repeal these Bylaws or to adopt new bylaws shall be stated in the notice of the meeting of the Board of Directors or the Class A Members, or in the waiver of notice thereof, as the case may be, unless all of the directors or the holders of record of all of the Class A Members, issued and outstanding and entitled to vote, are present at such meeting.

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