

## ICAP SEF Application

### Exhibit G: SEF Organizational Documents

This Exhibit G contains the following documents:

**Exhibit G-1: Certificate of Formation of ICAP SEF (US) LLC**

*Filed with the Secretary of State of Delaware (“DE SOS”) on August 7, 2013*

**Exhibit G-2: Limited Liability Company Operating Agreement of ICAP SEF (US) LLC**

*Dated as of August 7, 2013*

**Exhibit G-3: Regulatory Oversight Committee Charter of ICAP SEF (US) LLC**

**Exhibit G-4: Good Standing Certificate for ICAP SEF (US) LLC**

*Issued by the DE SOS on August 29, 2013*

## ICAP SEF Application

Exhibit G-1: ICAP SEF (US) LLC Certificate of Formation

# Delaware

PAGE 1

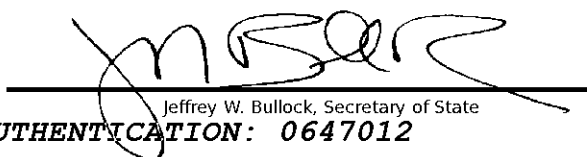
*The First State*

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 FORMATION OF "ICAP SEF (US) LLC", FILED IN THIS OFFICE ON THE SEVENTH DAY OF AUGUST, A.D. 2013, AT 1:32 O'CLOCK P.M.

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Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 0647012

DATE: 08-07-13

CERTIFICATE OF FORMATION

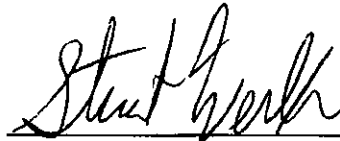
OF

ICAP SEF (US) LLC

1. The name of the limited liability company is ICAP SEF (US) LLC.

2. The address of its registered office in the State of Delaware is: Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation of ICAP SEF (US) LLC this 5<sup>th</sup> day of August, 2013.



Stuart Wexler  
Authorized Person

## ICAP SEF Application

### Exhibit G-2: ICAP SEF (US) LLC Operating Agreement



## OPERATING AGREEMENT

OF

ICAP SEF (US) LLC

A DELAWARE LIMITED LIABILITY COMPANY

THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT (this "Agreement") is hereby duly adopted as the limited liability company agreement of ICAP SEF (US) LLC, a Delaware limited liability company (the "Company"), effective as of this 7<sup>th</sup> day of August, 2013, by the Unitholders.

In consideration of the covenants and agreements set forth in this Agreement, the parties agree as follows:

### ARTICLE 1

#### DEFINITIONS

All capitalized terms used in this Agreement but not defined herein shall have the meanings ascribed thereto in the SEF Rulebook attached hereto as Exhibit A (the "SEF Rulebook"). Otherwise, as used in this Agreement:

"Affiliate" shall mean, with respect to any Person, any other Person who controls, is controlled by or is under common control with such Person.

"Agreement" shall have the meaning set out in the preamble.

"Board of Directors" shall mean the board of directors of the Company.

"Business Day" shall have the meaning ascribed to such term in the SEF Rulebook.

"Capital Account" as of any given date shall mean the Capital Contribution to the Company by a Unitholder as adjusted up to the date in question pursuant to Article 8.2.

"Capital Contribution" shall mean any contribution to the capital of the Company in cash or Property by a Unitholder whenever made in exchange for Units.

"CEA" shall mean the U.S. Commodity Exchange Act, as amended from time to time.

“CEO” shall have the meaning set out in Article 5.2.

“Certificate” shall mean the Certificate of Formation of the Company as filed by the organizer of the Company with the Secretary of State of the State of Delaware on August 7, 2013, as the same may be amended from time to time.

“CFTC” shall mean the U.S. Commodity Futures Trading Commission or any successor regulatory body.

“CFTC Regulations” shall mean any rule, regulation, order, directive and any interpretation thereof promulgated by the CFTC, as amended.

“Chairman” shall have the meaning set out in Article 5.2.

“Code” shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent superseding Federal revenue laws.

“Common Units” shall mean the common limited liability company interests issued by the Company to the Unitholders in accordance with this Agreement with such name and having the powers, preferences, priorities and rights and the qualifications, limitations and restrictions set forth in this Agreement. The number of Common Units held by each Unitholder is as set forth on Exhibit B attached hereto, as it may be amended by the Unitholders from time to time. For the sake of clarity, the Common Units shall constitute “limited liability company interests” of the Company for all purposes of, and within the meaning set forth in, the Delaware Act.

“Company” shall mean ICAP SEF (US) LLC.

“Contract” shall have the meaning ascribed to such term in the SEF Rulebook.

“Covered Individual” shall have the meaning set out in Article 10.1.

“Customer” shall have the meaning ascribed to such term in the SEF Rulebook.

“Delaware Act” and “Act” shall mean the Delaware Limited Liability Company Act at Title 6 of the Delaware Code, § 18-101 through § 18-1109 as the same may be amended from time to time, and any successor act.

“DFA” shall mean the Dodd-Frank Wall Street Reform and Consumer Protection Act.

“director” shall mean a member of the Board of Directors. References to a director in the singular or as him, her, it, itself or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be.



“Emergency” shall mean any occurrence or circumstance which, in the opinion of the SEF, requires immediate action and which threatens or may threaten such things as the fair and orderly trading in, or the liquidation of, or delivery pursuant to, any Contracts on the SEF, including any manipulative or attempted manipulative activity; any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions; any circumstances which may materially affect the performance of Contracts traded on the SEF, including failure of the payment system or the bankruptcy or insolvency of any Participant; any action taken by any Governmental Authority, or any other board of trade, market or facility which may have a direct impact on trading on the SEF and any other circumstance which may have a severe, adverse effect upon the functioning of the SEF.

“Executive Proceeding” shall have the meaning set out in Article 6.2.7(i).

“Fiscal Year” shall mean the 12-month period ending March 31<sup>st</sup> of each year.

“Governance Principles” shall mean the Board of Directors Corporate Governance Principles attached hereto as Exhibit C, as amended from time to time.

“Gross Asset Value” shall have the meaning set out in Part A of Exhibit D.

“Immediate family member” shall have the meaning ascribed to such term in the CFTC Regulations.

“Interested Person” shall have the meaning set out in Article 6.2.7(i).

“Last Trading Day” shall have the meaning ascribed to such term in the SEF Rulebook.

“Majority Interest” shall mean that number of Units which, when taken together, represent a Percentage Interest greater than fifty percent (50%).

“Material Relationship” shall mean a relationship that reasonably could affect the independent judgment or decision-making ability of an individual acting as a Public Director.

“Member” shall have the meaning ascribed to such term in CEA section 1a(34).

“Net Profits” and “Net Losses” means, for each Fiscal Year, an amount equal to the Company’s taxable income or loss for such Fiscal Year, determined in accordance with Code § 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code § 703(a)(1) shall be included in taxable income or loss), with the adjustments set forth in Part B of Exhibit D.

“NFA” shall mean the U.S. National Futures Association or any successor self-regulatory body.

“Other Entity” shall have the meaning set out in Article 10.1.

“Participant” shall have the meaning ascribed to such term in the SEF Rulebook.

“Person” shall mean an individual, sole proprietorship, corporation, association, limited liability company, limited liability partnership, partnership, estate, trust, unincorporated organization, governmental agency, or any other legal entity.

“Percentage Interest” shall mean, with respect to any Unitholder as of any date, the ratio (expressed as a percentage) of the number of Units held by such Unitholder on such date to the aggregate number of Units held by all Unitholders on such date. The Percentage Interest of each Unitholder is as set forth on Exhibit B attached hereto, as it may be amended by the Unitholders from time to time. The combined Percentage Interests of all Unitholders shall at all times equal 100%.

“Physical Emergency” shall mean a physical emergency such as fire or other casualty, bomb threat, substantial inclement weather, power failure, communication or transportation breakdown, computer malfunction, screen-based trading system break-down, malfunction of plumbing, heating, ventilation and air conditioning systems, backlog or delay in clearing or in the processing of data related to clearing Contracts.

“Proceeding” shall have the meaning set out in Article 10.1.

“Property” shall mean all real and personal property contributed to or acquired by the Company and any improvements thereto, and shall include both tangible and intangible property.

“Public Director” shall mean a member of the Board of Directors who the Board of Directors, on the record, has determined does not have nor has had within the one-year period prior to his or her appointment as a Public Director, a Material Relationship with the SEF or any of its Affiliates. In addition a member of the Board of Directors shall not be considered a “Public Director” if at the time of such individual’s appointment as a Public Director, at any time during the one-year period prior to such appointment, or at any time following such appointment while serving as a Public Director:

- (i) such individual, or an immediate family member of such individual, is or was an officer or employee of the Company, or an officer or an employee of an Affiliate of the Company;
- (ii) such individual, or an immediate family member of such individual, is or was a Member of the SEF, or a director, officer or employee of a Member of the SEF;
- (iii) such individual, or an immediate family member of such individual, is or was an officer of another Person, which Person has or had a compensation committee (or similar body) on which an officer of the SEF serves; or
- (iv) such individual, or an immediate family member of such individual, or a Person with which such individual or such immediate family member is a partner, officer, employee or director, has received in excess of \$100,000 in combined

annual payments for legal, accounting or consulting services from the SEF, any Affiliate of the SEF, any Member of the SEF or any Affiliate of such Member.

Notwithstanding the foregoing, (a) compensation for services as a director of the Company or as a director of an Affiliate of the Company shall not count toward the \$100,000 threshold specified in clause (iv) of this definition, nor shall compensation for services rendered by such individual prior to becoming a director of the Company, so long as such compensation is or was in no way contingent, conditioned or revocable; and (b) a Public Director may also serve as a director of an Affiliate of the Company if he or she otherwise meets the requirements set forth in clauses (i) through (iv) of this definition.

“Public Participant” shall have the meaning set out in Article 6.8.1.

“Respondent” shall have the meaning ascribed to such term in the SEF Rulebook.

“Rules” shall have the meaning ascribed to such term in the SEF Rulebook.

“SEF” shall mean the swap execution facility (as such term is defined in section 1a(50) of the CEA) established and operated by the Company, or any successor thereto.

“Tax Items” shall have the meaning set out in Article 12.2.1.

“Tax Matters Partner” shall have the meaning set out in Article 12.8.

“TEFRA” shall have the meaning set out in Article 12.8.

“Termination Event” shall have the meaning set out in Article 14.1.1.

“Trading Privilege Holder” shall have the meaning ascribed to such term in the SEF Rulebook.

“Treasury Regulations” shall mean the temporary and final regulations promulgated under the Code in effect as of the date of filing the Certificate and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations.

“Unitholder” shall mean each of the parties who executes a counterpart of this Agreement as a Unitholder and each of the parties who acquires Units hereafter as permitted herein.

“Units” shall mean the Common Units together with any other series or class of limited liability company interests issued by the Company to the Unitholders in accordance with this Agreement, in each case with such name and having the powers, preferences, priorities and rights and the qualifications, limitations and restrictions set forth in this Agreement from time to time. The number of Units held by each Unitholder shall be as set forth on Exhibit B attached hereto, as it may be amended by the Unitholders from time to time. For the sake of clarity, the

Units shall constitute “limited liability company interests” of the Company for all purposes of, and within the meaning set forth in, the Delaware Act.

“US\$” and “U.S. Dollars” shall mean the lawful currency, for the time being, of the United States of America.

“Violation” shall have the meaning ascribed to such term in the SEF Rulebook.

## ARTICLE 2

### FORMATION OF COMPANY

2.1 Formation. The Company has been organized as a Delaware limited liability company by executing the Certificate and filing it with the Secretary of State of the State of Delaware in accordance with and pursuant to the Delaware Act.

2.2 Name. The name of the Company is ICAP SEF (US) LLC.

2.4 Principal Place of Business. The principal place of business of the Company in the United States of America is Harborside Financial Center, 1100 Plaza 5, Jersey City, NJ 07311. The Company may locate its places of business at any other place or places the Board of Directors may deem advisable.

2.4 Registered Office and Registered Agent. The Company’s initial registered office shall be the office of its registered agent at The Company Trust Company, Company Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 and the name of its initial registered agent shall be The Company Trust Company.

2.5 Duration. The term of the Company commenced on the date of the filing of the Certificate with the Secretary of State of the State of Delaware in accordance with and pursuant to the Delaware Act, and shall continue indefinitely unless the Company is earlier dissolved in accordance with the provisions of this Agreement and the Delaware Act.

2.6 Units. Holders of Units shall have the rights and obligations of a member within the meaning of Section 18-101(11) of the Delaware Act and shall be the holders of limited liability company interests in the Company within the meaning of Section 18-101(8) of the Delaware Act. The par value per unit and the minimum per unit capital contribution for each Common Unit shall be \$0.01. The Board of Directors may create one or more different series or classes of limited liability company interests as series or classes of units, as the case may be, with such name and having the powers, preferences, priorities, rights, qualifications, limitations and restrictions as (i) the Board of Directors may determine from time to time by written resolution and (ii) shall be reflected pursuant to an amendment to this Agreement.

## ARTICLE 3

### BUSINESS OF COMPANY

3.1 Permitted Businesses. The business of the Company shall be to carry on any lawful business or activity and to have and exercise all of the powers, rights and privileges which a limited liability company organized pursuant to the Delaware Act may have and exercise.

## ARTICLE 4

### NAMES, ADDRESSES AND STATUS OF UNITHOLDERS

4.1 List of Unitholders. The names, addresses and unitholdings of the Unitholders are set forth on Exhibit B attached hereto, as it may be amended from time to time by the Unitholders. Unitholders may be admitted to the Company (i) upon the approval of the Board of Directors, (ii) on such terms as the Board of Directors may determine and (iii) in accordance with Article 8.3 of this Agreement.

4.2 Limitation of Liability. A Unitholder shall not be personally liable to creditors of the Company or otherwise for any debts, obligations, liabilities or losses of the Company, whether arising in contract, tort or otherwise, beyond such Unitholder's Capital Contributions, except as otherwise required by law. No Unitholder will be bound by, or be personally liable for the expenses, liabilities or obligations of the Company, unless such Unitholder explicitly agrees to such liability.

4.3 Company Books. The Board of Directors shall maintain and preserve, during the term of the Company, the accounts, books and other relevant Company documents. Upon reasonable written request, each Unitholder, and its duly authorized representatives, shall have the right, at a time during ordinary business hours, as reasonably determined by the Board of Directors, to inspect and copy such Company documents at the Unitholder's expense.

## ARTICLE 5

### MEETINGS OF UNITHOLDERS

5.1 Annual Meetings. Annual meetings of Unitholders for the election of directors and for such other business as may be stated in the notice of the meeting, shall be held at such place, either within or without the State of Delaware, and at such time and date as the Board of Directors, by resolution, shall determine and as set forth in the notice of the meeting. At each annual meeting, the Unitholders entitled to vote shall elect a Board of Directors and they may transact such other corporate business as shall be stated in the notice of the meeting.

5.2 Special Meetings. Special meetings of the Unitholders for any purpose or purposes may be called by the Chairman of the Board of Directors of the Company (the "Chairman"), the Chief Executive Officer ("CEO") or Secretary, or by resolution of the Board of

Directors. Any special meeting of the Unitholders shall be held on such date, at such time and at such place within or without the State of Delaware as the Chairman, CEO, Secretary, or directors calling the meeting may designate. At a special meeting of the Unitholders, no business shall be transacted and no corporate action shall be taken other than that stated in the notice of the meeting unless all of the Unitholders are present in person or by proxy, in which case any and all business may be transacted at the meeting even though the meeting is held without notice. The attendance of any Unitholder at a special meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, will constitute a waiver of notice by such Unitholder. The Unitholders may designate any place as may be stated in the notice of meeting for a meeting of the Unitholders, either within or outside the State of Delaware, as the place of meeting. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal place of business of the Company.

5.3 Notice of Meetings. Written notice, stating the place, date and time of the meeting, and the general nature of the business to be considered, shall be given to each Unitholder entitled to vote thereat at its address as it appears on the records of the Company, not less than ten (10) nor more than sixty (60) days before the date of the meeting. If a Unitholder provides written consent to the Company consenting to notice by electronic transmission, notice of meetings may be given by the form of electronic transmission so consented to by such Unitholder. Any such consent to notice by electronic transmission shall be revocable by the Unitholder by written notice to the Company. Any such consent shall be deemed revoked if (i) the Company is unable to deliver by electronic transmission two (2) consecutive notices given by the Company in accordance with such consent and (ii) such inability becomes known to the Secretary or an assistant secretary of the Company or to the transfer agent, or other Person responsible for the giving of notice; *provided, however*, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. No business other than that stated in the notice shall be transacted at any meeting without the unanimous consent of all the Unitholders entitled to vote thereat, unless otherwise stated in this Agreement.

5.4 Meeting of All Unitholders. If Unitholders owning ninety percent (90%) of the outstanding Units consent to the holding of a meeting at any time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

5.5 Record Date.

5.5.1 In order that the Company may determine the Unitholders entitled to notice of or to vote at any meeting of Unitholders or any adjournment thereof, or to express consent to company action in writing without a meeting, or entitled to receive any distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of Units or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action.

5.5.2 A determination of Unitholders of record entitled to notice of or to vote at a meeting of Unitholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for determination of Unitholders entitled to

vote at the adjourned meeting, and in such case shall also fix as the record date for Unitholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of Unitholders entitled to vote at the adjourned meeting.

5.5.3 If no record date is fixed by the Board of Directors, (i) the record date for determining Unitholders entitled to notice of or to vote at a meeting of Unitholders shall be at the close of business on the next day preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (ii) the record date for determining Unitholders entitled to express consent to company action in writing without a meeting, when no prior action by the Board of Directors is required, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company; and (iii) the record date for determining Unitholders entitled to express consent to Company action in writing without a meeting, when prior action by the Board of Directors is required, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

5.6 Quorum. Except as otherwise required by law, by the Certificate or this Agreement, the presence, in person or by proxy, of Unitholders holding a Majority Interest shall constitute a quorum at all meetings of the Unitholders. At any meeting of the Unitholders at which the holders of any class of Units of the Company shall be entitled to vote separately as a class, the holders of a majority in number of the total outstanding Units of such class, present in person or represented by proxy, shall constitute a quorum for purposes of such class vote unless the representation of a larger number of Units of such class shall be required by law, by the Certificate or by this Agreement. In case a quorum shall not be present at any meeting, a Majority Interest, present in person or by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite amount of Units entitled to vote shall be present. At any such adjourned meeting at which a quorum shall be represented, any business may be transacted which might have been transacted at the meeting as originally noticed; but only those Unitholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof.

## 5.7 Voting.

5.7.1 Each Unitholder entitled to vote in accordance with the terms of this Agreement shall be entitled to one vote, in person or by proxy, for each Unit entitled to vote held by such Unitholder, unless otherwise stated herein. Upon the demand of any Unitholder, the vote for directors and the vote upon any question before the meeting shall be by ballot. All questions (including but not limited to elections of directors) shall be decided the affirmative vote of a Majority Interest except as otherwise provided herein or by the laws of the State of Delaware or the CFTC Regulations.

5.7.2 A complete list of the Unitholders entitled to vote at a meeting, with the address of each, and the number of Units held by each, shall be open to the examination of any Unitholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, at the principal place of business of the Company.

5.7.3 Units of the Company belonging to the Company or to another company, if a majority of the shares, units or limited liability company interests entitled to vote in the election of directors of such other company is held, directly or indirectly, by the Company, shall neither be entitled to vote nor counted for quorum purposes. Nothing in this Article 5.7.3 shall limit the right of the Company or any other company from voting stock, units or limited liability company interests, including but not limited to its own stock, units or limited liability company interests, held by it in a fiduciary capacity.

5.8 Proxies. At all meetings of Unitholders, a Unitholder may vote in person or by proxy executed in writing or electronically by the Unitholder or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Board of Directors before or at the time of the meeting. No proxy shall be valid after three (3) years from the date of its execution, unless otherwise provided in the proxy.

5.9 Conference Telephone. Any Unitholder may participate in a meeting of the Unitholders by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in the meeting by means of such equipment shall constitute presence in person at such meeting.

5.10 Action by Unitholders Without a Meeting. Unless otherwise provided by the Delaware Act, any action which is required to or may be taken at any meeting of Unitholders 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 Unitholders having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Units entitled to vote thereon were present and voted. Prompt notice of the taking of the action without a meeting by less than unanimous written consent shall be given to the Company and to each Unitholder entitled to vote thereat. An electronic transmission consenting to an action to be taken and transmitted by a Unitholder or proxyholder (or a Person authorized to act on behalf of such Unitholder or proxyholder) shall be deemed to be written, signed and dated for the purposes of this Article 5.10 provided that such electronic transmission is received by the Company, sets forth information from which the Company can determine that the electronic transmission was transmitted by such Person. The date on which such electronic transmission is received by the Company shall be deemed the date on which such consent was signed.

5.11 Waiver of Notice. When any notice is required to be given to any Unitholder, notice need not be given to a Unitholder if such Unitholder (i) signs a waiver thereof (whether in writing or electronically), a consent to holding the meeting or an approval of the minutes thereof, in each case whether before, at or after the meeting or (ii) attends the meeting without protesting the lack of notice prior to the commencement of the meeting.



## ARTICLE 6

### BOARD OF DIRECTORS

#### 6.1 Management.

6.1.1 *General.* The business and affairs of the Company shall be managed by its Board of Directors. The Board of Directors shall act as manager of the Company within the meaning of Section 18-101(10) of the Act and, subject to the CFTC Regulations and the other terms and conditions of this Agreement, as a board shall have full and complete authority, power, and discretion to manage and control the business, affairs, and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Company's business and objectives, in each case in accordance with the procedures set out below. Unless authorized to do so by this Agreement or by the Board of Directors, no Unitholder, attorney-in-fact, employee, or other agent of the Company, other than the officers described in Article 7 hereof, shall have any power or authority to bind the Company.

6.1.2 *Promotion of SEF Activities.* The Board of Directors has the power by itself or through agents, and is authorized and empowered on behalf and in the name of the Company, to perform all acts and enter into other undertakings that it may in its discretion deem necessary or advisable in order to promote the sound and efficient operation of the SEF and its swap execution activities (except such as otherwise required by law, the CFTC Regulations, the Certificate or this Agreement, or as are conferred upon or reserved to the Unitholders), including, but not limited to, the following:

- (i) Ensuring that the SEF complies with all statutory, regulatory and self-regulatory responsibilities under the DFA and the CEA;
- (ii) Reviewing, approving and monitoring major strategic, financial and business activities, the Company's budget and the Company's financial performance;
- (iii) Evaluating risks and opportunities facing the Company and proposing options for addressing such issues;
- (iv) Overseeing and reviewing recommendations from the Company's committees and the Chief Compliance Officer; and
- (v) Having the sole power to set the payment dates and amounts of any dues, assessments or fees to be levied on Trading Privilege Holders.

6.1.3 *Operating Constraints.* The Board of Directors shall, to the extent consistent with such responsibilities and as long as the Company remains an indirect subsidiary of ICAP plc, and subject in each case to the CFTC Regulations, operate within the restraints and delegated authorities set by the ICAP plc group.

6.1.4 *Determination of Contracts.* The Board of Directors shall determine which Contracts are available from time to time for trading on or subject to the Rules of the SEF, and will approve Rules of the SEF containing specifications for such Contracts; *provided* that the Board of Directors may delegate the authority to approve such Rules to a committee or one or more officers of the Company; *provided, further*, that certifications or applications with respect to such Rules shall be submitted to the CFTC as required by the CEA and the CFTC Regulations thereunder.

6.1.5 *Regulatory Agreements.* The Board of Directors (or committee thereof or other delegated body) may from time to time cause the SEF to enter into such agreements with domestic or foreign self-regulatory associations, other associations, boards of trade and their respective regulators providing for the exchange of information and other forms of mutual assistance for financial surveillance, routine audits, market surveillance, investigative, enforcement and other regulatory purposes as the Board of Directors may consider necessary or appropriate or as the CFTC may require.

6.1.6. *Emergency Action.*

(i) Responsibility for Taking Action. In the event of an Emergency, action may be taken by the following: (I) by the Board of Directors; (II) by any two (2) members of the Board of Directors in the case of any Emergency where it is impracticable, in the opinion of the Chairman or in his or her absence, any two (2) members of the Board of Directors, to call a meeting of the Board of Directors to deal with the Emergency; or (III) by any committee pursuant to powers conferred on said committee under the Rules or by the Board of Directors.

(ii) Vote Required. The vote required of the Board of Directors or committee authorized to take any Emergency action hereunder shall be: (I) in the case of action by the Board of Directors, the affirmative vote of not less than a majority of the members of the Board of Directors present and voting at a meeting at which there is a quorum; or (II) in the case of action by a committee, the affirmative vote of two (2) or more Persons constituting not less than a majority of the members of said committee present and voting at a meeting at which there is a quorum. The consent in writing to any Emergency action of all members of the Board of Directors or of a committee, as applicable, shall be sufficient to take such Emergency action without a meeting. A member of the Board of Directors or of a committee shall be deemed present or in attendance at such a meeting if such a Person participates in the meeting by means of a conference telephone or similar communications equipment allowing all Persons participating in the meeting to hear each other at the same time.

(iii) Action Which May Be Taken. In the event of an Emergency, the SEF may, subject to Part 40 of the CFTC Regulations under the CEA, place into immediate effect a rule which may provide for, or may authorize the SEF, or any committee, to undertake actions which, in the opinion of the SEF are necessary or appropriate to meet the Emergency, including, but not limited to, such actions as: (I) extending or shortening

the expiration date for trading in Contracts; (II) extending the time of delivery under or expiration of Contracts; (III) extending, limiting or changing hours of trading on the SEF; (iv) modifying SEF price limits; and (v) modifying or suspending any provision of the Rules. In the event of an Emergency when a quorum of the Board of Directors is not available, all trading on the SEF may be suspended by an affirmative vote of a majority of the directors present, or by action of one director if only one director is present, for such period of time as in their or his or her judgment is necessary. In the event of an Emergency which prevents normal attendance at a meeting of the Board of Directors, when no director is present, any officer of the SEF shall have authority to order suspension of trading on the SEF for such period of time as in his or her judgment is necessary. Any action taken under this Article 6.1.6 shall be subject to review and modification by the Board of Directors. Whenever any action is taken under this Article 6.1.6 pursuant to which trading on the SEF is suspended or other changes in procedure are made, all matters relating to notices, deliveries and other obligations may be suspended or deferred in such manner as the Board of Directors or committee, as the case may be, may determine.

*6.1.7 Physical Emergencies.* In the event the physical functions of the SEF are, or are threatened to be, severely and adversely affected by a Physical Emergency, the Chairman, or in his or her absence the CEO or in his or her absence any other officer, may take any action which, in the opinion of such officer is necessary or appropriate to deal with the Physical Emergency, including, but not limited to, suspending trading on the SEF in any one or more Contracts, delaying the opening of trading in any one or more Contracts, extending the Last Trading Day and/or the time of trading. In the event a designated officer has ordered suspension of trading, the Chairman, the CEO, or in their absence any other officer, may order restoration of trading on the SEF, or may remove other restrictions so imposed, if such officer determines that the Physical Emergency has sufficiently abated to permit the physical functions of the SEF to continue in an orderly manner. A report of any action taken under this Article 6.1.7 shall be filed with the CFTC in accordance with Part 40 of the CFTC Regulations under the CEA.

*6.1.8 Suspension of Trading.* The Board of Directors may, in its discretion, by an affirmative vote of a majority of the directors present at a meeting at which there is a quorum (which, in an Emergency other than a Physical Emergency, may be held without previous notice), close the SEF or suspend trading in any one or more Contracts on such days or portions of days as will, in its judgment, serve to promote the best interest of the SEF.

*6.1.9 Annual Performance Review.* The Board of Directors shall cause to be conducted a review of its own performance, and that of its individual members, at least annually (and prior to the expiration of each one year term of office for the directors). The Board of Directors, or a committee delegated such responsibility, shall establish criteria for the Board of Directors' evaluation, shall conduct the evaluation in accordance with such criteria, and shall make recommendations to improve deficiencies.

*6.1.10 Annual Public Director Determinations.* The Board of Directors shall make Public Director findings (including but not limited to determinations as to such Public

Directors' Material Relationships) as often as necessary in light of all circumstances relevant to each Public Director, but in no case less than annually.

## 6.2 Number, Election, Tenure, Qualifications and Conflicts of Interest.

6.2.1 *Number.* As of the date of formation of the Company, the number of directors shall be five (5), and the Board of Directors shall consist of those directors appointed by the initial Unitholder. From time to time thereafter, the number of directors shall be determined by the Board of Directors, but in no event shall the number of directors be less than five (5) or greater than twelve (12). Directors need not be Unitholders. Subject to compliance with Article 6.2.2, the number of directors may be increased or decreased by the affirmative vote of a majority of the directors or by the affirmative vote of a Majority Interest, at the annual meeting or at a special meeting called for that purpose.

6.2.2 *Public Directors.* At all times following the initial date of appointment of Public Directors by the Board of Directors, the Board of Directors must be composed of at least thirty-five percent (35%), but no less than two (2), Public Directors, or such other percentage of Public Directors as may be required to comply with the CEA and CFTC Regulations. Public Directors shall be capable of exercising independent judgment to guard against conflicts of interest and assisting the entire Board of Directors to carry out their responsibilities more effectively.

6.2.3 *Term.* Directors shall each serve a one-year term, be elected at the annual meeting of the Unitholders by the affirmative vote of a Majority Interest and shall be elected to serve until their respective successors shall be elected and qualified, or until their resignation, removal or death.

6.2.4 *Compliance with SEF Rulebook.* Each director shall be familiar with, and comply with, to the extent applicable, the provisions contained in the SEF Rulebook.

6.2.5 *Certification and Compliance with Governance Principles.* Each director shall, before taking office, acknowledge his or her receipt and understanding of the Governance Principles, as well as upon any publication of a revised set of Governance Principles or amendment thereto.

6.2.6 *Qualifications.* Each director, including each Public Director, shall be of sufficiently good repute and have sufficient expertise in the SEF's scope or intended scope of financial services (including any ancillary services valuable for the SEF to fulfill its core mission). No director may have (i) a history of disciplinary offenses that would be disqualifying under CFTC Regulation § 1.63(b) or (ii) had any felony conviction within the ten (10) years prior to his or her appointment.

6.2.7 *Conflicts of Interest.* Each director shall act in the best interests of the Company and refrain from any conduct that would be, or gives the appearance of being, a conflict of interest. A "conflict of interest" exists when a director's private interest, including his or her immediate family member's private interest, is inconsistent with or opposed to, or appears to be inconsistent with or opposed to, the Company's interests. This includes a personal interest

in a Member, vendor of the Company or other Person that could be significantly and disproportionately impacted by a decision of the Board of Directors. In addition to the foregoing:

(i) *Prohibition.* No (x) member of the Board of Directors, (y) member of any committee, (z) officer or other Person authorized to exercise authority on behalf of the Company will knowingly participate in any inquiry, investigation or any disciplinary proceeding, suspension, Emergency or other executive action (each, an “Executive Proceeding”) if such Person has a material conflict of interest between such Person’s position acting on behalf of the Company and such Person’s personal interests (each, an “Interested Person”). Material conflicts of interest include, but are not limited to, instances where an Interested Person (A) is named as a Respondent or potential Respondent in an Executive Proceeding, (B) is an employer, employee or fellow employee of a Respondent or potential Respondent in an Executive Proceeding, (C) has any other significant, ongoing business relationship with a Respondent or potential Respondent in an Executive Proceeding, excluding relationships limited to executing transactions opposite each other or to clearing transactions through the same clearing members, (D) has a family relationship with a Respondent or potential Respondent in an Executive Proceeding or (E) has a direct and substantial financial interest in the result of the deliberations or vote of any Executive Proceeding based upon either SEF or non-SEF positions. For purposes of this subparagraph, a “family relationship” exists between a Respondent or potential Respondent in an Executive Proceeding and a potential Interested Person if one Person is the other’s spouse (including a domestic partner or partner in a civil union), co-habitator, former spouse, parent, stepparent, child or other legal dependent, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

(ii) *Disclosure.* Prior to consideration of any Executive Proceeding involving a Respondent or potential Respondent, each potential Interested Person who does not choose to abstain from deliberations and voting will disclose to the Chairman or chairman of the relevant committee any potential material conflict of interest.

(iii) *Procedure and Determination.* The Board of Directors, or committee, as applicable, will determine whether any Person who discloses a potential material conflict of interest who does not choose to abstain from deliberations and voting in any Executive Proceeding is an Interested Person prohibited from participation in any Executive Proceeding. Such determination will be based upon a review of the information provided by such potential Interested Person and any other source of information that is held by or reasonably available to the SEF. Furthermore, in the case of any material conflict of interest resulting from a financial interest in the result of the deliberations or vote in any Executive Proceeding based upon either SEF or non-SEF positions, the potential Interested Person shall disclose to the Board of Directors or

committee, as applicable, the financial interest and related position information (including information regarding positions held by such Person, positions held by individuals of such Person's family and positions held by a firm with which such Person is affiliated) that is known to such Person with respect to any particular month or months that are under consideration, and any other positions which the deliberating body reasonably expects could be affected by the significant action, including but not limited to:

(A) gross positions held in such member's personal accounts or "controlled accounts," as defined in CFTC Regulation § 1.3(j);

(B) gross positions held in proprietary accounts, as defined in CFTC Regulation § 1.17(b)(3), at such Person's affiliated firm;

(C) gross positions held in accounts in which such Person is a principal, as defined in CFTC Regulation § 3.1(a);

(D) net positions held in Customer accounts, as defined in CFTC Regulation § 1.17(b)(2), at such Person's affiliated firm; and

(E) any other types of positions, held in such Person's personal accounts or the proprietary accounts of such Person's affiliated firm, that the SEF reasonably expects could be affected by the significant action.

(iv) *Deliberation Exemption.* Any Person determined to be an Interested Party who would otherwise be required to abstain from deliberations and voting pursuant to paragraph (i) above, may participate in deliberations, but not voting, if the Board of Directors, or committee, as applicable, after considering the factors specified below, determines by a majority vote (excluding the relevant Interested Persons) that (A) such Interested Party's participation in the deliberations is necessary to achieve a quorum or the Interested Party has unique or special expertise, knowledge or experience in the matter being considered; and (B) such participation would be consistent with the public interest.

(v) *Unitholders' Determination.* In the event that all directors are Interested Parties who either choose to abstain from deliberations and voting in an Executive Proceeding or are determined to be Interested Parties who are prohibited from participating in an Executive Proceeding pursuant to Article 6.2.7(iii), the holders of a Majority Interest, at a special meeting of the Unitholders called for the purpose, shall make the determination that is required to be made in that Executive Proceeding.

(iii) Documentation. The minutes of any meeting in which the Board of Directors, or committee, as applicable, determines that an Interested Person may participate in deliberations prior to a vote will reflect the following information: (A) the names of all members of the relevant deliberating body who attended such meeting; (B) the name of any

member of the relevant deliberating body who voluntarily recused himself or herself or was required to abstain from deliberations or voting on a matter and the reason for the recusal or abstention, if stated; (C) information on the financial interest and related position information that was reviewed for each member of the relevant deliberating body; and (D) any determination made and the reasons for the determination.

6.3 Resignation. Any director or member of a committee may resign at any time by written notice to the Chairman or Secretary; provided that each such Person shall in good faith provide the Chairman or Secretary such prior notice as may be reasonably necessary for the Board of Directors to identify and appoint a qualified Person to fill the resulting vacancy. Such resignation shall be made in writing, and, unless specifically contingent upon its acceptance, shall take effect at the date or as of the effective date specified therein, and if no time be specified, at the time of its receipt by the Chairman or Secretary. The acceptance of a resignation shall not be necessary to make it effective. To the extent that any vacancy results in the number of Public Directors falling below the number required by Article 6.2.2, the Board of Directors shall act as expeditiously as reasonably practicable to appoint one or more Public Directors as may be required to comply with Article 6.2.2.

6.4 Removal. Except as hereinafter provided, any director or directors may be removed either for or without cause at any time by either the affirmative vote of (i) a majority of the directors or (ii) the holders of a Majority Interest, at the annual meeting of Unitholders or at a special meeting of the Unitholders called for the purpose. In addition, a vacancy shall occur in the office of any director, and such director shall be removed from office, if (x) the holders of a Majority Interest shall determine, at the annual meeting of Unitholders or at a special meeting of the Unitholders called for the purpose, or (y) the Board of Directors shall determine, by the affirmative vote of a majority of the whole Board of Directors (other than the director whose conduct is at issue), that (I) the director is no longer qualified under the provisions of this Agreement, (II) that there has been a change in his or her affiliations as would make him or her ineligible for election or appointment as director on the date the Board of Directors makes such determination, (III) the director has failed to comply with, or certify compliance with, the Governance Principles or (IV) the conduct of such director is likely to be prejudicial to the sound and prudent management of the SEF.

6.5 Vacancies. If the office of any director, member of a committee or other officer becomes vacant by reason of death, resignation or for any other reason, the affirmative vote of the holders of a Majority Interest may appoint any qualified Person to fill such vacancy (without a proposal from the Nominating Committee), who shall hold office for the unexpired term and until his or her successor shall be duly chosen.

6.6 Meetings.

6.6.1. *First Meeting.* The newly elected directors may hold their first meeting for the purpose of organization and the transaction of business at such time and place as may be fixed by consent in writing of all the directors, but in no event later than the annual meeting of the Unitholders.

6.6.2 *Regular Meetings.* Regular meetings of the directors may be held without notice at such places and times as shall be determined from time to time by resolution of the directors, *provided* that the Board of Directors shall meet for the transaction of any business at least quarterly.

6.6.3 *Special Meetings.* Special meetings of the Board of Directors may be called by the Chairman or by the Secretary on the written request of any two (2) directors to each director and shall be held at such place or places as may be determined by the directors, or shall be stated in the call of the meeting. The attendance of any director at a special meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, will constitute a waiver of notice by such director.

6.6.4 *Teleconference.* Unless otherwise restricted by the Certificate, or by this Agreement, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or other communications equipment by means of which all Persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

6.6.5 *Quorum.* The presence of at least fifty percent (50%) of the directors shall constitute a quorum for the transaction of business; *provided* that directors that are recused with respect to a particular issue nevertheless shall be deemed present for the purpose of determining the existence of a quorum. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained, and no further notice thereof need be given other than by announcement at the meeting which shall be so adjourned.

6.6.6 *Voting.* Each director shall have one (1) vote in all matters brought before the Board of Directors at which such director is present. Unless this Agreement, the Certificate, the CFTC Regulations, the Delaware Act or other applicable law shall require the vote of a greater number, decisions of the Board of Directors shall require the approval of a majority of the directors present at a meeting; *provided* that should the Board of Directors be unable to render a decision due to either a tie in the vote or more than one director being recused with respect to the issue being voted upon, unless otherwise prohibited by the CFTC Regulations or the Delaware Act, then the affirmative vote of a Majority Interest, may make the decision in lieu of the Board of Directors.

6.6.7 *Action by Board of Directors Without a Meeting.* Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting, if consent thereto is signed, in writing or by electronic transmission, in accordance with applicable law, by all members of the Board of Directors, or of such committee as the case may be, in accordance with applicable law, and such consent is filed with the minutes of proceedings of the Board of Directors or committee. Any such consent may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts together constituting the same consent. An electronic transmission consenting to an action to be taken and transmitted by a director or committee



member shall be deemed to be written, signed and dated for the purposes of this section provided that such electronic transmission sets forth information from which the Company can determine that the electronic transmission was transmitted by such director or committee member and the date on which such director or committee member transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed the date on which such consent was signed.

6.6.8 *Waiver of Notice.* When any notice is required to be given to any director, notice need not be given to a director if such director (i) signs a waiver thereof, a consent to holding the meeting or an approval of the minutes thereof, in each case whether before, at or after the meeting or (ii) attends the meeting without protesting the lack of notice prior to the commencement of the meeting.

## 6.7 Committees.

### 6.7.1 *Standing Committees.*

(i) General. The Board of Directors shall designate such standing committees (each, a "Standing Committee") as are specified in this Article 6.7. The members of Standing Committees shall be directors appointed by the Chairman, subject to the approval of the Board of Directors, as promptly as possible after each annual meeting of the Company. Each appointee will serve until the due appointment of his or her successor or his or her resignation or removal, with or without cause, by a majority vote of the Board of Directors. Subject to the approval of the Board of Directors, the Chairman shall also designate the chairman of each Standing Committee.

(ii) Duties. Each Standing Committee shall assist in the supervision, management and control of the affairs of the SEF within its particular area of responsibility. Subject to the control and supervision of the Board of Directors, each Standing Committee shall recommend for adoption such Rules of the SEF or amendments thereto as it may deem necessary or advisable for the orderly conduct of its business, and administer the Rules of the SEF within its particular area of responsibility.

(iii) Meetings. Except as may be otherwise provided in this Agreement or the Certificate, and except as otherwise directed by the Board of Directors, each Standing Committee shall determine the manner, form and time of conducting its proceedings. Each Standing Committee may act at a meeting, through a quorum composed of a majority of all its members then in office; *provided* that a quorum shall not exist unless at least two (2) members of any such Standing Committee are present; *provided, further*, that members of a Standing Committee that are recused with respect to a particular issue nevertheless shall be deemed present for the purpose of determining the existence of a quorum. The decision of a majority of those voting at a meeting at which a quorum is present shall be the decision of the Standing Committee. Any or all members of any Standing Committee may participate in any meeting thereof by means of conference telephone or other communications equipment by means of which all members participating in such meeting can hear each other. Alternatively, each Standing

Committee may act without a meeting if all of its members consent in writing to the action in question.

(iv) Alternates. In the event of the absence or disqualification of any member of a Standing Committee from any meeting thereof, the Chairman or the CEO, in the order of their availability, may appoint another qualified director to act at the relevant meeting in the place of such absent or disqualified member.

6.7.2 *Special Committees*. In addition to the Standing Committees, the Board of Directors may from time to time constitute and appoint, by rule or resolution, special committees of the Board of Directors and designate their composition, responsibilities and powers. The provisions regarding Standing Committees in subparagraphs (i) through (iv) in Article 6.7.1 above shall apply to any such special committees of the Board of Directors with any such modifications or adaptations as may be necessary or appropriate under the circumstances. The Board of Directors may designate one or more directors as alternate members of any special committee, who may replace any absent or disqualified member at any meeting of the special committee. In the absence or disqualification of any member of such special committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

6.7.3 *General Powers of Standing Committees and Special Committees*. Any Standing Committee or special committee, to the extent provided in the resolution of the Board of Directors, or in this Agreement, but subject to the Delaware Act, the CEA and the CFTC Regulations, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Company, and may authorize the seal of the Company to be affixed to all papers which may require it, but no such committee shall have the power or authority in reference to amending the Certificate, this Agreement, adopting an agreement of merger or consolidation, recommending to the Unitholders the sale, lease or exchange of all or substantially all of the Company's property and assets, or recommending to the Unitholders a dissolution of the Company or a revocation of a dissolution; and, unless the resolution, this Agreement, or the Certificate expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of Units.

6.7.4 *Nominating Committee*. At such time as determined in the discretion of the Board of Directors (or at such other time as may otherwise be required by the CFTC Regulations), the Board of Directors shall establish a Nominating Committee. The Nominating Committee shall be a Standing Committee of the Board of Directors, and shall be composed of at least fifty-one percent (51%) Public Directors. Each member of the Nominating Committee shall serve until the due appointment of his or her successor, or until his or her earlier resignation or removal, with or without cause, as a member of the Nominating Committee or as a Public Director, as applicable. A member of the Nominating Committee may serve for multiple terms. The chair of the Nominating Committee shall be a Public Director. The Nominating Committee shall: (i) identify individuals qualified to serve on the Board of Directors, consistent with criteria specified by the Board of Directors and any composition requirements that the CFTC

promulgates; and (ii) nominate individuals to the Unitholders of the Company for designation as directors.

*6.7.5 Participation Committee.* At such time as determined in the discretion of the Board of Directors (or at such other time as may otherwise be required by the CFTC Regulations), the Board of Directors shall establish a Participation Committee. The Participation Committee shall be a Standing Committee of the Board of Directors, and shall be composed of at least thirty-five percent (35%) Public Directors. Each member of the Participation Committee shall serve until the due appointment of his or her successor, or until his or her earlier resignation or removal, with or without cause, as a member of the Participation Committee or as a Public Director, as applicable. A member of the Participation Committee may serve for multiple terms. The Participation Committee shall: (i) determine the standards and requirements for initial and continuing SEF participation eligibility; (ii) review appeals of staff denials of SEF membership or participation applications; and (iii) approve rules that would result in different categories or classes of Participants receiving disparate access to the SEF. The Participation Committee shall not uphold any staff denial if the relevant application meets the standards and requirements that the Participant Committee sets forth from time to time, and the Participation Committee shall not restrict access or impose burdens on access to the SEF in a discriminatory manner, within each category or class of Members or Participants or between similarly situated categories or classes of Members or Participants.

*6.7.6 Regulatory Oversight Committee.* The Regulatory Oversight Committee shall be a Standing Committee of the Board of Directors and shall consist only of Public Directors. Each member of the Regulatory Oversight Committee shall serve until the due appointment of his or her successor, or until his or her earlier resignation or removal, with or without cause, as a member of the Regulatory Oversight Committee or as a Public Director. A member of the Regulatory Oversight Committee may serve for multiple terms. The Regulatory Oversight Committee shall:

- (i) Monitor the SEF's self-regulatory program for sufficiency, effectiveness, and independence;
- (ii) Oversee all facets of the SEF's self-regulatory program, including trade practice, market surveillance, audits, examinations and other regulatory responsibilities with respect to Participants, and the conduct of investigations;
- (iii) Review the size and allocation of the SEF's regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel;
- (iv) Review the performance of the Chief Compliance Officer, and make recommendations with respect to such performance to the Board of Directors;
- (v) Review all regulatory proposals prior to implementation and advise the Board of Directors as to whether and how such changes may impact regulation;

(vi) Recommend changes to the SEF's self-regulatory program that would ensure fair, vigorous, and effective regulation;

(vii) Prepare an annual report to the Board of Directors and the CFTC assessing the self-regulatory program of the SEF and including a description of the program, the expenses of the program, the staffing and structure of the program, a catalog of investigations and disciplinary actions taken during the year, and a review of the performance of the Review Panel, Hearing Panel, and Chief Compliance Officer; and

(viii) Perform such other duties as the Board of Directors may delegate to it from time to time.

In addition, the Regulatory Oversight Committee may impose controls on the SEF to reduce the potential risk of market disruption, including but not limited to market restrictions that pause or halt trading in specified market conditions.

## 6.8 Disciplinary Panels.

6.8.1 *Review Panel.* At such time as determined in the discretion of the Board of Directors (or at such other time as may otherwise be required by the CFTC Regulations), the Board of Directors shall appoint a Review Panel, which shall consist of no less than five (5) panelists. The Review Panel shall also include at least one Person who would not be disqualified from serving as a Public Director under the CFTC Regulations (the "Public Panelist"). Such Public Panelist shall serve as the chair of the Review Panel. No Participant shall be permitted to participate in deliberations or voting on any matter in which the Participant has a financial interest. The Review Panel shall have the power to direct that an investigation of any suspected Violation be conducted. In any case where the Review Panel concludes, by majority vote, that a Violation may have occurred, the relevant Participant shall be advised of that fact and the matter shall be referred to the Hearing Panel, pursuant to the procedures detailed in Chapter Five of the SEF Rulebook.

6.8.2 *Hearing Panel.* At such time as determined in the discretion of the Board of Directors (or at such other time as may otherwise be required by the CFTC Regulations), the Board of Directors shall appoint a Hearing Panel, which shall consist of no less than five (5) panelists. The Hearing Panel shall include at least one Person who is a Public Panelist. Such Public Panelist shall serve as the chair of the Hearing Panel. No Participant shall be permitted to participate in deliberations or voting on any matter in which the Participant has a financial interest. Within ten (10) days of being notified of the appointment of a Hearing Panel, a Respondent (as defined in Chapter Five of the SEF Rulebook) may seek to disqualify any individual named to the Hearing Panel on account of a conflict of interest or other reasonable grounds, by serving written notice to the appropriate staff of the SEF and providing a copy thereof to the chair of the Hearing Panel. By not filing a timely request for disqualification, the Respondent will be deemed to have waived any objection to the composition of the Hearing Panel. The appropriate staff of the SEF will decide the merits of any request for disqualification within his or her sole discretion and such decision will not be subject to appeal. The Hearing

Panel shall conduct the formal hearings on Violations referred to it by the Review Panel, pursuant to the procedures detailed in Chapter Five of the SEF Rulebook.

6.8.3 *General.* In designating the members of a Review Panel or Hearing Panel, the Board of Directors shall endeavor to appoint a panel that is not dominated or subject to disproportionate influence by any group or class of Participants. The Board of Directors shall consider the objection of any Participant who believes this objective is not satisfied, and the Board of Directors shall determine whether a change is necessary or advisable to meet this objective.

## 6.9 Compensation.

6.9.1 *Salary.* Directors that are employees of the Company, of any Member or any Affiliate of any Member shall not receive any stated salary for their services as directors or as members of committees, but by resolution of the Board of Directors, a fixed fee and expenses of attendance may be allowed for each director's attendance at each meeting.

6.9.2 *Other Capacity.* Nothing in this Article 6.9 shall be construed to preclude any director (other than a Public Director) from serving the Company in any other capacity as an officer, agent or otherwise, and receiving compensation therefor.

6.9.3 *Compensation Not Linked to SEF Performance.* Any compensation awarded to Public Directors and other nonexecutive directors shall not be linked to the business performance of the SEF.

6.10 Confidentiality. Absent prior written consent of the SEF, no member of the Board of Directors or any committee established by the Board of Directors or by or pursuant to the Rules of the SEF or any officer or other employee or consultant shall, either during or after service with the SEF, use, directly or indirectly, information that is deemed to be non-public information, or disclose non-public information to others, except (a) to others within the SEF, the SEF's Affiliates or to outside advisors thereof or other service providers, provided that such advisors and service providers are subject to confidentiality obligations, and that such disclosure is necessary for the performance of official duties by the individual or entity, (b) if required by regulatory authority, or (c) if compelled to do so by valid legal process, provided that the individual or entity notifies the SEF. For purposes of this Article 6.10, the terms "employee" and "non-public information" have the meanings ascribed to them in CFTC Regulation § 1.59.

## ARTICLE 7

### OFFICERS

7.1 Officers of the Company. The officers of the Company shall be the Chairman of the Board of Directors, a Chief Executive Officer and President, Secretary, Chief Financial Officer and Treasurer and Chief Compliance Officer. In addition, the Board of Directors may appoint Co-Presidents, a Chief Operating Officer, one or more Vice-Presidents, one or more Assistant Secretaries and Assistant Treasurers, and any other officers as the Board of Directors may deem proper, who shall hold their offices for such terms and shall exercise such powers and

perform such duties as shall be determined from time to time by the Board of Directors, except as otherwise provided by the CEA or applicable law. The Board of Directors may authorize any officer of the Company to act for or bind the Company to the extent so authorized by the Board of Directors. Except as otherwise provided by the CEA or applicable law, any number of offices may be held by the same Person. Each officer shall be of sufficiently good repute and possess the requisite skills and expertise to fulfill his or her responsibilities in the management and governance of the Company, to have a clear understanding of such responsibilities and to exercise sound judgment about the affairs of the Company.

7.2 Appointment, Removal and Vacancies. The Chairman shall be appointed by the affirmative vote of a majority interest of the Unitholders, and shall hold office until his or her successor is elected and qualified. The other officers of the Company shall each be elected by the Board of Directors and hold office until their successors are elected and qualified. None of the officers of the Company need be directors. The officers shall be elected at the first meeting of the Board of Directors after each annual meeting. Subject to Article 7.10.3 and compliance with the CEA, any officer, other than the Chairman, may be removed from his or her position as an officer of the Company at any time, either with or without cause, by the Chairman, or the affirmative vote of a majority of the directors then in office.

7.3 Resignation. Any officer may resign at any time by written notice to the Board of Directors. Such resignation shall be made in writing, and, unless specifically contingent upon its acceptance, shall take effect at the date or as of the effective date specified therein, and if no time be specified, at the time of its receipt by the Board of Directors. The acceptance of a resignation shall not be necessary to make it effective.

7.4 Chairman. The Chairman shall preside at all meetings of the Board of Directors. He or she shall also preside at all meetings of the Unitholders if present thereat. He or she shall have and perform such other duties as are set forth in this Agreement and from time to time as may be assigned to him or her by the Board of Directors.

7.5 Chief Executive Officer and President. The CEO shall serve as the Chief Executive Officer and President of the Company, shall be the principal executive officer of the Company and, subject to the control of the Board of Directors, shall supervise and manage the business and affairs of the Company, and, in the absence or nonelection of the Chairman, shall preside at all meetings of the Board of Directors. The CEO shall see that all orders and resolutions of the Board of Directors are carried into effect (unless any such order or resolution shall provide otherwise), and in general shall perform all duties incident to the office of Chief Executive Officer and President and such other duties as may be prescribed by the Board of Directors from time to time. The CEO shall have a background and skills appropriate for developing and implementing high-level strategies, making major corporate decisions, managing the overall operations and resources of the SEF, and acting as the main point of communication between the Board of Directors and the SEF's operations.

7.6 Chief Financial Officer and Treasurer. The Chief Financial Officer and Treasurer shall have custody of, and when proper shall pay out, disburse or otherwise dispose of, all funds and securities of the Company which may have come into his or her hands; he or she

may endorse on behalf of the Company for collection checks, notes and other obligations and shall deposit the same to the credit of the Company in such bank or banks or depository or depositories as the Board of Directors may designate; he or she shall sign all receipts and vouchers for payments made to the Company; he or she shall enter or cause to be entered regularly in the books of the Company kept for the purpose full and accurate accounts of all moneys received or paid or otherwise disposed of by him or her and whenever required by the Board of Director or the CEO shall render statements of such accounts; he or she shall, at all reasonable times, exhibit his or her books and accounts to any director of the Company upon application at the office of the Company during business hours; and he or she shall have all powers and perform all duties incident of the office of the Chief Financial Officer and Treasurer and shall also have such other powers and shall perform such other duties as may from time to time be assigned to him or her by this Agreement or by the Board of Directors or the CEO. The Chief Financial Officer and Treasurer shall have a background and skills appropriate for overseeing the financial activities of the SEF, including financial planning, monitoring cash flow, overseeing the accounting and finance departments, and ensuring that the SEF's financial reports are accurate and completed on time.

7.7 Assistant Treasurers. The assistant treasurers, if any, shall perform such duties as shall be assigned to them by the Chief Financial Officer and Treasurer or by the Board of Directors. In the absence of the Treasurer, or in the event of his or her inability or refusal to act, unless otherwise determined by the Board of Directors, an assistant treasurer (or in the event there be more than one assistant treasurer, the assistant treasurers in the order designated, or in the absence of any designation, then in the order of their election) shall perform the duties of the Chief Financial Officer and Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chief Financial Officer and Treasurer.

7.8 Secretary. The Secretary shall (i) keep the minutes of the meetings of the Unitholders, the Board of Directors and all committees, if any, of which a secretary shall not have been appointed, in one or more books provided for that purpose; (ii) see that all notices are duly given in accordance with the provisions of this Agreement and as required by law; (iii) be custodian of the corporate records and of the seal of the Company and see that the seal of the Company is affixed to all documents, the execution of which on behalf of the Company under its seal, is duly authorized; (iv) keep a register of the address of each Unitholder which is furnished to the Secretary by such Unitholder; (v) have general charge of the unit transfer books of the Company and sign with the applicable directors any Unit certificates, the issue of which shall have been authorized by resolution of the Board of Directors; (vi) certify the resolutions of the Board of Directors, and other documents to the Company as true and correct thereof; and (vii) in general perform all duties incident to the office of secretary and such other duties as may be prescribed by the Board of Directors or the CEO from time to time.

7.9 Assistant Secretaries. The assistant secretaries, if any, shall perform such duties as shall be assigned to them by the Secretary or by the Board of Directors. In the absence of the Secretary, or in the event of his or her inability or refusal to act, unless otherwise determined by the Board of Directors, an assistant secretary (or in the event there be more than one assistant secretary, the assistant secretaries in the order designated, or in the absence of any designation, then in the order of their election) shall perform the duties of the Secretary, and when so acting,

shall have all the powers of and be subject to all the restrictions upon the Secretary.

#### 7.10 Chief Compliance Officer.

7.10.1 *Appointment; Qualifications.* The Board of Directors shall appoint and approve the Chief Compliance Officer of the Company, who shall be the Chief Compliance Officer of the SEF. The Chief Compliance Officer shall not serve as general counsel of the Company or the SEF, or as a member of the Company's or the SEF's legal department, and may not be disqualified from registration pursuant to sections 8a(2) or 8a(3) of the CEA. The Board of Directors shall approve the compensation of the Chief Compliance Officer and shall meet with the Chief Compliance Officer at least annually (which meeting may occur in person or by telephone). The Chief Compliance Officer shall also meet with the Regulatory Oversight Committee at least quarterly. The appointment of the Chief Compliance Officer and the amount of the Chief Compliance Officer's compensation shall require the approval of a majority of the directors.

7.10.2 *Duties.* The Chief Compliance Officer shall have the following duties, which list shall not be deemed exhaustive:

- (i) oversee and review the SEF's compliance with section 5h of the CEA and any related rules adopted by the CFTC;
- (ii) in consultation with the Board of Directors, resolve any conflicts of interest that may arise;
- (iii) establish and administer written policies and procedures reasonably designed to prevent violation of the CEA and any rules adopted by the CFTC;
- (iv) take reasonable steps to ensure compliance with the CEA and CFTC Regulations relating to agreements, contracts, or transactions, and with CFTC Regulations under section 5h of the CEA;
- (v) establish procedures for the remediation of noncompliance issues identified by the Chief Compliance Officer through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint;
- (vi) establish and follow appropriate procedures for handling, management response, remediation, retesting, and closing of noncompliance issues;
- (vii) establish a compliance manual designed to promote compliance with applicable laws, rules and regulations and administer a written code of ethics designed to prevent ethical violations and to promote honesty and ethical conduct;
- (viii) supervise the SEF's self-regulatory program with respect to trade practice surveillance, market surveillance, real-time market monitoring, compliance



with audit trail requirements, enforcement and disciplinary proceedings, audits, examinations and other regulatory responsibilities with respect to Participants (including ensuring compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and

- (ix) supervise the effectiveness and sufficiency of any regulatory services provided to the SEF by NFA or any other registered futures association or other registered entity.

The Chief Compliance Officer shall also prepare and file any annual compliance reports with the CFTC that are required by the CEA or CFTC Regulations. The Chief Compliance Officer shall have supervisory authority over all staff acting in furtherance of the Chief Compliance Officer's obligations.

7.10.3 *Removal.* Removal of the Chief Compliance Officer shall require the approval of a majority of the directors. The Company shall notify the CFTC of the departure of the Chief Compliance Officer and explain the reasons for the departure within two (2) Business Days. The Board of Directors shall immediately appoint an interim Chief Compliance Officer and shall appoint a permanent Chief Compliance Officer as soon as reasonably practicable thereafter. The SEF shall notify the CFTC within two (2) Business Days of appointing any new interim or permanent Chief Compliance Officer.

7.11 Compensation. The officers of the Company shall be entitled to receive such compensation for their services as shall from time to time be determined by the Board of Directors or on their behalf in accordance with the policies adopted by the Board of Directors.

## ARTICLE 8

### CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS; TRANSFERS OF UNITS

8.1 Capital Contributions. Each Unitholder, or any predecessor which was a Unitholder prior to transferring its Units to such Unitholder, has contributed such amount set forth in Exhibit B as its Capital Contribution, in return for which such Unitholder (or such predecessor prior to such transfer) has received Units. Except as set forth in Exhibit B, no Unitholder shall be required to make any Capital Contributions. To the extent agreed and approved by the Unitholders and the Board of Directors in accordance with this Article 8, the Unitholders shall make additional Capital Contributions at such time or times as may be required pursuant to such agreement or agreements.

8.2. Capital Accounts. A separate Capital Account will be maintained for each Unitholder in accordance with this Article 8.2 and Exhibit B.

8.2.1 Each Unitholder's Capital Account will be increased by (i) such Unitholder's Capital Contributions (net of liabilities secured by such contributed Property that the Company is considered to assume or take subject to under Section 752 of the Code); (ii) such Unitholder's distributive share of Net Profits and any items in the nature of income or gain which

are specially allocated pursuant to Part D(3) of Exhibit D; and (iii) the amount of Company liabilities assumed by such Unitholder or which are secured by any Property distributed to such Unitholder.

8.2.2 Each Unitholder's Capital Account will be decreased by (i) the amount of money distributed to such Unitholder by the Company; (ii) the Gross Asset Value of Property distributed to such Unitholder by the Company (net of liabilities secured by such distributed Property that such Unitholder is considered to assume or take subject to under Section 752 of the Code); (iii) such Unitholder's distributive share of Net Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Part D(3) of Exhibit D; and (iv) the amount of any liabilities of such Unitholder assumed by the Company.

8.2.3 In the event of a permitted sale or exchange of Units, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Units in accordance with Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

8.2.4 Except as otherwise required in the Delaware Act and subject to Article 8.1, no Unitholder shall have any liability to restore all or any portion of a deficit balance in such Unitholder's Capital Account.

8.3. Transfers of Units. Subject to compliance with any applicable CFTC Regulations, a Unitholder may transfer its Units to another Person with the prior consent of a Majority Interest either in writing or at a meeting called for such purpose. If consent of a Majority Interest is not obtained, the transferee shall have no right to participate in the management of the business and affairs of the Company or to become a Unitholder. The transferee shall be entitled to receive the share of profits, losses, distributions or other compensation by way of income and the return of contributions to which the transferor otherwise would be entitled. The Unitholders agree to sign such additional documents as may be required in order to admit additional Unitholders to the Company, as well as, among other things, to provide for the division of profits, losses and distributions among the Unitholders. All costs and expenses incurred by the Company in connection with the assignment of a Unitholder's interest, including any filing fees publishing costs and the fees and disbursements of counsel, shall be paid by the assigning Unitholder. Each Person who becomes a Unitholder, by becoming a member of the Company, shall and does hereby ratify and agree to be bound by the terms and conditions of this Agreement.

## ARTICLE 9

### ACCOUNTS; DIVIDENDS; FINANCIAL RESOURCES

9.1 Accounts. The Company shall draw up accounts to a date coterminous with the accounting reference date of Unitholders holding a Majority Interest; provided, however, that the Board of Directors may at any time change the fiscal or accounting year of the Company. Subject to the preceding sentence, the Fiscal Year of the Company shall begin on the 1<sup>st</sup> of April in each year and terminate on the 31<sup>st</sup> of March in each succeeding year.

9.2 Dividends. Subject to the Delaware Act, the CFTC Regulations (including retention by the Company of any amounts as may be required by the CFTC Regulations in order to fund its operations) and the provisions of the Certificate, the Board of Directors may, out of funds legally available therefor at any regular or special meeting, declare dividends upon the capital of the Company as and when they deem expedient. Before declaring any dividend there may be set apart out of any funds of the Company available for dividends, such sum or sums as the directors from time to time in their discretion deem proper for working capital or as a reserve fund to meet contingencies or for equalizing dividends or for such other purposes as the directors shall deem conducive to the interests of the Company.

9.3 Financial Resources. The Company must maintain adequate financial, operational, and managerial resources to discharge each responsibility of the SEF. The Company shall maintain financial resources as required by the CFTC Regulations.

## ARTICLE 10

### INDEMNIFICATION

10.1 Indemnification. Any individual who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding (a "Proceeding"), whether civil, criminal, administrative, or investigative in nature (whether or not by or in the right of the Company), by reason of the fact that such individual is or was a director, officer, employee, committee member, agent or organizer of the Company, or is or was serving at the request of the Company as a director, officer, employee, committee member or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise (an "Other Entity"), shall be indemnified by the Company to the fullest extent permitted by law against expenses (including counsel fees and disbursements), judgments, fines (including excise taxes assessed on an individual with respect to any employee benefit plan), and amounts paid in settlement incurred by him or her in connection with such Proceeding. Any other individual may be similarly indemnified in respect of service to the Company or to an Other Entity at the request of the Company to the extent the Board of Directors at any time specifies that any such individual is entitled to the benefits of this Article 10 (any individual so indemnified pursuant to this Article 10 being a "Covered Individual"). However, no Person shall be indemnified from liability for fraud, bad faith, willful misconduct or gross negligence. Further, no Person shall be indemnified against a civil penalty imposed by the CFTC under section 6b of the CEA.

10.2 Advancement of Expenses. The Company shall, from time to time, reimburse or advance to any Covered Individual the funds necessary for payment of expenses, including attorneys' fees and disbursements, incurred in connection with any Proceeding, in advance of the final disposition of such Proceeding; *provided, however*, that, if (and only if) required by the Delaware Act, such expenses incurred by or on behalf of any Covered Individual may be paid in advance of the final disposition of a Proceeding only upon receipt of the Company of an undertaking, by or on behalf of such Covered Individual, to repay any such amount so advanced if it shall ultimately be determined by final judicial decision from which there is no further right of appeal that such Covered Individual is not entitled to be indemnified for such expenses.

10.3 Rights Not Exclusive. The rights to indemnification and reimbursement or advancement of expenses provided by, or granted pursuant to, this Article 10 shall not be deemed exclusive of any other rights to which an individual seeking indemnification or reimbursement or advancement of expenses may have or hereafter be entitled under any statute, the Certificate, this Agreement, any agreement, any vote of Unitholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

10.4 Continuing Rights. The rights to indemnification and reimbursement or advancement of expenses by, or granted pursuant to, this Article 10 shall continue as to an individual who has ceased to be a director or officer (or other Covered Individual indemnified hereunder), shall inure to the benefit of the executors, administrators, legatees and distributees of such individual, and in either case, shall inure whether or not the claim asserted is based on matters which antedate the adoption of this Article 10.

10.5 Insurance. The Company shall have power to purchase and maintain insurance on behalf of any Covered Individual against any liability asserted against such individual and incurred by such individual in any such capacity as an agent of the Company, or arising out of such individual's status as such, whether or not the Company would have the power to indemnify such individual against such liability under the provisions of the Certificate, this Agreement, the SEF Rulebook or under the Delaware Act or any other provision of law.

10.6 Contract Rights; No Repeal. The provisions of this Article 10 shall be a contract between the Company, on the one hand, and each Covered Individual who serves in his or her capacity as an agent of the Company at any time while this Article 10 is in effect and any other individual indemnified hereunder, on the other hand, pursuant to which the Company and each such Covered Individual intend to be legally bound. No repeal or modification of this Article 10 shall affect any rights or obligations with respect to any state of facts then existing or heretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

10.7 Enforceability; Burden Of Proof. The rights of indemnification and reimbursement or advancement of expenses provided by, or granted pursuant to, this Article 10 shall be enforceable by any individual entitled to such indemnification or reimbursement or advancement of expenses in any court of competent jurisdiction. The burden of proving that such indemnification or reimbursement or advancement of expense is inappropriate shall be on the Company. Neither the failure of the Company (including its Board of Directors, its independent legal counsel and its Unitholders) to have made a determination prior to the commencement of such action that such indemnification or reimbursement or advancement of expenses is proper in the circumstances nor an actual determination by the Company (including its Board of Directors, its independent legal counsel and its Unitholders) that such individual is not entitled to such indemnification or reimbursement or advancement of expenses shall constitute a defense to the action or create a presumption that such individual is not so entitled. Such an individual shall also be indemnified for any expenses incurred in connection with successfully establishing his or her right to such indemnification or reimbursement or advancement of expenses, in whole or in part, in any such Proceeding.

10.8 Service At The Request Of The Company. Any director or officer of the Company serving in any capacity in (a) another corporation of which a majority of the shares entitled to vote in the election of its directors is held, directly or indirectly, by the Company or (b) any employee benefit plan of the Company or any corporation referred to in clause (a) shall be deemed to be doing so at the request of the Company.

10.9 Right To Be Covered By Applicable Law. Any individual entitled to be indemnified or to reimbursement or advancement of expenses as a matter of right pursuant to this Article 10 may elect to have the right to indemnification or reimbursement or advancement of expenses interpreted on the basis of the applicable law in effect at the time of the occurrence of the event or events giving rise to the applicable Proceeding, to the extent permitted by law, or on the basis of the applicable law in effect at the time such indemnification or reimbursement or advancement of expenses is sought. Such election shall be made, by a notice in writing to the Company, at the time indemnification or advancement of expenses is sought; *provided, however*, that if no such notice is given, the right to indemnification or reimbursement or advancement of expenses shall be determined by the law in effect at the time indemnification or reimbursement or advancement of expense of sought.

## ARTICLE 11

### UNIT CERTIFICATES

11.1 Certificates. Every Unitholder in the Company shall be entitled, in accordance with Section 18-702(c) of the Act, to have a certificate signed by or in the name of the Company by either (i) two (2) members of the Board of Directors or (ii) the Chairman or Vice Chairman of the Board of Directors, if they be elected, CEO or Vice-President, and the Chief Financial Officer and Treasurer or an Assistant Treasurer, or Secretary or an Assistant Secretary, in each case representing the number, series and class of units in the Company owned by such holder. Any of or all the signatures may be facsimile. In case any director or officer who shall have signed any such certificate or certificates shall cease to be such director or officer of the Company, whether because of death, resignation or otherwise, before such certificate or certificate shall have been delivered by the Company, such certificate or certificates may nevertheless be issued and delivered as though the Person or Persons who signed such certificate or certificates had not ceased to be such director or officer of the Company.

11.2. Record Ownership. A record of the name and address of the holder of such certificate, the number of shares represented thereby and the date of issue thereof shall be made on the Company's books. The Company shall be entitled to treat the holder of any Unit as the holder in fact thereof, and accordingly shall not be bound to recognize any equitable or other claim to or interest in any Unit on the part of any other Person, whether or not it shall have express or other notice thereof, except as required by law.

11.3 Lost, Stolen or Destroyed Certificates; Issuance of New Certificates. The Company may issue a new certificate of Units in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Company may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Company a

bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

11.4 Unitholder Record Date. The Board of Directors may fix, in advance, a Unitholder record date in accordance with Section 5.5.

## ARTICLE 12

### ALLOCATIONS; INCOME TAX; ELECTIONS AND REPORTS

12.1 Allocations of Profits and Losses from Operations. The Net Profits and Net Losses of the Company for each Fiscal Year shall be allocated to the Capital Accounts of the Unitholders in proportion to their respective Percentage Interests in the Company. Subject to the other provisions of this Article 12, allocations to a Unitholder of Net Profits or Net Losses shall be treated as an allocation of the same unit of each item of income, gain, loss, deduction or credit that is taken into account in computing Net Profits or Net Losses.

#### 12.2 Tax Allocations.

12.2.1 In General. Except as otherwise provided in this Article 12.2, for income tax purposes each item of income, gain, loss and deduction (collectively, "Tax Items") shall be allocated among the Unitholders in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Article 12.1.

12.2.2 Allocations Respecting Section 704(c). Tax Items with respect to Company Property that is contributed to the Company by a Unitholder shall be united among the Unitholders solely for income tax purposes pursuant to Treasury Regulations promulgated under Section 704(c) of the Code, so as to take into account the variation, if any, between the basis of the Property to the Company and its initial Gross Asset Value. With respect to Company Property, if any, that is initially contributed to the Company upon its formation, such variation between basis and initial Gross Asset Value shall be taken into account under the "traditional method" as described in Proposed Treasury Regulation § 1.704-3(b) and Treasury Regulation § 1.704-1(c)(2). In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (ii) of the definition of Gross Asset Value, subsequent allocations of Tax Items with respect to such asset shall, solely for Federal income tax purposes, take account of the variation, if any, between the adjusted basis of such asset and its Gross Asset Value in the same manner as under Code Section 704(c) and the applicable Treasury Regulation under the same method.

12.3 Accounting Principles. The Company's financial statements shall be prepared and its profit and loss statement shall be determined in accordance with generally accepted accounting principles applied on a consistent basis using the accrual method of accounting.

12.4 Interest on and Return of Capital Contributions. No Unitholder shall be entitled to interest on its Capital Contribution or to a return of its Capital Contribution.

12.5 Loans to Company. Nothing in this Agreement shall prevent any Unitholder from making secured or unsecured loans to the Company by agreement with the Company.

12.6 Records and Report. At the expense of the Company, the Board of Directors shall maintain records and accounts of the operations and expenditures of the Company. At a minimum, the Company shall keep at its principal place of business the following records:

(i) A current list of the full name and last known business or mailing address of each Unitholder and director;

(ii) A copy of the Certificate and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

(iii) Copies of the Company's financial statements and Federal, state and local income tax returns and reports, if any, for the three most recent years;

(iv) Copies of the Company's currently effective written Agreement, as amended; and

(v) A copy of any other records as may be required under the CFTC Regulations from time to time.

12.7 Returns and Other Elections. The Board of Directors shall cause the preparation and timely filing of tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns or pertinent information therefrom shall be furnished to the Unitholders within a reasonable time after the end of the Company's Fiscal Year. All elections permitted to be made by the Company under Federal or state laws shall be made by the Treasurer in his or her sole discretion.

12.8 Tax Matters Partner. If necessary to have Subchapter C of Chapter 63 of the Code (the so-called "TEFRA" audit provisions) apply to the Company, and if the Company is a partnership for U.S. Federal income tax purposes, the Company shall make an election pursuant to Code Section 6231(a)(1)(B)(ii). If the TEFRA audit provisions apply to the Company, ICAP Broking Holdings North America LLC will be the "Tax Matters Partner" (as defined in Code Section 6231), and will be authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including, without limitation, administrative and judicial proceedings and to expend Company funds for professional services and costs associated therewith. The Unitholders agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings.

## ARTICLE 13

### INCOME AND ASSETS; DISTRIBUTIONS TO UNITHOLDERS

13.1 Income and Assets. The income and assets of the Company belong beneficially to the Company. Upon liquidation of the Company, liquidating distributions shall be made in accordance with Article 14.

13.2 Distributions. Subject to Section 18-607 of the Delaware Act, the Board of Directors may cause the Company to make distributions of cash or other Property to the Unitholders at such time and for such amounts as determined by the Board of Directors; *provided, however,* that the Board of Directors shall use its best efforts to distribute to the Unitholders with respect to each Fiscal Year an amount of cash reasonably estimated to be sufficient to enable the Unitholders to pay taxes (computed under principles and at rates determined by the Board of Directors) on their distributive shares of Company income for such Fiscal Year. Upon liquidation of the Company, liquidating distributions shall be made in accordance with Article 14.2 below.

## ARTICLE 14

### DISSOLUTION AND TERMINATION

#### 14.1 Dissolution.

14.1.1 The Company shall be dissolved upon the occurrence of any of the following events (each, a "Termination Event"):

- (i) by the unanimous written consent of the Unitholders; or
- (ii) the entry of a decree of judicial dissolution under Section 18-802 of the Delaware Act.

14.1.2 The dissolution of the Company shall be effective on the day on which a Termination Event occurs, but the Company shall not terminate until the certificate of cancellation shall be filed with the Secretary of State of the State of Delaware and the assets of the Company are distributed as provided in Article 14.2 below.

#### 14.2 Winding Up, Liquidation and Distribution of Assets.

14.2.1 Upon dissolution of the Company, the Board of Directors shall be responsible for the winding up of the affairs of the Company and the distribution of its assets. In connection with a winding up of the affairs of the Company, the Board of Directors shall cause an accounting to be made of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution.



14.2.2 If the Company is dissolved and its affairs are to be wound up, the Board of Directors shall:

- (i) First, sell or otherwise liquidate all of the Company's assets as promptly as practicable;
- (ii) Second, discharge all liabilities of the Company, including liabilities to the Unitholders as creditors of the Company to the extent permitted by law; and
- (iii) Third, distribute the remaining assets to the Unitholders in proportion to their remaining positive Capital Account balances.

14.2.3 Upon completion of the winding up, liquidation and distribution of the assets of the Company, the Company shall be deemed terminated.

14.2.4 The Board of Directors shall comply with all requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

14.3 Certificate of Cancellation. When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provisions have been made therefore and all of the remaining Property and assets of the Company have been distributed, a certificate of cancellation shall be executed by one or more authorized Persons, which certificate shall set forth the information required by the Delaware Act. The certificate of cancellation shall be filed with the Secretary of State of the State of Delaware, and shall serve to cancel the Certificate of the Company.

14.4 Effect of Filing of Certificate of Cancellation. Upon the filing of the certificate of cancellation with the Secretary of State of the State of Delaware, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Delaware Act. The Board of Directors shall have authority to distribute any Company Property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

## ARTICLE 15

### MISCELLANEOUS PROVISIONS

15.1 Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Delaware, all rights and remedies being governed by said laws.

15.2 Amendments. This Agreement may not be amended except by the affirmative vote or written consent of Unitholders holding a Majority Interest. Notwithstanding the foregoing, the Board of Directors shall be permitted to and shall in good faith take all actions necessary to amend Exhibit B hereto to reflect properly any additional Capital Contributions, changes in units or the holders thereof, in each case effected in accordance herewith; *provided*,

that the failure of the Board of Directors to amend Exhibit B promptly shall not, in any event, render the action requiring such amendment ineffective or otherwise void.

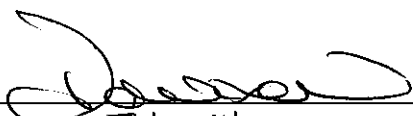
15.3 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Unitholder has caused this Agreement to be executed and delivered as of the date first above written.

UNITHOLDER:

**ICAP BROKING HOLDINGS NORTH  
AMERICA LLC**

By:   
Name: John Nixon  
Title: Director

**EXHIBIT A**

**SEF Rulebook**

**EXHIBIT B**

**Unitholders**

As of August 7, 2013

<b>Name &amp; Address</b>	<b>Initial Capital Contributions</b>	<b>Additional Capital Contributions</b>	<b>Common Units</b>	<b>Percentage Interest</b>
ICAP Broking Holdings North America LLC	\$10	—	1,000	100%

## **EXHIBIT C**

### **Governance Principles**

## EXHIBIT D

### Tax Provisions

For purposes of interpreting and implementing the foregoing Agreement, the following shall apply and shall be treated as part of the terms of the Agreement:

#### Part A. Definitions

(1) Capitalized terms used but not defined in this Exhibit D shall have the meanings ascribed to such terms in the Agreement.

(2) The following terms used in this Exhibit D and in the Agreement shall have the following meanings (unless otherwise expressly provided herein):

(a) “Adjusted Deficit Capital Account” shall mean, with respect to any Unitholder, the deficit balance, if any, in such Unitholder’s Capital Account as of the end of the taxable year, after giving effect to the following adjustments:

(i) Credit to such Capital Account of any amount which such Unitholder is obligated to restore under Treas. Reg. § 1.704-1(b)(2)(ii)(c), as well as any addition thereto pursuant to the penultimate sentences of Treas. Regs. §§ 1.704-2(g)(1) and (i)(5); and

(ii) Debit to such Capital Account of the items described in Treas. Regs. §§ 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

This definition of Adjusted Deficit Capital Account is intended to comply with Treas. Regs. § 1.704-1(b)(2)(ii)(d), and will be interpreted consistently with those regulations.

(b) “Depreciation” shall mean, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for Federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the Federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; *provided, however*, that if the adjusted basis for Federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Unitholders.

(c) “Gross Asset Value” shall mean, with respect to any asset, the asset’s adjusted basis for Federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Unitholder to the Company shall be the fair market value of such asset at the time it is

accepted by the Company, unreduced by any liability secured by such asset, as determined by the Unitholders;

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective fair market values, unreduced by any liabilities secured by such assets, as determined by the Unitholders, as of the following times: (a) the acquisition of an additional interest in the Company by any new or existing Unitholder in exchange for more than a de minimis Capital Contribution, or the grant of an interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by an existing Unitholder acting in a Unitholder capacity, or by a new Unitholder acting in a Unitholder capacity or in anticipation of being a Unitholder; (b) the distribution by the Company to a Unitholder of more than a de minimis amount of Property as consideration for an interest in the Company; and (c) the liquidation of the Company within the meaning of Treas. Regs. § 1.704-1(b)(2)(ii)(g); *provided, however*, that adjustments pursuant to clauses (a) and (b) above shall be made only if the Unitholders reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Unitholders in the Company;

(iii) The Gross Asset Value of any Company asset distributed to any Unitholder shall be adjusted to equal the fair market value of such asset, unreduced by any liability secured by such asset, on the date of distribution as determined by the Unitholders; and

(iv) 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 Code § 734(b) or Code § 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treas. Regs. § 1.704-1(b)(2)(iv)(m) and Part B(6) and Part D(3)(g) hereof; *provided, however*, that Gross Asset Values shall not be adjusted pursuant to this paragraph (iv) to the extent the Unitholders reasonably determine that an adjustment pursuant to paragraph (ii) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to paragraphs (i), (ii), or (iv) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

(d) [reserved]

(e) “Nonrecourse Deductions” shall have the meaning set forth in Treas. Regs. § 1.704-2(b)(1).

(f) “Nonrecourse Liability” shall have the meaning set forth in Treas. Regs. § 1.704-2(b)(3).

(g) “Partner Nonrecourse Debt” shall have the meaning set forth in Treas. Regs. § 1.704-2(b)(4).



(h) “Partner Nonrecourse Debt Minimum Gain” shall mean an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Treas. Regs. § 1.704-2(i)(3).

(i) “Partner Nonrecourse Deductions” shall have the meaning set forth in Treas. Regs. §§ 1.704-2(i)(1) and 1.704-2(i)(2).

(j) “Partnership Minimum Gain” shall have the meaning set forth in Treas. Regs. §§ 1.704-2(b)(2) and 1.704-2(d).

(k) “Regulatory Allocations” shall have the meaning set forth in Part D(3)(h) of Exhibit D.

**Part B.**      Adjustments to Net Profits and Losses

Net Profits and Net Losses shall be subject to the following adjustments:

(1) Any income of the Company that is exempt from Federal income tax and not otherwise taken into account in computing Net Profits or Net Losses pursuant to the definition thereof shall be added to such taxable income or loss;

(2) Any expenditures of the Company described in Code § 705(a)(2)(B) or treated as Code § 705(a)(2)(B) expenditures pursuant to Treas. Regs. § 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Profits or Net Losses pursuant to the definition thereof shall be subtracted from such taxable income or loss;

(3) In the event the Gross Asset Value of any Company asset is adjusted pursuant to paragraphs (ii) or (iii) of the definition of “Gross Asset Value,” the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profits or Net Losses;

(4) Gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for Federal income tax purposes shall be computed by reference to the Gross Asset Value of the Property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Gross Asset Value;

(5) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year, computed in accordance with the definition of Depreciation above;

(6) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code § 734(b) or Code § 743(b) is required pursuant to Treas. Regs. § 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of all of a Unitholder’s Units, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset)

or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Profits or Net Losses; and

(7) Notwithstanding any other provision of the definition of Net Profits and Net Losses or of this Part B of this Exhibit D, any items which are specially allocated pursuant to Part D(3) of this Exhibit D shall not be taken into account in computing Net Profits or Net Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Part D(3) of this Exhibit D shall be determined by applying rules analogous to those set forth in paragraphs (1) through (6) above.

### **Part C.**        Capital Accounts and Adjustments

(1) The Capital Account of a Unitholder who receives a distribution of a promissory note the maker of which is the Company and which is not readily traded on an established securities market shall not be decreased until such Unitholder makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Treas. Regs. § 1.704-1(b)(2)(iv)(e)(2).

(2) The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Company by the maker of the note (or a Person related to the maker of the note within the meaning of Treas. Regs. § 1.704-1(b)(2)(ii)(c)) shall not be included in the Capital Account of any Person until the Company makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Treas. Regs. § 1.704-1(b)(2)(iv)(d)(2).

(3) In determining the amount of any liability for purposes of Articles 8.2.1 and 8.2.2, there shall be taken into account Code § 752(c) and any other applicable provisions of the Code and the Treasury Regulations.

(4) The manner in which Capital Accounts are to be maintained pursuant to Article 8.2 and this Part C is intended to comply with the requirements of Code § 704(b) and Treas. Regs. § 1.704-1(b) promulgated thereunder. In the event the Unitholders shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributions or distributed Property or that are assumed by the Company or the Unitholders) are computed in order to comply with Code § 704(b) and Treas. Regs. § 1.704-1(b), the Unitholders may make such modification; *provided, however*, that it is not likely to have a material effect on the amounts distributed to any Person pursuant to Article 14.2 upon the dissolution of the Company. The Unitholders also shall (i) make any adjustments necessary or appropriate to maintain equality between the aggregate value of the Capital Accounts of the Unitholders and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treas. Regs. § 1.704-1(b)(2)(iv)(q), and (ii) make any appropriate modifications in the event unanticipated events (for example, the acquisition by the Company of oil or gas properties) might otherwise cause the Agreement not to comply with Treas. Regs. § 1.704-1(b).

**Part D.**      Special Allocation Provisions

(1)      Allocation of Net Losses. Except as otherwise required by the last sentence of this Part D(1) of this Exhibit D, no allocations of loss, deduction, and/or expenditures described in Code § 705(a)(2)(B) shall be charged to the Capital Accounts of any Unitholder if such allocation would cause such Unitholder to have an Adjusted Deficit Capital Account. The amount of the loss, deduction, and/or Code § 705(a)(2)(B) expenditure which would have caused a Unitholder to have an Adjusted Deficit Capital Account shall instead be charged to the Capital Account of any Unitholders which would not have an Adjusted Deficit Capital Account as a result of the allocation, in proportion to their positive Capital Accounts (after giving effect to the adjustments described in the definition of Adjusted Deficit Capital Account), or, if no such Unitholders exist, then to the Unitholders in accordance with their Percentage Interests.

(2)      General Allocation Rules.

(a)      Reversals. Allocations to reverse prior allocations pursuant to Part D(3)(h) shall reverse the earliest such prior allocations first, and, if prior allocations arising in the same Fiscal Year that are subject to reversal exceed the current Fiscal Year allocations that remain to reverse prior allocations, such remaining current Fiscal Year allocations shall be deemed to reverse such prior allocations for each Unitholder pro rata in accordance with such Unitholder's prior Fiscal Year allocations.

(b)      Proportionate Share of Items. All allocations of Net Profits and Net Losses shall be deemed to be comprised of a proportionate unit of all items comprising such Net Profits and Net Losses.

(3)      Special Allocations.

(a)      If any Unitholder unexpectedly receives any adjustments, allocations, or distributions described in Treas. Regs. § 1.704-1(b)(2)(ii)(d)(4), (5), or (6), which create or increase an Adjusted Deficit Capital Account of the Unitholder, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year) shall be specially allocated to the Capital Account of the Unitholder in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Deficit Capital Account so created as quickly as possible; *provided, however*, that an allocation pursuant to this Part D(3)(a) shall be made only if and to the extent that such Unitholder would have an Adjusted Deficit Capital Account after all other allocations provided for in this Part D and Article 12 of the Agreement have been tentatively made as if this Part D(3)(a) were not in the Agreement. It is the intent that this Part D(3)(a) be interpreted to comply with the alternate test for economic effect set forth in Treas. Regs. § 1.704-1(b)(2)(ii)(d).

(b)      If any Unitholder would have a deficit Capital Account at the end of any Company taxable year which is in excess of the sum of (i) the amount that the Unitholder is obligated to restore to the Company under Treas. Regs. § 1.704-1(b)(2)(ii)(c) and (ii) the amount such Unitholder is deemed to be obligated to restore pursuant to the penultimate sentences of Treas. Regs. §§ 1.704-2(g)(1) and 1.704-2(i)(5), such Unitholder shall be specially allocated

items of Company income (including gross income) and gain in the amount of the excess as quickly as possible; *provided, however*, that an allocation pursuant to this Part D(3)(b) shall be made only if and to the extent that such Unitholder would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Part D and Article 12 of the Agreement have been made as if Part D(3)(a) hereof and this Part D(3)(b) were not in the Agreement.

(c) Except as otherwise provided in Treas. Regs. § 1.704-2(f), notwithstanding any other provision of this Part D or Article 12 of the Agreement, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, each Unitholder shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Person's unit of the net decrease in Partnership Minimum Gain, determined in accordance with Treas. Regs. § 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Unitholder pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Regs. §§ 1.704-2(f)(6) and 1.704-2(j)(2). This Part D(3)(c) is intended to comply with the minimum gain chargeback requirement in Treas. Regs. § 1.704-2(f) and shall be interpreted consistently therewith.

(d) Except as otherwise provided in Treas. Regs. § 1.704-2(i)(4), notwithstanding any other provision of this Part D or Article 12 of the Agreement, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Fiscal Year, each Person who has a unit of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Treas. Regs. § 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Person's unit of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Treas. Regs. § 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Unitholder pursuant thereto. The items to be so allocated shall be determined in accordance with Treas. Regs. §§ 1.704-2(i)(4) and 1.704-2(j)(2). This Part D(3)(d) is intended to comply with the minimum gain chargeback requirement in Treas. Regs. § 1.704-2(i)(4) and shall be interpreted consistently therewith.

(e) Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Unitholders in proportion to their Percentage Interests.

(f) Any Partner Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Unitholder who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Treas. Regs. § 1.704-2(i)(1).

(g) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code § 734(b) or Code § 743(b) is required, pursuant to Treas. Regs. § 1.704-1(b)(2)(iv)(m)(2) or § 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Unitholder in complete liquidation of its interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of

gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Unitholder in accordance with their interests in the Company in the event that Treas. Regs. § 1.704-1(b)(2)(iv)(m)(2) applies, or to the Unitholder to whom such distribution was made in the event that Treas. Regs. § 1.704-1(b)(2)(iv)(m)(4) applies.

(h) The allocations set forth in Part D(1) and Part D(3)(a), (b), (c), (d), (e), (f) and (g) (the “Regulatory Allocations”) are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Unitholders that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Part D(3)(h). Therefore, notwithstanding any other provision of Article 12 of the Agreement or this Part D (other than the Regulatory Allocations), the Unitholders shall make such offsetting special allocations of Company income, gain, loss or deduction so that, after such offsetting allocations are made, each Unitholder’s Capital Account balance is, to the extent possible, equal to the Capital Account balance such Unitholder would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Article 12.1 of the Agreement. In exercising their discretion under this Part D(3)(h), the Unitholders shall take into account future Regulatory Allocations under Part D(3)(c) and (d) that, although not yet made, are likely to offset other Regulatory Allocations previously made under Part D(3)(e) and (f).

(i) [reserved]

(j) For purposes of determining the Net Profits, Net Losses, or any other items allocable to any period, Net Profits, Net Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Unitholders using any permissible method under Code § 706 and the Treasury Regulations thereunder.

(k) The Unitholders are aware of the income tax consequences of the allocations made by Article 12 of the Agreement and this Part D, and hereby agree to be bound by such provisions in reporting their units of Company income and loss for income tax purposes.

(l) Solely for purposes of determining a Unitholder’s proportionate unit of the “excess nonrecourse liabilities” of the Company within the meaning of Treas. Regs. § 1.752-3(a)(3), each Unitholder’s interest in the Company’s profits shall be such Person’s Percentage Interest.

(m) To the extent permitted by Treas. Regs. § 1.704-2(h)(3), the Unitholders shall endeavor to treat distributions as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Deficit Capital Account for any Unitholder.

## ICAP SEF Application

Exhibit G-3: ICAP SEF (US) LLC Regulatory Oversight Committee Charter

**ICAP SEF (US) LLC  
REGULATORY OVERSIGHT COMMITTEE  
CHARTER**

**Status and Purpose**

The Regulatory Oversight Committee (the “Committee”) is appointed by the Board of Directors (the “Board”) of ICAP SEF (US) LLC (the “Company”) as a Standing Committee pursuant to the Company’s Operating Agreement to assist the Board in its oversight of the Company’s self-regulatory program and other regulatory and compliance matters. The Board shall delegate sufficient authority, dedicate sufficient resources and allow sufficient time for the Committee to perform its responsibilities.

**Composition and Appointment**

The Committee shall be composed of two or more of the Company’s Public Directors, as such term is defined from time to time in the rules, regulations, orders, directives or any interpretation thereof promulgated by the Commodity Futures Trading Commission. Directors other than Public Directors shall not be appointed to the Committee.

The Committee members and Committee Chairman shall be appointed by the Chairman of the Board, subject to the approval of the Board, at a meeting of the Board. Each appointee will serve until the due appointment of his or her successor or his or her resignation or removal as a member of the Committee or as a Public Director, with or without cause, by a majority vote of the Board. A member of the Committee may serve for multiple terms.

**Procedures**

The Committee shall meet at least four times each year and at such other times as it deems necessary to fulfill its responsibilities. The Committee may meet in joint session with any other committee of the Board from time to time to discuss areas of common interest and significant matters.

The Committee shall report regularly to the Board with respect to its activities and make recommendations to the Board it may deem necessary or advisable for the orderly conduct of its business. Minutes of its meetings shall be maintained on behalf of the Committee and approved by the Committee.

Unless the Board provides otherwise and subject to the provisions of the Operating Agreement of the Company, the Committee can make, alter or repeal rules for the conduct of its business. In the absence of such rules, each meeting of the Committee shall be called, notice of each such meeting be given or waived and the business of the Committee conducted or its action taken as nearly as may be in the same manner as is provided in the Operating Agreement with respect to the meetings or for conduct of business or the taking of actions by the Board.

**Responsibilities**

The Board has delegated to the Committee the responsibility and authority to:

- (a) Monitor the Company’s self-regulatory program for sufficiency, effectiveness, and independence;
- (b) Oversee all facets of the self-regulatory program, including trade practice, market surveillance, audits, examinations and other regulatory responsibilities with respect to Trading Privilege Holders, Authorized Trading Firms, Authorized Traders and Customers, and the conduct of investigations;
- (c) Review the size and allocation of the Company’s regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel;

- (d) Review the performance of the Company's chief compliance officer, and make recommendations with respect to such performance to the Board;
- (e) Review all regulatory proposals prior to implementation and advise the Board as to whether and how such changes may impact regulation;
- (f) Recommend changes to the Company's regulatory program that would ensure fair, vigorous, and effective regulation;
- (g) Recommend adoption of rules or amendments to rules deemed necessary or advisable for the effective supervision, management and control of the Company as it relates to regulatory and compliance matters;
- (h) Prepare an annual report to the Board and Commodity Futures Trading Commission assessing the self-regulatory program of the Company and including a description of the program, the expenses of the program, the staffing and structure of the program, a catalog of investigations and disciplinary actions taken during the year, and a review of the performance of the Review Panel, Hearing Panel, and Company chief compliance officer; and
- (i) Perform such other duties as the Board may delegate to it from time to time.

In addition, the Committee may impose controls on the swap execution facility operated by the Company to reduce the potential risk of market disruption, including but not limited to market restrictions that pause or halt trading in specified market conditions.



## ICAP SEF Application

Exhibit G-4: ICAP SEF (US) LLC Certificate of Good Standing

# Delaware

PAGE 1

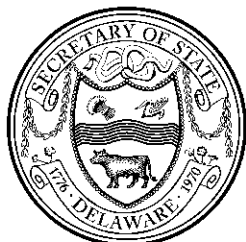
*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "ICAP SEF (US) 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 TWENTY-NINTH DAY OF AUGUST, A.D. 2013.

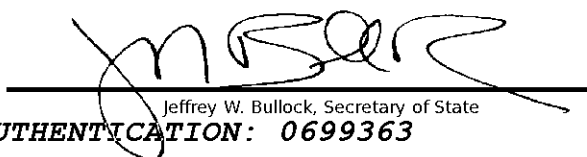
AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE NOT BEEN ASSESSED TO DATE.

5379767 8300

131036980



You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 0699363

DATE: 08-29-13