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November 25, 2003

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Attention: Secretary

Re: Amendments to the ByLaws and Rules of BrokerTec Futures Exchange, L.L.C. ("BTEX") Submitted Pursuant to Section 5c(c)(1) of the Commodity Exchange Act (the "Act") – Rule Certification

Ladies and Gentlemen:

Enclosed are revised versions of the Bylaws and Rules of BTEX and BTEX Bulletin #03-19, Membership Eligibility and Share Ownership. The Bylaws and Rules have been marked to reflect recent amendments (the "Amendments") approved by the Board. The Bulletin informs BTEX Members of the Amendments and the following actions taken by the Board of Directors:

- The elimination of the requirement that, in order to be eligible for membership in BTEX, either the applicant or one of its affiliates must own at least one B Share in BTEX (Rule 202(a)(v));
- The elimination of the restriction on the allocation of additional B Shares to a member where such allocation would result in ownership by a Class B Shareholder of more than 9.9% of the profits, losses or capital of the Exchange or more than 9.9% of the voting rights of the Class B Shareholders (Bylaw Sections 3.4(e)(i), 3.20(d) and the proviso to Bylaw Section 3.13(b));
- The redemption and cancellation of all outstanding Non-Participating B Shares in the Exchange immediately, upon which redemption and cancellation the Non-Participating B Shareholder shall receive the then positive balance, if any, in its capital account and shall cease to be a "member" of BTEX within the meaning of the Delaware Limited Liability Company Act (the Delaware Act) (new Bylaw Section 3.20(f)(i));
- The acceleration from January 1, 2004 to November 26, 2003 of the date of determination of the allocation of additional B shares to Participating B Shareholders based upon their trading volume on BTEX since January 31, 2003 (Bylaw Section 3.4(d)(ii)); and
- After the allocation of additional B Shares on November 26, 2003, the redemption and cancellation of all outstanding Participating B Shares of BTEX where the Shareholder thereof owns only a single Participating B Share on November 26, 2003, upon which redemption and cancellation the Participating B Shareholder shall receive the then positive balance, if any, in its capital account and shall cease to be a member of BTEX within the meaning of the Delaware Act (new Bylaw Section 3.20(f)(ii)).

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These amendments have been made to effect a restructuring of BTEX's equity ownership and governance effective with the suspension of trading operations on November 26, 2003. The amended Bylaws and Rules, and Bulletin #03-19, are hereby provided to the Commission pursuant to Section 5c(c)(1) of the Act.

No substantive opposing views have been expressed to BTEX as to the Amendments. The undersigned hereby certifies that the Amendments and Bulletin #03-19 comply with the Act (including the regulations under the Act).

I would be pleased to answer any questions that any member of the Commission or its staff may have concerning the enclosed.

Very truly yours,

Douglas E. Harris
General Counsel and Chief Operating Officer
BrokerTec Futures Exchange, L.L.C.

cc: CFTC Regional Office

enclosures

BrokerTec Futures Exchange

Bulletin #03-19

Membership Eligibility and Share Ownership

Bulletin Date: November 25, 2003
To: All MEMBERS
Effective Date: November 26, 2003

The Board of Directors of BrokerTec Futures Exchange (BTEX) has approved amendments to its Bylaws and Rules to effect the following changes to its membership requirements and to members' equity ownership:

- eliminate the requirement that, in order to be eligible for membership in BTEX, either the applicant or one of its affiliates must own at least one B Share in BTEX (Rule 202(a)(v));
- eliminate the restriction on the allocation of additional B Shares to a member where such allocation would result in ownership by a Class B Shareholder of more than 9.9% of the profits, losses or capital of the Exchange or more than 9.9% of the voting rights of the Class B Shareholders (Bylaw Sections 3.4(e)(i), 3.20(d) and the proviso to Bylaw Section 3.13(b)),
- redeem and cancel all outstanding Non-Participating B Shares in the Exchange immediately, upon which redemption and cancellation the Non-Participating B Shareholder shall receive the then positive balance, if any, in its capital account and shall cease to be a "member" of BTEX within the meaning of the Delaware Limited Liability Company Act (the Delaware Act) (new Bylaw Section 3.20(f)(i));
- accelerate from January 1, 2004 to November 26, 2003 the date of determination of the allocation of additional B shares to Participating B Shareholders based upon their trading volume on BTEX since January 31, 2003 (Bylaw Section 3.4(d)(ii)); and
- after the allocation of additional B Shares on November 26, 2003, redeem and cancel all outstanding Participating B Shares of BTEX where the Shareholder thereof owns only a single Participating B Share on November 26, 2003, upon which redemption and cancellation the Participating B Shareholder shall receive the then positive balance, if any, in its capital account and shall cease to be a member of BTEX within the meaning of the Delaware Act (new Bylaw Section 3.20(f)(ii)).

Copies of the revised BTEX Bylaws and Rules are available on our website – www.btecfutures.com.

If you have any questions please contact:

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BROKERTEC FUTURES EXCHANGE, L.L.C.

RULES

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BROKERTEC FUTURES EXCHANGE, L.L.C.

Part 1 – Meaning of Terms

RULES

101. Definitions.

The following terms shall, unless the context otherwise indicates, have the meanings set forth below:

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

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

“**AORS**” means an automated order routing system.

“**Approved Financial Institution**” means a bank or other institution approved by the Clearing Organization to receive, hold and transfer deposits and payments of original margin, and variation margin and to effect deliveries pursuant to Futures Contracts.

“**Authorized Trader**” means an individual employed by a Member or an Affiliate of a Member who is authorized by a Member to have direct access through a terminal or otherwise to the BTEX Trading System.

“**Block Trade**” means a single transaction for the purchase and sale of not less than the number of Contracts specified in Part 3 of these Rules.

“**Board**” means the Board of Directors of the Exchange.

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

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

“**Bylaws**” means, with respect to any Entity, the bylaws of such Entity and the interpretations, resolutions, orders and directives of the Entity thereunder, as in effect from time to time; and, if no other Entity is specified, shall mean the Limited Liability Company Agreement and Bylaws of the Exchange dated as of June 22, 2001 as in effect from time to time.

“**Calendar Spread**” means a Combination Trade in which a Person simultaneously enters into a Futures Contract to purchase a Commodity for delivery in one Delivery Month and a Futures Contract to sell the same Commodity for delivery in another Delivery Month.

“**Class A Shareholders,**” “**Class A Shares,**” “**Class B Shareholders,**” “**Class B Shares**” and “**Shareholders**” have the meanings set forth in the Bylaws.

“Clearing Member” means any Member which has clearing privileges pursuant to the Bylaws, these Rules, and the Bylaws and Rules of the Clearing Organization.

“Clearing Member ID” means a unique identification code assigned by the Exchange to each Clearing Member.

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

“Combination Trade” means a transaction in which two or more Contracts are executed simultaneously at a single price.

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

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

“Commodity” means any commodity within the definition of that term contained in the Act.

“Contract” means a Futures Contract.

“Customer” means any Person who is a “customer” within the meaning set forth in Section 1.3(k) of the Commission Regulations.

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

“Deliverable Grade” means, with respect to the Underlying Commodity of a Futures Contract, the requirements set forth in Part 3 of these Rules for such Commodity to be deliverable.

“Delivery Day” means the day on which delivery of an Underlying Commodity is made or is to be made pursuant to any Futures Contract.

“Delivery Month” means the month in which delivery of an Underlying Commodity is to be made pursuant to the terms of any Futures Contract.

“Delivery Notice” means a written notice by a Clearing Member that it intends to make delivery pursuant to a Futures Contract.

“ECP” means any Person who is an “eligible contract participant” within the meaning set forth in the Act.

“EFP” means an exchange of Futures Contracts for physical Commodities effected pursuant to Rule 407.

“EFS” means an exchange of Futures Contracts for swaps effected pursuant to Rule 408.

“Enforcement Staff” means the employees of the Exchange, or of any other organization approved by the Board, who are responsible for enforcing the Bylaws and Rules.

“Entity” means any Person other than an individual.

“Exchange” means BrokerTec Futures Exchange, L.L.C. Unless otherwise provided in the Bylaws or these Rules, any reference to an action required or permitted to be taken by “the Exchange” pursuant to the Bylaws or Rules shall include an action taken by any duly authorized officer or employee of the Exchange.

“Financial or Operational Emergency” means, with respect to any Member, any situation in which the financial or operational condition of such Member, or the business conduct of such Member, is such that it would not be in the best interests of the marketplace for such Member to trade on the Exchange or to carry positions in Contracts, and shall include without limitation the occurrence of any of the events listed in subparagraphs (ii) through (viii) of paragraph (a) of Rule 206.

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

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

“Last Trading Day” means, for any Contract, the day specified as such for such Contract in Part 3 of these Rules.

“Market Maker” means a Person designated as such pursuant to Rule 208.

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

“Member ID” means a unique identification code assigned by the Exchange to each Member.

“NFA” means the National Futures Association.

“Notice Day” means a day on which a short Clearing Member gives a Delivery Notice to the Clearing Organization as provided in Rule 601.

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

“Proprietary Account” means a “proprietary account” as defined in Section 1.3(y) of the Commission Regulations.

“Qualifying Clearing Member” means, with respect to any Member, the Clearing Member which has executed and delivered to the Exchange the agreement referred to in Rule 205(a)(iv)(A).

“Qualified Bank” means a federal or state chartered U.S. bank which is a member of the Federal Reserve System and which has capital in excess of \$100,000,000.

“Respondent” has the meaning set forth in Rule 701(a).

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

“Settlement Price” means the price established each day by the Exchange as the basis for settlement of Futures Contracts and delivery under Futures Contracts.

“SRO” means the Exchange, the Clearing Organization, any other designated contract market or commodity or securities exchange or market (domestic or foreign), any clearing organization, the NFA, the National Association of Securities Dealers, Inc., and any other self-regulatory organization (domestic or foreign).

“Tick” means the minimum fluctuation permitted pursuant to these Rules in the price of any Contract or Combination Trade.

“Trader ID” means an identification code assigned by a Member to each Authorized Trader employed by such Member or any Affiliate of such Member.

“Trading Session” means, with respect to any Contract, the period of hours during which trading in that Contract through the BTEX Trading System is permitted by the Exchange.

“Trading Session Minutes” has the meaning set forth in Rule 406(e).

“Underlying Commodity” means, with respect to any Futures Contract, the Commodity which (or the cash value of which) is required to be delivered pursuant to the terms of such Futures Contract.

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

102. Time References.

Except as may be otherwise expressly provided in these Rules, all references to times in these Rules shall be to the local time prevailing in New York City.

103. Conflicts with Bylaws.

In the event of any conflict between any provision of these Rules and any provision of the Bylaws, the provision of the Bylaws shall govern.

Part 2 – Membership Rules

201. Status of Members.

Members shall have the privileges, rights and obligations set forth in, or established pursuant to, the Bylaws and Rules.

202. Eligibility.

(a) Any Person is eligible to become a Member, provided that such Person meets the following standards:

(i) If an individual, shall have attained the age of majority in the State of New York and shall be of good character;

(ii) If an Entity, shall be duly organized, existing and in good standing under the laws of its jurisdiction of organization;

(iii) Shall have good commercial standing and business experience; and

(iv) Shall have such operational capabilities (including without limitation such hardware, software, communications systems and staffing) as the Exchange may determine is appropriate in view of such Person's anticipated type and level of activity on the Exchange; and

~~(v) Shall either be a Class B Shareholder of the Exchange or an Affiliate of a Person who is a Class B Shareholder of the Exchange, unless the Board in its discretion waives this standard in any particular case.~~

(b) Any Member is eligible to become a Clearing Member, provided that such Member meets the following standards:

(i) Shall be an Entity;

(ii) Shall either (A) have Capital, as such term is defined in the Rules of the Clearing Organization, of not less than \$50,000,000; or (B) deliver to the Clearing Organization a guaranty of such Member's obligations, in the form prescribed by the Clearing Organization, from an Affiliate of such Member, which Affiliate has Capital (as so defined) of not less than \$50,000,000 and is approved by the Clearing Organization; or (C) be either a Category 1 Dealer Netting Member or a Category 1 Futures Commission Merchant Netting Member of the Government Securities Clearing Corporation; and

(iii) Shall have been approved for membership in the Clearing Organization by the Clearing Organization.

203. Applications for Membership.

(a) Any Person desiring to become a Member or a Clearing Member must file with the Exchange an application for membership or clearing membership in the form prescribed by the Exchange, together with a non-refundable application fee in such amount as may be specified by the Exchange, and such financial statements and other information and documents as the Exchange may request.

(b) Such Person, or one or more representatives thereof, shall appear personally before the Membership Committee if so requested and shall furnish such additional information as the Membership Committee may request.

(c) After receiving all of the information it deems necessary or appropriate, the Membership Committee shall determine whether to grant or deny such Person's application for membership or clearing membership.

(d) The Exchange may adopt expedited procedures to deal with applications received from Persons who are to acquire or succeed to the business of any Member or in any other case where the Exchange in its discretion deems that there is a need for urgent action.

204. Denial of Membership.

(a) The Membership Committee may deny the application for membership or clearing membership of any Person if such Person:

(i) does not meet any of the standards of eligibility set forth in Rule 202, or does not follow the procedures to apply for membership set forth in these Rules;

(ii) has been convicted of any felony or misdemeanor involving, arising from, or related to, the purchase or sale of any Commodity, security, futures contract, option or other financial instrument, or involving or arising from fraud or moral turpitude, or is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction or any Governmental Agency from engaging in or continuing any conduct or practice in connection with the purchase or sale of any Commodity, security, futures contract, option or other financial instrument, or is or has been subject to an order of the Commission denying trading privileges on any contract market to such Person;

(iii) has had any fine, cease and desist order, denial of trading privileges, censure or other sanction or discipline (whether through an adverse determination, voluntary settlement or otherwise) imposed on such Person by any Governmental Agency;

(iv) has ever been expelled from, suspended by or subject to any other disciplinary action (whether through an adverse determination, voluntary settlement or otherwise) imposed on such Person by any SRO;

(v) is subject to any material unsatisfied judgments, the enforcement of which has not been stayed by a court of competent jurisdiction; or

(vi) has made any false or misleading statement in or in connection with any application filed with the Exchange; or

if under all of the circumstances the Membership Committee in its discretion determines that the grant of membership or clearing membership to such Person would not be in the best interests of the Exchange.

(b) In the event that the Membership Committee proposes to deny the application for membership or clearing membership of any Person, it shall so notify such Person in writing, setting forth the grounds upon which the Membership Committee proposes to deny such application; and such Person, upon written request filed with the Exchange within 10 days after receipt of such notification, shall be entitled to a hearing before the Membership Committee. Any such hearing shall be conducted in such manner as shall, in the judgment of the Membership Committee, give such Person an opportunity to present fully and fairly to the Membership Committee the Person's reasons why the application should be granted. If an applicant does not so request a hearing within such 10 days, the application shall be deemed to have been withdrawn. If there shall be such a hearing, and if after the completion of such hearing the Membership Committee decides to deny such Person's application for membership or clearing membership, the Exchange shall give such Person written notice of the decision of the Membership Committee, setting forth the grounds therefor, and such decision shall be the final action of the Exchange and not subject to appeal within the Exchange.

205. Grant of Membership or Clearing Membership.

(a) In the event that the Membership Committee grants the application for membership of any Person to become a Member or a Clearing Member, such Person shall, within such time as the Exchange may specify, take the following actions:

(i) Execute and deliver to the Exchange an agreement in the form prescribed by the Exchange whereby among other things such Person shall:

(A) agree to abide by the Bylaws and Rules;

(B) consent to the jurisdiction of the Exchange in all matters arising under the Bylaws or Rules; and

(C) if such Person does not have its principal place of business in the City of New York, consent to the jurisdiction of the federal and state courts in the City of New York in any action or proceeding brought by the Exchange;

(ii) Designate at least one senior officer who is responsible for supervising all activities of its employees relating to transactions effected on the Exchange or subject to its Rules, and advise the Exchange of the name, title, address, phone number, fax number and e-mail address of each such officer;

(iii) Establish a working connection with the BTEX Trading System in accordance with such procedures and protocols as the Exchange may have in effect from time to time;

(iv) If the application of any Person to become a Member but not a Clearing Member has been granted:

(A) deliver to the Exchange an agreement in form prescribed by the Exchange, whereby a Clearing Member among other things agrees to accept for clearance all transactions effected by such Person which are not accepted for clearance by any other Clearing Member; and

(B) deposit with the Exchange the Class B Shares owned by such Person or its Affiliate as security for the performance by such Person of such Person's obligations to the Exchange or the Members; and

(v) File such other documents and take such other actions as the Exchange may prescribe (which shall include among other things, for each Member which is not a Clearing Member, an agreement granting a perfected security interest to the Exchange in all cash, securities and other property deposited by such Member pursuant to Rule 205(a)(iv)(B) as security for the performance of all such Member's obligations to the Exchange).

(b) Upon completion of the actions specified in paragraph (a) of this Rule:

(i) Such Person shall become a Member or a Clearing Member of the Exchange (as the case may be), with all of the rights, privileges and obligations set forth in, or established pursuant to, the Bylaws and Rules; and

(ii) The Exchange shall notify such Person of the effective date and time thereof, and of the Member ID and, in the case of a Clearing Member, the Clearing Member ID assigned to such Person.

(c) The deposit of each Member referred to in paragraph (a)(iv)(B) of this Rule, together with any interest received thereon, shall be held and disposed of by the Exchange as follows:

(i) Any distributions made with respect to such Class B Shares shall promptly be paid over to the Member which deposited the same.

(ii) All or any portion of such deposit may be applied by the Exchange from time to time in payment of any unpaid amounts owing by such Member pursuant to the Bylaws, the Rules or any agreement between such Member and the Exchange, or in connection with any transactions effected on the Exchange, to the following Persons (in the order stated): first, to the Exchange; second, to the Clearing Organization; and third, to other Members. Any such application shall be made by redeeming Class B Shares at a price per Share equal to the value of such Member's Capital Account (determined as provided in Article IV of the Bylaws), divided by the total number of Class B Shares held by such Member, in the number of Class B Shares necessary in the judgment of the Exchange to generate cash proceeds at least sufficient to pay such unpaid amounts in full. The Exchange shall then pay out such proceeds to the Persons entitled to the same in accordance with this subparagraph (ii). If such proceeds are sufficient to pay in full the amounts owing to the Exchange and to the Clearing Organization but are not sufficient

to pay such other Members in full, then any proceeds remaining after paying the Exchange and the Clearing Organization in full shall be divided pro rata among such other Members.

(iii) The Exchange shall give the Member written notice of any proposed application of such Member's deposit pursuant to subparagraph (i) (the "application notice"). If such Member gives the Exchange written notice objecting to such proposed application (the "objection notice") within 10 days after the application notice was given, the matter shall be submitted to arbitration pursuant to the Rules of the NFA. If such Member does not give the Exchange an objection notice within such 10 days, such Member shall have waived any right to object to the proposed application.

(iv) In the event that all or any portion of the deposit of any Member is applied and paid out in any amount as heretofore provided in this Rule 205(c), such Member shall forthwith restore such amount in cash upon demand by the Exchange.

(v) Any balance of such deposit not so applied shall be returned to the Member within six months after the date such Member's membership in the Exchange terminates for any reason; provided that if an Exchange disciplinary proceeding is pending at the end of such six months, the Exchange may retain such deposit until the termination of such proceeding. The deposit shall be so returned without interest.

(d) If such Person does not complete the actions specified in paragraph (a) within the time specified by the Exchange, then, unless the Exchange shall extend such time, such Person shall be deemed to have withdrawn the application for membership or clearing membership, as the case may be.

206. Duties of Members.

(a) Each Member shall immediately notify the Exchange in writing upon becoming aware of any of the following events:

(i) Any refusal of admission to, or withdrawal by the Member of any application for membership or clearing membership in, any SRO;

(ii) Any expulsion, suspension or fine in excess of \$25,000 (whether through an adverse determination, voluntary settlement or otherwise) imposed by any SRO;

(iii) Any denial or withdrawal of any application for any registration or license by or from any Governmental Agency and any revocation, suspension, or conditioning of any registration or license granted by any Governmental Agency;

(iv) Any fine, cease and desist order, denial of trading privileges, censure or other sanction or discipline (whether through an adverse determination, voluntary settlement or otherwise) imposed by any Governmental Agency;

(v) Any indictment of the Member or any of its senior officers for, any conviction of the Member or any of its senior officers of, any confession of guilt or plea

of guilty or *nolo contendere* by the Member or any of its senior officers to, any felony or misdemeanor involving, arising from, or related to, the purchase or sale of any Commodity, security, futures contract, option or other financial instrument, or involving or arising from fraud or moral turpitude;

(vi) Any issuance of a formal order of investigation (or its equivalent) of the Member, or the commencement of any judicial or administrative proceeding against the Member, by any Governmental Agency;

(vii) The commencement by or against the Member of a case in bankruptcy or of any other action or proceeding to liquidate, reorganize or restructure the Member pursuant to any applicable provision of law, federal or state, domestic or foreign;

(viii) Any damage to or failure or inadequacy of the systems, facilities or equipment of the Member which might materially and adversely affect the ability of the Member to effect transactions on the Exchange or subject to the Rules, to comply with the Bylaws and Rules or, in the case of a Clearing Member, to clear transactions effected on or subject to the Rules, or to timely perform its regulatory or financial obligations under or in connection with Contracts;

(ix) Any change in the senior officer designated as provided in paragraph (f);
and

(x) Any other material change in any information contained in the application for membership or clearing membership of such Member.

(b) Each Member shall make and file reports in accordance with the rules and regulations of, and in such manner and form and at such times as may be prescribed by, the Commission, showing the details and terms of all transactions entered into by such Member, in cash transactions or transactions for future delivery consummated on the Exchange or subject to the Rules. In accordance with such rules and regulations, each Member shall keep a record, as the Commission may direct, showing the details and terms of all cash and futures transactions entered into by them, consummated on the Exchange or subject to the Rules, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged or terminated. Such record shall be kept for a period of five years from the date thereof (or for a longer period if the Commission shall so direct), shall be readily accessible during the first two years of the five-year period and shall at all times be open to inspection by any representative of the Commission or of the United States Department of Justice.

(c) Each Member shall make and file reports with the Exchange at such times and containing such information in such form as the Exchange may prescribe from time to time.

(d) Each Member shall make such records relating to orders received, transactions effected and positions carried in Contracts and Underlying Commodities, and shall maintain such records for such time, as the Exchange may prescribe from time to time. Such records shall at all times be open to inspection by the Exchange.

(e) Each Member shall timely furnish such information as may from time to time be requested by the Board, any committee of the Board or the Exchange, or any employee of the Exchange, acting in the course of its, their, his or her duties.

(f) Each Member shall diligently supervise all activities of its employees relating to transactions effected on the Exchange or subject to the Rules. Without limiting the generality of the foregoing:

(i) Each Member shall continue to have at all times at least one senior officer who is responsible for such supervision and shall promptly advise the Exchange of any change in the name, title, address, phone number, fax number or e-mail address of each such officer;

(ii) Each Member shall be responsible for training its employees regarding these Rules and the proper use of the BTEX Trading System and of any terminal or other device used for obtaining access to the BTEX Trading System; and

(iii) Furnish the Exchange on demand with a list of all Authorized Traders employed by such Member or any Affiliate of such Member, giving the name, location and Trader ID of each such Authorized Trader.

(g) Any violation of the Bylaws or Rules by any employee of a Member shall constitute a violation of the Bylaws or Rules, as the case may be, by such Member.

(h) Each Member shall be fully responsible for timely performance of all obligations under or in connection with, any Contract resulting from the entry of any order into the BTEX Trading System with such Member's Member ID and any Contract otherwise resulting (including without limitation any Block Trade, EFP or EFS) and reported to the BTEX Trading System with such Member's Member ID.

(i) Each Member shall use due diligence in receiving and handling orders from Customers, entering such orders into the BTEX Trading System, responding to inquiries from Customers about their orders and reporting back to Customers the execution of any such orders.

(j) Each Member shall at all times continue to meet the standards of eligibility set forth in Rule 202 and not be subject to any of the grounds for denial of an application for membership or clearing membership set forth in Rule 204(a).

(k) In the event that the deposit of any Member referred to in Rule 205(a)(iv)(B) is applied in whole or in part as provided in Rule 205(c), such Member shall on demand restore the amount so applied.

(l) Each Member shall establish and enforce internal rules, procedures and controls to ensure, to the extent possible, that each order received from a Customer which is executable at or near the market price is entered into the BTEX Trading System before any order in any Futures Contract having the same Delivery Month in the same Commodity for any Proprietary Account, any other account in which any Affiliate of the Member has an interest, or any account for which the Member, an Affiliate of the Member or an employee of either the Member or an Affiliate of

the Member may originate orders without the specific prior consent of the owner of the account, if such Member, Affiliate or employee has gained knowledge of the Customer's order prior to the entry of the order for the Proprietary Account, the account in which an Affiliate of the Member has an interest or the account for which the Member, an Affiliate of the Member or an employee of either the Member or an Affiliate of the Member may originate orders without the prior specific consent of the owner of the account.

(m) Each Member which is a futures commission merchant registered by the Commission shall comply with such minimum financial requirements and related reporting requirements as may be prescribed by the Commission.

(n) No Member or Clearing Member shall accept an order from or on behalf of a Customer, or permit an order from a Customer to be transmitted to the BTEX Trading System through an AORS, unless such Customer is first provided with a customer disclosure statement in such form as may be specified by the Exchange.

207. Prohibited Conduct by Members.

No Member shall:

(a) Disseminate any false, misleading or knowingly inaccurate information, including reports concerning any Commodity traded on the Exchange or market information or conditions that affect or tend to affect the price of any Commodity traded on the Exchange;

(b) Manipulate, or attempt to manipulate, the price of, or to corner, any Commodity traded on the Exchange;

(c) Furnish false or misleading information to, or fail to furnish information when requested by, the Board, any committee of the Board or of the Exchange, or any employee of the Exchange, or any member of the Enforcement Staff, acting in the course of its, their, his or her duties;

(d) Violate or fail to conform to the Bylaws, Rules or procedures of the Exchange, or the bylaws, rules or procedures of the Clearing Organization;

(e) Enter any bids, offers or transactions into the BTEX Trading System when such Member knows or should have known that it is insolvent, within the meaning of any applicable bankruptcy or insolvency laws, federal or state, domestic or foreign, without the prior written approval of the Exchange;

(f) Violate, or fail timely to comply with, the terms of any agreement between the Member and the Exchange or the Clearing Organization, or of any order or decision of the Exchange or the Clearing Organization;

(g) Enter bids or offers into the BTEX Trading System other than in good faith for the purpose of executing transactions, or make any bid or offer for the purpose of establishing a market price which does not reflect the true state of the market;

(h) Place any orders for Contracts with or execute any transaction in Contracts through any Clearing Member without the prior written consent of any Qualifying Clearing Member of such Member (which may be in the form of a blanket consent to all orders and transactions entered or executed after such consent is given);

(i) Knowingly carry an account, enter an order or effect any transaction for any employee of the Exchange, the Clearing Organization or any other Member without the prior written consent of the employer (which may be in the form of a blanket consent to all orders and transactions entered or executed after such consent is given);

(j) Knowingly carry an account, enter an order into the BTEX Trading System or effect any transaction in any Contract for any Member without the prior written consent of such Member's Qualifying Clearing Member (which may be in the form of a blanket consent to all orders and transactions entered or executed after such consent is given);

(k) Knowingly enter into a transaction on the Exchange which is a wash sale, cross trade, accommodation trade or prearranged trade, except as may be permitted under the Rules; or

(l) Engage in conduct or practices inconsistent with just and equitable principles of trade or conduct or practices detrimental to the best interests of the Exchange.

208. Market Maker Program.

The Board may adopt a program whereby one or more Members and/or Affiliates of Members may be designated as Market Makers and may be granted benefits in return for assuming obligations in order to provide liquidity and orderliness in an Exchange market. Any such program may contain:

(a) The qualifications to become a Market Maker, including without limitation any minimum net capital requirements;

(b) The procedure by which Members may seek and receive designation as Market Makers;

(c) The obligations of the Market Makers, including without limitation minimum bid and offer commitments; and/or

(d) The benefits accruing to Market Makers, including without limitation reduced transaction fees and/or the receipt of compensatory payments from the Exchange.

209. Margins.

Members carrying accounts for other Persons shall be required to collect margins for such accounts at such times, in such amounts and in such forms as the Board may from time to time prescribe.

210. Termination of Membership.

(a) The membership of any Member may be terminated at any time:

(i) By the Exchange pursuant to Part 7 of the Rules; or

(ii) By the Member upon written notice to the Exchange, specifying the effective date of termination, which shall be (A) not less than 30 days following the date of giving of such notice, or (B) such other date as may be approved by the Exchange.

(b) Any Member may be required to withdraw from membership if the Exchange shall determine, after notice and an opportunity to be heard, that such Member no longer meets any one or more of the eligibility standards set forth in Rule 202(a).

(c) Notwithstanding any termination of its membership, a Person who was a Member shall remain subject to the jurisdiction of the Exchange after the effective date of such termination as if such Person were still a Member with respect to any investigation or proceeding commenced by the Exchange against such Person pursuant to Part 7 of the Rules or any claim in arbitration filed against such Person pursuant to Part 8 of the Rules, provided that such investigation, proceeding or arbitration is commenced not more than six months after the effective date of such termination.

(d) Any Person whose membership has terminated shall immediately notify the Exchange of any change in its address as most recently reported to the Exchange for a period of one year following the effective date of such termination.

Part 3 - Contract Terms and Conditions

301. Futures Contracts on Short-Term U.S. Treasury Notes (2 Year).

Each Futures Contract on short-term U.S. Treasury Notes shall be a contract whereby the seller agrees to sell and deliver, and the buyer agrees to buy and pay for, one or more short-term U.S. Treasury Notes of Deliverable Grade having an aggregate principal amount of \$200,000 for delivery in a specified month; provided, however, that the Board may in its discretion exclude any issue from being deliverable. Futures Contracts in short-term U.S. Treasury Notes shall be traded and performed in accordance with the following specifications:

(a) Trading Sessions: Trading shall take place in one or more sessions on each Business Day, which will start and end at such hours as may be specified from time to time by the Board; provided that trading in any Futures Contract for any Delivery Month shall terminate at 1:00 p.m. on the Last Trading Day for such Delivery Month.

(b) Delivery Months: Futures Contracts may be traded for delivery in the last month of each of the five consecutive calendar quarters following the current month (including the current month if it is the last month of a calendar quarter); provided, however, that the Exchange may determine to list Futures Contracts for additional Delivery Months or not to list any Delivery Month. Effective at the beginning of the first Trading Session following the Last Trading Day of a Futures Contract for any Delivery Month, the last month of the fifth calendar quarter following the current calendar quarter shall automatically become a Delivery Month and be listed.

(c) Ticks: Bids and offers for Futures Contracts shall be quoted, and trades shall be executed, in minimum increments of $\frac{1}{4}$ of $\frac{1}{32}^{\text{nd}}$ of a point (or \$15.625 rounded up to the nearest 1 cent per contract); provided however that:

(i) Calendar Spreads may be bid, offered and traded at a differential price of $\frac{1}{4}$ of $\frac{1}{32}$ of a point or such lesser amount as may be specified by the Board from time to time; and

(ii) The Board may determine, based upon such factors as the decimalization of the cash market, that Contracts shall be bid, offered and traded on a decimal basis, in minimum price fluctuations of \$10.00, and that Calendar Spreads may be bid, offered and traded on a decimal basis, in minimum price fluctuations of \$5.00. Any such determination may apply to Contracts and Calendar Spreads outstanding at the time, with fractional prices being converted to decimal prices, rounded to the nearest multiples of \$10.00 in the case of Contracts and \$5.00 in the case of Calendar Spreads. Any adjustments in the prices of outstanding Contracts or Calendar Spreads resulting therefrom shall pass between longs and shorts as variation margin.

(d) Minimum Size of Block Trades: 250 Futures Contracts.

(e) Speculative Position Limit: 5,000 Futures Contracts net long or net short in the current month if such month is a Delivery Month, and in all Delivery Months combined.

(f) Last Trading Day: The last day on which trading shall be permitted in Futures Contracts for delivery in any Delivery Month (the "Last Trading Day") shall be the last Business Day of the month or two Business Days prior to issuance of two-year notes by the U.S. Treasury auctioned in the Delivery Month, whichever occurs first.

(g) Permissible Delivery Days: Delivery of the Underlying Commodity may be made on any Business Day during the Delivery Month and shall be made on or before the later of the last Business Day of the Delivery Month or the third Business Day following the Last Trading Day of the Delivery Month; except that by mutual agreement settlement may be made after the Last Trading Day but no later than the third Business Day immediately preceding the last Business Day of the Delivery Month by exchanging any open short-term U.S. Treasury Notes Futures Contract for short-term U.S. Treasury Notes in the quantity specified in the preamble of this Rule or comparable instruments, or for a swap in accordance with Rule 408.

(h) Deliverable Grade: In order to be deliverable, short-term U.S. Treasury Notes must have an original maturity of not more than five years, three months and a remaining maturity on the first day of the Delivery Month of not less than one year, nine months and not more than two years, and must carry semi-annual interest payments. In determining maturity, the time to maturity of a given issue is calculated in complete one-month increments (e.g., 1 year, 10 months, 17 days is taken to be 1 year, 10 months) from the first day of the Delivery Month.

(i) Delivery and Payment Procedures: Delivery of and payment for notes pursuant to this Rule shall be made in accordance with Rule 601.

302. Futures Contracts on Medium-Term U.S. Treasury Notes (5 Year).

Each Futures Contract on medium-term U.S. Treasury Notes shall be a contract whereby the seller agrees to sell and deliver, and the buyer agrees to buy and pay for, one or more medium-term U.S. Treasury Notes of Deliverable Grade having an aggregate principal amount of \$100,000 for delivery in a specified month; provided, however, that the Board may in its discretion exclude any issue from being deliverable. Futures Contracts in medium-term U.S. Treasury Notes shall be traded and performed in accordance with the following specifications:

(a) Trading Sessions: Trading shall take place in one or more sessions on each Business Day, which will start and end at such hours as may be specified from time to time by the Board; provided that trading in any Futures Contract for any Delivery Month shall terminate at 1:00 p.m. on the Last Trading Day for such Delivery Month.

(b) Delivery Months: Futures Contracts may be traded for delivery in the last month of each of the five consecutive calendar quarters following the current month (including the current month if it is the last month of a calendar quarter); provided, however, that the Exchange may determine to list Futures Contracts for additional Delivery Months or not to list any Delivery Month. Effective at the beginning of the First Trading Session following the Last Trading Day of a Futures Contract for any Delivery Month, the last month of the fifth calendar quarter following the current calendar quarter shall automatically become a Delivery Month and be listed.

(c) Ticks: Bids and offers for Futures Contracts shall be quoted, and trades shall be executed, in minimum increments of 1/4 of 1/32nd of a point (or \$7.813 rounded to the nearest 1 cent per contract); provided however that:

(i) Calendar Spreads may be bid, offered and traded at a differential price of 1/4 of 1/32 of a point or such lesser amount as may be specified by the Board from time to time; and

(ii) The Board may determine, based upon such factors as the decimalization of the cash market, that Contracts shall be bid, offered and traded on a decimal basis, in minimum price fluctuations of \$10.00, and that Calendar Spreads may be bid, offered and traded on a decimal basis, in minimum price fluctuations of \$5.00. Any such determination may apply to Contracts and Calendar Spreads outstanding at the time, with fractional prices being converted to decimal prices, rounded to the nearest multiples of \$10.00 in the case of Contracts and \$5.00 in the case of Calendar Spreads. Any adjustments in the prices of outstanding Contracts or Calendar Spreads resulting therefrom shall pass between longs and shorts as variation margin.

(d) Minimum Size of Block Trades: 250 Futures Contracts.

(e) Position Accountability Level: 7,500 Futures Contracts net long or net short in all Delivery Months combined.

(f) Last Trading Day: The last day on which trading shall be permitted in Futures Contracts for delivery in any Delivery Month (the "Last Trading Day") shall be the eighth Business Day prior to the end of such month.

(g) Permissible Delivery Days: Delivery of the Underlying Commodity may be made on any Business Day during the Delivery Month and shall be made not later than the last Business Day of the Delivery Month; except that by mutual agreement settlement may be made after the Last Trading Day but no later than the fifth Business Day immediately preceding the last Business Day of the Delivery Month by exchanging any open medium-term U.S. Treasury Note Futures Contract for medium-term U.S. Treasury Notes in the quantity specified in the preamble of this Rule or comparable instruments, or for a swap in accordance with Rule 408.

(h) Deliverable Grade: In order to be deliverable, medium-term U.S. Treasury Notes must have an original maturity of not more than five years, three months and a remaining maturity on the first day of the Delivery Month of not less than four years, three months, and must carry semi-annual interest payments. In determining maturity, the time to maturity of a given issue is calculated in complete one-month increments (e.g., 4 years, 5 months, 14 days is taken to be 4 years, 5 months) from the first day of the Delivery Month.

(i) Delivery and Payment Procedures: Delivery of and payment for notes pursuant to this Rule shall be made in accordance with Rule 601.

303. **Futures Contracts on Long-Term U.S. Treasury Notes (6½-10 Year).**

Each Futures Contract on long-term U.S. Treasury Notes shall be a contract whereby the seller agrees to sell and deliver, and the buyer agrees to buy and pay for, one or more long-term U.S. Treasury Notes of Deliverable Grade having an aggregate principal amount of \$100,000 for delivery in a specified month; provided, however, that the Board may in its discretion exclude any issue from being deliverable. Futures Contracts in long-term U.S. Treasury Notes shall be traded and performed in accordance with the following specifications:

(a) Trading Sessions: Trading shall take place in one or more sessions on each Business Day, which will start and end at such hours as may be specified from time to time by the Board; provided that trading in any Futures Contract for any Delivery Month shall terminate at 1:00 p.m. on the Last Trading Day for such Delivery Month.

(b) Delivery Months: Futures Contracts may be traded for delivery in the last month of each of the five consecutive calendar quarters following the current month (including the current month if it is the last month of a calendar quarter); provided, however, that the Exchange may determine to list Futures Contracts for any additional Delivery Months or not to list any Delivery Month. Effective at the beginning of the first Trading Session following the Last Trading Day of a Futures Contract for any Delivery Month, the last month of the fifth calendar quarter following the current calendar quarter shall automatically become a Delivery Month and be listed.

(c) Ticks: Bids and offers for Futures Contracts shall be quoted, and trades shall be executed, in minimum increments of $\frac{1}{2}$ of $\frac{1}{32}^{\text{nd}}$ of a point (or \$15.625 rounded up to the nearest 1 cent per contract); provided however that:

(i) Calendar Spreads may be bid, offered and traded at a differential price of $\frac{1}{4}$ of $\frac{1}{32}$ of a point or such lesser amount as may be specified by the Board from time to time; and

(ii) The Board may determine, based upon such factors as the decimalization of the cash market, that Contracts and Calendar Spreads shall be bid, offered and traded on a decimal basis, in minimum price fluctuations of \$10.00. Any such determination may apply to Contracts and Calendar Spreads outstanding at the time, with fractional prices being converted to decimal prices, rounded to the nearest multiples of \$10.00. Any adjustments in the prices of outstanding Contracts or Calendar Spreads resulting therefrom shall pass between longs and shorts as variation margin.

(d) Minimum Size of Block Trades: 250 Futures Contracts.

(e) Position Accountability Level: 7,500 Futures Contracts net long or net short in all Delivery Months combined.

(f) Last Trading Day: The last day on which trading shall be permitted in Futures Contracts for delivery in any Delivery Month (the "Last Trading Day") shall be the eighth Business Day prior to the end of such month.

(g) Permissible Delivery Days: Delivery of the Underlying Commodity may be made on any Business Day of the Delivery Month and shall be made not later than the last Business Day of the Delivery Month; except that by mutual agreement settlement may be made after the Last Trading Day but no later than the fifth Business Day immediately preceding the last Business Day of the Delivery Month by exchanging any open long-term U.S. Treasury Note Futures Contract for long-term U.S. Treasury Notes in the quantity specified in the preamble of this Rule or comparable instruments, or for a swap in accordance with Rule 408.

(h) Deliverable Grade: In order to be deliverable, long-term U.S. Treasury Notes must have a remaining maturity on the first day of the Delivery Month of not less than six and one-half years and not more than ten years, and must carry semi-annual interest payments. In determining maturity, the time to maturity of a given issue is calculated in complete quarter-year increments (e.g., 8 years, 10 months, 17 days is taken to be 8 years, 9 months) from the first day of the Delivery Month.

(i) Delivery and Payment Procedures: Delivery of and payment for notes pursuant to this Rule shall be made in accordance with Rule 601.

304. Futures Contracts on U.S. Treasury Bonds (15 - 30 Year).

Each Futures Contract on U.S. Treasury Bonds shall be a contract whereby the seller agrees to sell and deliver, and the buyer agrees to buy and pay for, one or more long-term United States Treasury Bonds of Deliverable Grade having an aggregate principal amount of \$100,000 for delivery in a specified month; provided, however, that the Board may in its discretion exclude any issue from being deliverable. Futures Contracts in long-term United States Treasury Bonds shall be traded and performed in accordance with the following specifications:

(a) Trading Sessions: Trading shall take place in one or more sessions on each Business Day, which will start and end at such hours as may be specified from time to time by the Board; provided that trading in any Futures Contract for any Delivery Month shall terminate at 1:00 p.m. on the Last Trading Day for such Delivery Month.

(b) Delivery Months: Futures Contracts may be traded for delivery in the last month of each of the five consecutive calendar quarters following the current month (including the current month if it is the last month of a calendar quarter); provided, however, that the Exchange may determine to list Futures Contracts for additional Delivery Months or not to list any Delivery Month. Effective at the beginning of the First Trading Session following the Last Trading Day of a Futures Contract for any Delivery Month, the last month of the fifth calendar quarter following the current calendar quarter shall automatically become a Delivery Month and be listed.

(c) Ticks: Bids and offers for Futures Contracts shall be quoted, and trades shall be executed, in minimum increments of $1/32^{\text{nd}}$ of a point (or \$31.25 per contract); provided however that:

(i) Calendar Spreads may be bid, offered and traded at a differential price of $1/4$ of $1/32$ of a point or such lesser amount as may be specified by the Board from time to time; and

(ii) The Board may determine, based upon such factors as the decimalization of the cash market, that Contracts and Calendar Spreads shall be bid, offered and traded on a decimal basis, in minimum price fluctuations of \$10.00. Any such determination may apply to Contracts and Calendar Spreads outstanding at the time, with fractional prices being converted to decimal prices, rounded to the nearest multiples of \$10.00. Any adjustments in the prices of outstanding Contracts or Calendar Spreads resulting therefrom shall pass between longs and shorts as variation margin.

(d) Minimum Size of Block Trades: 250 Futures Contracts.

(e) Position Accountability Level: 10,000 Futures Contracts net long or net short in all Delivery Months combined.

(f) Last Trading Day: The last day on which trading shall be permitted in Futures Contracts for delivery in any Delivery Month (the "Last Trading Day") shall be the eighth Business Day prior to the end of such month.

(g) Permissible Delivery Days: Delivery of the Underlying Commodity may be made on any Business Day of the Delivery Month and shall be made not later than the last Business Day of the Delivery Month; except that by mutual agreement settlement may be made after the Last Trading Day but no later than the fifth Business Day immediately preceding the last Business Day of the Delivery Month by exchanging any open Treasury Bond Futures Contract for Treasury Bonds in the quantity specified in the preamble of this Rule or comparable instruments, or for a swap in accordance with Rule 408.

(h) Deliverable Grade: In order to be deliverable, Treasury Bonds must have a remaining maturity on the first day of the Delivery Month of not less than 15 years, must not be callable for at least 15 years, and must carry semi-annual interest payments. In determining maturity, the time to maturity of a given issue is calculated in complete three-month increments (i.e., 15 years and 5 months is taken to be 15 years and 1 quarter) from the first day of the Delivery Month.

(i) Delivery and Payment Procedures: Delivery of and payment for bonds pursuant to this Rule shall be made in accordance with Rule 601.

Part 4 - Trading

401. Trading Sessions.

Except as otherwise provided in these Rules or determined by the Board, orders for Contracts shall only be executed by the BTEX Trading System during the respective Trading Sessions for such Contracts. If and as provided by the Board, orders may be entered into the BTEX Trading System outside of Trading Sessions, but shall not be executed until the next Trading Session commences.

402. Opening of Trading.

Trading in all Delivery Months for each Futures Contract shall be opened simultaneously, without trading rotations.

403. Handling of Orders.

(a) Except as otherwise expressly provided in these Rules, all transactions of any type in or involving Contracts must be bid, offered and executed through the BTEX Trading System.

(b) Orders may be entered into the BTEX Trading System only:

- (i) During a Trading Session;
- (ii) In such form as the Exchange shall prescribe; and
- (iii) By a Member or an Authorized Trader, or by any other Person through an AORS of a Member.

(c) Orders may be entered into the BTEX Trading System to purchase or sell Contracts, Calendar Spreads or such other Combination Trades as may be provided for in or pursuant to these Rules.

(d) Any order entered into the BTEX Trading System shall be either a limit order or a market order.

(i) A limit order is an order to purchase or sell a Contract or Combination Trade at a specified price (including a specified average price) or better. A limit order may be any of the following:

(A) "Fill and store," which is an order to be executed when entered to the extent that there are opposite orders open in the BTEX Trading System, with any balance to remain as an open order until it expires, is executed or is canceled.

(B) "Fill or kill," which is an order to be filled when entered for the entire quantity of the order against opposite orders open in the BTEX Trading System, and if not so executed in its entirety, to be automatically canceled.

(C) "Fill and kill," which is an order to be executed when entered to the extent that there are opposite orders in the BTEX Trading System, and to the extent not so executed, to be automatically canceled.

(ii) A market order is an order to buy or sell at the best price available in the BTEX Trading System at the time the order is entered. A market order may be either of the following:

(A) "Fill or kill," which is an order to be executed when entered for the entire quantity of the order against opposite orders in the BTEX Trading System at the best price available, or if not so executed, to be automatically canceled.

(B) "Fill and kill," which is an order to be executed when entered against opposite orders in the BTEX Trading System to the extent available, and to the extent not so executed, to be automatically canceled.

(e) Orders entered into the BTEX Trading System may contain such limitations as may from time to time be approved by the Board.

(f) [Reserved]

(g) Each order entered into the BTEX Trading System must be in such form as the Exchange shall prescribe and must contain such information as the Exchange may from time to time require. Without limiting the generality of the foregoing, each order must include the originator of the order (including the Member ID of the Member by or through whom the order is being placed, and the Trader ID or other identifier of the Authorized Trader placing the order or AORS through which the order is being placed), the Delivery Month of the relevant Futures Contract or Futures Contracts, the bid or ask price, the order type, the quantity, the validity time (i.e., the period after which the order expires), an account number or identifier, the customer type indicator as prescribed in the Regulations of the Commission, and an origin code (showing whether the order is for the Member's Proprietary Account or Customer Account). In addition the order may also include free text. Any order not complying in full with the foregoing requirements of this paragraph (g) shall not be accepted into the BTEX Trading System.

(h) An order to buy or sell more than one Contract or Combination Trade shall be deemed to be for the number specified or for any lesser number, unless otherwise specified in the order.

(i) All orders entered into the BTEX Trading System shall be firm and remain open in the BTEX Trading System until executed or canceled, or until the expiration time, if any, specified in the order. Orders entered into the BTEX Trading System may be changed by the Member entering the order. Any such change shall be treated as the deletion of the existing order and the entry of a new order for all purposes (including without limitation time priority), unless the change consists only of one or more of the following:

(A) Reduction of quantity;

(B) Change of validity time;

- (C) Change of account number or identifier, CTI or origin code;
- (D) Adding, modifying or deleting free text; and/or
- (E) Such other change as the Exchange may from time to time specify.

(j) No Authorized Trader shall knowingly enter an order for a Customer into the BTEX Trading System or cause a transaction to be executed for a Customer in the BTEX Trading System in which the Authorized Trader, or the Member or the Affiliate of the Member employing such Authorized Trader, shall assume the opposite side of such order or transaction, unless:

(i) Such Customer shall have previously given consent thereto (which may be in the form of a blanket consent to all orders and transactions entered or executed after such consent is given); and

(ii) Except in the case of transactions effected pursuant to Rule 406, 407 or 408, such Authorized Trader first enters the Customer's order into the BTEX Trading System and waits for at least 5 seconds before entering the opposite order.

(k) If an order or series of orders is executed in one or more transactions at different prices in a single Trading Session, a Member may confirm to its Customer an average price for such transactions, provided that:

(i) The confirming of such average prices is in accordance with the then current requirements of the Commission;

(ii) Each such transaction is for the same account or group of accounts and for the same Contract;

(iii) The average price in each case shall be computed by multiplying the price of each Contract by the number of Contracts executed at that price, adding the results together and dividing the total by the aggregate number of Contracts executed; and, in the case of a series of orders, the average price may be computed based on the average price of each Contract in the series; and

(iv) Any confirmation of an average price must indicate on the confirmation and in any monthly statement furnished to the Customer that the price is an average price and not an execution price.

(l) Members may have communications with potential counterparties regarding interest in executing a particular transaction prior to the entry of any order into the BTEX Trading System, provided that, if the Member receives both buy and sell orders as a result of such communications, the Member may enter both orders, provided that (A) at least five seconds must elapse between the entry of any buy order and the entry of any sell order, and (B) any orders received from or on behalf of a Customer must be entered before any orders for a Proprietary Account.

404. Execution of Orders.

Unless otherwise specified by the Exchange, orders entered into the BTEX Trading System for Contracts shall be executed in accordance with an algorithm that gives first priority to orders at the best prices, and then gives priority among orders at the same price based on time of entry into the BTEX Trading System. Subject to the preceding sentence, orders entered into the BTEX Trading System for Combination Trades shall be executed and the legs thereof shall be priced in accordance with an algorithm that gives priority to execution of each leg of the transaction as a separate transaction rather than to execution of the transaction at a differential price, if the prices for the legs of the transaction are better than, or equal to, the differential price.

405. Correction of Errors.

If a Member advises the Exchange of an error in a transaction confirmed by the BTEX Trading System as executed:

(a) Such transaction may be cancelled as provided in this Rule, provided that the price of the transaction is outside the No-Cancellation Range for such transaction as set forth in paragraph (i) below, and provided that the Member advises the Exchange of such error by such means as the Exchange shall prescribe within 10 minutes after such transaction was confirmed. If such price is at or within such No-Cancellation Range, such transaction may not be cancelled, even if the parties agree to cancellation.

(b) If the price of the transaction is outside such No-Cancellation Range, the Exchange shall contact all Members which are parties to such transaction and shall send an advisory to all Members and to all quotation vendors disseminating quotations of the Exchange, indicating that the particular transaction may be cancelled.

(c) If, within 10 minutes after the Exchange sends the advisory referred to in paragraph (b), all Members which are parties to the transaction agree to its cancellation, and if no other Person notifies the Exchange that such Person objects to such cancellation, the transaction shall be cancelled.

(d) If, within 10 minutes after the Exchange sends the advisory referred to in paragraph (b), any Member which is a party to the transaction objects to its cancellation or if any such Member cannot be contacted, or if any other Person objects, the matter shall be referred to a panel consisting of at least three members of the Trade Review Committee appointed by the chairman of such Committee. Such panel may not include any individual who is employed by any of the parties to the transaction, or by any Person objecting to the cancellation, or by any Affiliate of any of them, or who otherwise has a direct or indirect interest in the transaction. The panel shall, in its sole and absolute discretion, determine whether there was manifest error in the transaction and, if so, whether such transaction should be cancelled. Unless it is impracticable to do so, the panel shall make its determination within 10 minutes after being appointed. The decision of the panel shall be final and not be subject to any appeal.

(e) In reaching any determination as provided in paragraph (d) of this Rule, the factors that may be considered by the panel include:

- (i) the market conditions before and after the transaction occurred;
- (ii) whether one or more parties to the trade believe the trade was at a valid price;
- (iii) whether there is any indication that the transaction in question triggered any contingency orders or resulted in the execution of any Combination Trades;
- (iv) whether a third party relied on the price; and
- (v) any other factors that the panel deems relevant.

(f) If a transaction is cancelled as provided in this Rule, either by agreement of the parties or by a panel of the Trade Review Committee:

- (i) the parties to the transaction shall reverse the transaction in accordance with such procedures as may be prescribed by the Exchange; and
- (ii) the Exchange shall also cancel all transactions resulting from contingency orders which were resting in the BTEX Trading System at the time the cancelled transaction was executed and which were triggered by such transaction. The Exchange shall notify the Clearing Members responsible for such cancelled transactions.

(g) As soon as a determination has been made as to whether a transaction shall be cancelled, the Exchange shall send an advisory to all Members and to all quotation vendors disseminating quotations of the Exchange, notifying them whether the transaction is being cancelled or not.

(h) If a transaction is cancelled pursuant to a decision of a panel of the Trade Review Committee, the party submitting the transaction for cancellation shall pay a fee to the Exchange in such amount as the Board may prescribe from time to time.

(i) The term "No-Cancellation Range" means such number of Ticks above or below the current market price as may be specified from time to time by the Board.

406. Block Trades.

A Clearing Member may effect a Block Trade between Customers of such Clearing Member, or between itself and any Customer, or between itself and any other Member (acting for itself or its Customers), without entering the same into the BTEX Trading System; provided that such Block Trade is effected in accordance with the provisions of this Rule; and provided further that if and at such time as there is in effect a Market Maker program, as provided in Rule 208, the Board may, as part of that program, restrict the right to effect Block Trades only to Members which are Market Makers or Affiliates of Market Makers.

(a) Each party to any Block Trade must be either:

(i) An “eligible contract participant” as that term is defined in Section 1a(12) of the Act, or

(ii) Being advised in connection with such Block Trade by a Person which is either:

(A) registered as an investment adviser with the Securities and Exchange Commission, registered as a commodity trading advisor by the Commission, or exempt from any such registration; or

(B) a foreign Person performing a similar role or function subject as such to foreign regulation

and, in either case, has total assets under management exceeding \$25 million.

For purposes of satisfying the minimum size requirements for Block Trades set forth in Part 3 of these Rules, an order placed by a Person described in subparagraph (ii) shall be considered a single order, irrespective of the number of clients on whose behalf such Person is acting, but otherwise orders placed on behalf of more than one client shall be considered separate orders.

(b) A Member may effect a Block Trade on behalf of a Customer only if the Member has received an order to do so from the Customer. Such order must be recorded by the Member and time-stamped with the time the order is placed and the time the order is executed.

(c) A Member may not take the opposite side of a Block Trade with a Customer of such Member without such Person’s prior consent, which may be in the form of a blanket consent to all transactions effected after such consent is given.

(d) The terms of each Block Trade shall be reported to the Exchange, in such form as the Exchange may prescribe, within the number of Trading Session Minutes set forth below following the consummation of the Block Trade:

Number of Contracts or Calendar Spread	Trading Session Minutes for Execution
250-999	15 minutes
1000-2499	30 minutes
2500-4999	60 minutes
5000-9999	120 minutes
10000+	240 minutes

(e) The term "Trading Session Minutes" shall mean the minutes occurring in any Trading Session during which a Block Trade is executed and during any Trading Session thereafter. (For example, if the required reporting time is 60 Trading Session Minutes, and the number of minutes remaining in a Trading Session during which a Block Trade is executed is 15, the Block Trade must be reported not later than 45 minutes following the commencement of the next Trading Session.)

(f) Any Member involved in any Block Trade shall maintain full and complete records of the transaction.

(g) Any Member involved in any Block Trade pursuant to this Rule must satisfy the Exchange, at its request, that the transaction complies with this Rule.

(h) Prices reported for Block Trades shall not trigger contingent orders pending in the BTEX Trading System.

407. Exchange of Futures for Physicals.

A Member may effect an exchange of Futures Contracts for physical Commodities (an "EFP") without entering the same into the BTEX Trading System in accordance with the provisions of this Rule.

(a) As used in this Rule 407, the term "Commodity" shall include but not be limited to: (A) a cash Commodity, (B) a forward contract to purchase or sell a cash Commodity, and (C) in the case of any Futures Contract on a group or index of securities, a basket of securities.

(b) Such transaction is to be consummated between two parties wherein one of the parties is the buyer of the Commodity and the seller of the Futures Contract, and the other party is the seller of the Commodity and the buyer of the Futures Contract.

(c) The Commodity being exchanged need not be the same as the Underlying Commodity for the Futures Contract being exchanged, but it must have a high degree of price correlation to such Underlying Commodity so that such Futures Contract would serve as an appropriate hedge for such Commodity.

(d) The quantity of the Commodity being exchanged must correspond approximately with the quantity of the Underlying Commodity of the Futures Contract being exchanged, taking into account any differences in the attributes of the Commodity being exchanged (such as interest rates and maturity dates) and those of the Underlying Commodity and applying hedge ratios as and to the extent appropriate.

(e) The purchase and sale of the Futures Contract shall be simultaneous with the sale and purchase of the corresponding Commodity.

(f) Such transaction may be consummated at any price as may be mutually agreed upon by the parties to the transaction.

(g) An EFP involving a Futures Contract having a particular Delivery Month may be made any time until the last Business Day permitted for the exchange of such Futures Contract for a Commodity pursuant to Part 3 of these Rules.

(h) The Clearing Member which is, or which is acting on behalf of a Person who is, the selling party under a Futures Contract which is a component of an EFP shall submit the transaction to the Clearing Organization for clearance.

(i) Each Member and/or Affiliate engaging in an EFP must satisfy the Exchange, at its request, that the transaction complies with this Rule.

(j) Prices reported for EFPs shall not trigger contingent orders pending in the BTEX Trading System.

408. Exchange of Futures for Swaps.

A Member may effect an exchange of Futures Contracts for swaps (an "EFS") without entering the same into the BTEX Trading System in accordance with the provisions of this Rule.

(a) The swap must be a transaction which is exempt from regulation under the Act or Commission Regulations.

(b) Such transaction is to be consummated between two parties wherein one of the parties is the buyer of the Futures Contract and assumes the opposite market risk under the swap, and the other party is the seller of the Futures Contract and assumes the opposite market risk under the swap, and the parties exchange such Futures Contract for the swap.

(c) The fluctuations in the value of the swap must have a high degree of correlation to fluctuations in the price of the Underlying Commodity for the Futures Contract being exchanged so that such Futures Contract would serve as an appropriate hedge for such swap.

(d) The notional amount of the swap being exchanged must correspond approximately with the quantity of the Underlying Commodity of the Futures Contract(s) being exchanged, taking into account any differences in the attributes of the swap being exchanged and those of the Underlying Commodity and applying appropriate hedge ratios.

(e) The purchase and sale of the Futures Contract shall be simultaneous with the transfer of the corresponding swap.

(f) Such transaction may be consummated at any price as may be mutually agreed upon by the parties to the transaction.

(g) An EFS involving a Futures Contract having a particular Delivery Month may be made any time until the last Business Day permitted for the exchange of such Futures Contract for a swap pursuant to Part 3 of these Rules.

(h) The Clearing Member which is, or which is acting on behalf of a Person who is, the selling party under a Futures Contract which is a component of an EFS shall submit the transaction to the Clearing Organization for clearance.

(i) Each Clearing Member which is, or which is acting on behalf of Person who is, a party to an EFS shall submit a report (the "EFS Report") to the Exchange with respect to such EFS not later than two Business Days after the date the Futures Contract component of such EFS was submitted for clearing. The EFS Report shall identify the transaction as an EFS made under this Rule and shall contain the following: a statement that the swap component of the EFS complied with paragraph (a) of this Rule at the time the EFS was entered into, a statement that the EFS has resulted or will result in a change of payments or other such change, the kind and quantity of the Futures Contracts involved, the price at which the Futures Contract component of the transaction is to be cleared, the names of the Clearing Members involved and their Customers, and such other information as the Exchange may require.

(j) All omnibus accounts and foreign brokers shall submit to the Exchange a signed EFS Reporting Agreement in the form prescribed by the Exchange. Such Agreement shall provide that any omnibus account or foreign broker identified by a Clearing Member (or another omnibus account or foreign broker) as the buyer or seller of an EFS shall supply the name of its Customer and such other information as the Exchange may require. Such information shall be submitted to the Exchange by noon on the Business Day which is not later than two Business Days after the EFS Report was submitted to the Exchange. Failure by an omnibus account or foreign broker to submit either the EFS Reporting Agreement or the particular EFS information to the Exchange may result in action by the Exchange to limit, condition or deny access of such omnibus account or foreign broker to the Exchange's markets.

(k) The Members involved in any EFS shall maintain full and complete records of the transaction, together with all pertinent documentation as to the swaps involved.

(l) Each Member engaging in an EFS must satisfy the Exchange, at its request, that the transaction complies with this Rule. Upon the request of the Exchange, all documentary evidence relating to the EFS (including without limitation a master swap agreement and any supplements thereto) shall be obtained by the Clearing Members and made available for examination by the Exchange.

(m) Prices reported for EFSs shall not trigger contingent orders pending in the BTEX Trading System.

409. [RESERVED]

410. Transfer of Positions.

(a) Contracts may be transferred from one account carried by a Member to another account carried by such Member or to an account carried by any other Person, but only if the transfer would not result in:

(i) the offset of long and short positions and in a reduction of the open interest in any Contract during the Delivery Month for such Contract; or

(ii) a change in the beneficial ownership in any Contract, unless the transfer is made:

(A) to correct an error in the original posting of the Contract;

(B) to reflect a change of ownership occurring by operation of law on the death or bankruptcy of a Person having an ownership interest in such Contract, or occurring as a result of a merger, consolidation, disposition of a line of business, reorganization or similar event affecting such a Person;

(C) to combine the positions held by two or more commodity pools operated by the same commodity pool operator and traded by the same commodity trading advisor pursuant to the same strategy, into a single consolidated account, so long as: (1) the transfers do not result in the liquidation of any open positions, and (2) the pro rata allocation of interests in the consolidated account does not result in more than a *de minimis* change in the value of the interest of any pool participant;

(D) in accordance with Rules 406, 407 or 408; or

(E) with the prior written approval of the Exchange.

(b) For purposes of this Rule, a change in beneficial ownership shall not be deemed to have occurred with respect to (i) transfers between firms which are 100% owned directly or indirectly by the same Person, and (ii) transfers between any Person and any Entity 100% owned directly or indirectly by such Person.

(c) Any Member transferring one or more Contracts shall give notice of the transfer to the Exchange in such form and containing such information as the Exchange may prescribe.

411. Establishment of Settlement Prices.

The Settlement Price for all Contracts shall be determined promptly after 3:00 p.m. in each Trading Session in accordance with the following procedure (or such other procedure as may from time to time be adopted by the Board):

(a) The Exchange shall appoint a panel of not less than eight Members. In the event that there shall be in effect at the time a Market Maker program pursuant to Rule 208, the panel shall include all of the Market Makers in the relevant Contract.

(b) Each member of the panel shall daily submit to the Exchange quotations of suggested settlement prices for each of the Contracts and Combination Trades then open for trading. The quotations shall be submitted promptly after the close of trading in the relevant Trading Session. Such quotations shall be based upon transactions, bids and offers occurring during such Session, as well as such other factors as each panel member may consider relevant.

(c) The Exchange shall disregard the two highest and the two lowest quotations so submitted and shall calculate the arithmetic average of the remaining quotations. Such average shall be the Settlement Price for each open Contract or Combination Trade.

(d) In the event that on any day for any reason it is not feasible to determine a Settlement Price in accordance with the foregoing provisions of this Rule, the Settlement Price shall be determined in such manner as may be prescribed by the Board. In any such case, the Exchange shall maintain a written record explaining the reason why it was not feasible to determine the Settlement Price in accordance with such procedures and describing the manner in which the Settlement Price was determined.

(e) The Exchange shall promptly publish such Settlement Prices to the media, the wire services and such other Persons as it may consider appropriate.

412. Speculative Position Limits.

In the case of any Contract for which speculative limits are set forth in Part 3 of these Rules:

(a) No Person may hold or control positions in Futures Contracts on the same side of the market, separately or in combination, net long or net short, in excess of such position limits, except as otherwise provided in the Rules.

(b) The position limits referred to in paragraph (a) of this Rule shall not apply to positions that have been exempted by the Exchange and which are either:

(i) Bona fide hedging positions as defined in Section 1.3(z)(1) of the Commission Regulations;

(ii) Positions (other than positions in the spot month in Contracts which have spot month limits) carried for an "eligible entity," as that term is defined in Section 150.1(d) of the Commission Regulations, in the separate account or accounts of an "independent account controller," as that term is defined in Section 150.1(e) of the Commission Regulations; provided, however, that the overall positions held or controlled by each such independent account controller may not exceed the applicable position limits; or

(iii) Risk management positions as described in this Rule. The term "risk management positions" means positions in Contracts (A) which are held on behalf of a commercial entity or other Person which qualifies as an "eligible swap participant", as that term is defined in Section 35.1(b)(2) of the Commission Regulations, and which commercial entity or other Person typically buys, sells, or holds positions in the Underlying Commodity or a related cash Commodity for which the cash market has a high degree of liquidity relative to the size of the risk management positions, and (B) which meet one or more of the following sets of criteria:

(A) Long positions in Futures Contracts, the face value of whose Underlying Commodity does not exceed the sum of:

(1) Cash set aside in an identifiable manner or unencumbered short-term U.S. Treasury obligations so set aside, plus any funds deposited as margin for such positions; and

(2) Accrued profits on such positions held by the futures commission merchant or other carrying firm.

(B) Long positions in Futures Contracts, the face value of whose Underlying Commodities does not exceed the sum of:

(1) The value of fully hedged positions in financial instruments; and

(2) Accrued profits on such positions held by the futures commission merchant or other carrying firm.

(C) Are recognized by the Exchange as risk management positions.

(iv) Arbitrage or spread positions from time to time enumerated by the Exchange.

(c) Position limits shall apply to (i) all positions in accounts for which any Person by power of attorney or otherwise directly or indirectly holds positions or controls trading, and (ii) to positions held by two or more Persons acting pursuant to an expressed or implied agreement or understanding the same as if the positions were held by, or the trading of the positions were done by, a single Person.

(d) No Member shall maintain a position in a Contract for itself in excess of the applicable position limits.

(e) No Member shall maintain a position in a Contract for any other Person if such Member knows, or with reasonable care should know, that such position will cause such other Person to exceed the applicable position limits; provided, however, that no Member shall be deemed to have violated the foregoing provisions of this paragraph (e) if:

(i) Such Member shall have established procedures and a system for applying such procedures which would reasonably be expected to detect, insofar as practicable, any violation by other Persons; and

(ii) Such Member has taken reasonable steps to apply such procedures and system without reasonable cause to believe that such procedures and system are not being complied with.

(f) Upon request by the Exchange, which may be written or oral, a Member shall, within one Business Day following receipt of such request or within such longer or shorter period of time as may be specified by the Exchange in its request:

(i) Furnish such assurance as the Exchange may request, and/or seek written assurance from any Person for whom such Member is maintaining a position, that such position does not violate the provisions of this Rule. In the event such Member seeks such assurance from such other Person, and if such other Person fails to deliver such assurance to the Member within a period of five Business Days after the request for assurance shall have been delivered by the Exchange to the Member, the Member must close out all positions in Contracts carried for such Person, and the continued maintenance by the Member of such position for such Person after such period shall be deemed *prima facie* evidence of the Member's violation of this Rule; or

(ii) Reduce the position maintained by the Member for itself or for such other Person to comply with the applicable position limits. In the event that any such position is maintained in accounts at more than one Member, then the position shall be reduced by each such Member in such manner as the Exchange may direct so that the aggregate position of the Person maintained by all Members does not exceed the applicable position limits.

413. Exemptions from Speculative Position Limits.

(a) Any Person seeking an exemption from the position limits referred to in Rule 412 must file an application with the Exchange no later than five Business Days after the day on which such Person's position exceeds such limits. The Exchange may direct that an application be filed in less than five Business Days.

(i) An application for exemption for bona fide hedging positions shall contain the following:

(A) An explanation of how the hedge position sought to be exempted would be exempt under Commission Regulation 1.3(z)(1);

(B) A statement of the maximum reasonable level that the applicant is seeking to have exempted;

(C) A description of the applicant's specific position in the Contracts for which the exemption is sought, the Underlying Commodities for those Contracts and any closely related Commodities; and

(D) A description of the applicant's business operations.

(ii) An application for exemption for positions carried by an eligible entity shall contain such information as the Exchange may require.

(iii) An application for exemption for risk management positions shall contain the following:

(A) An explanation of how the positions sought to be exempted qualify as risk management positions;

(B) A statement of the maximum reasonable level that the applicant is seeking to have exempted;

(C) A description of the applicant's specific position in the Contracts for which the exemption is sought, the Underlying Commodities for these Contracts and any closely related Commodities; and

(D) A general description of the applicant's relevant business operations.

(iv) An application for exemption for arbitrage or spread positions shall contain the following:

(A) An explanation of how the positions sought to be exempted qualify as arbitrage or spread positions;

(B) A statement of the maximum reasonable level that the applicant is seeking to have exempted;

(C) A description of the applicant's specific position in the Contracts for which the exemption is sought, the Underlying Commodities for these Contracts and any closely related Commodities; and

(D) A general description of the applicant's relevant business operations.

(b) If a Person is granted an exemption by the Exchange under this Rule:

(i) The exercise of that exemption, in whole or in part, by that Person, shall constitute:

(A) an undertaking by that Person to (i) notify the Exchange of any change in its circumstances that affect the reasonableness of the exemption granted; and (ii) supply the Exchange with such other and further information as the Exchange might require; and

(B) an acknowledgment by the exempted Person that the Exchange may, at any time, review, revoke, alter or place limits on any such exemptions if the Exchange deems such action to be in the best interests of the Exchange.

(ii) In the case of an exemption for an eligible entity, if the independent account controller is affiliated with the eligible entity or another independent account controller, each of the affiliated entities must:

(A) have and enforce written procedures to preclude the affiliated entities from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities; provided, however, that such procedures may provide for the disclosure of information that is reasonably

necessary for an eligible entity to maintain the level of control consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf;

(B) trade such accounts pursuant to separately developed and independent trading systems;

(C) market such trading systems separately; and

(D) solicit funds for such trading by separate disclosure documents that meet the standards of Sections 4.24 or 4.34 of the Commission Regulations, as applicable, where such disclosure documents are required.

(c) Within five Business Days after the submission of an application conforming to the requirements of this Rule, the Exchange shall notify the applicant whether the exemption has been approved and if any limitations have been placed thereon. An exemption shall remain in full force and effect until (i) the applicant requests a withdrawal thereof or (ii) the Exchange revokes, modifies or places further limitations thereon.

(d) If an application for an exemption under this Rule is denied, the affected party may appeal such denial to the Board by giving written notice to the Exchange within five Business Days following receipt of notification of the denial, in which case:

(i) A hearing on such application shall be conducted before the Board or its designee;

(ii) Any action by the Exchange respecting any application for exemption under the Rules of the Exchange shall remain in effect unless and until it is reversed by the Board or its designee, but may be stayed by the Board or its designee pending a decision thereon after the hearing;

(iii) Any such hearing shall be conducted pursuant to such rules and/or procedures as may be adopted by the Board or its designee, which rules or procedures shall, in the judgment of the Board or its designee, be sufficient to give such Person an opportunity to present fully and fairly to the Board or its designee the Person's reasons why the application should be granted. If an applicant does not so request a hearing within such five Business Days, the application shall be deemed to have been withdrawn. If there shall be such a hearing, and if after the completion of such hearing the Board or its designee decides to deny such Person's application, the Exchange shall give such Person written notice of the decision of the Board or its designee, setting forth the grounds therefor, and such decision shall be the final action of the Exchange and not subject to appeal within the Exchange; and

(iv) Applicants and exempted persons shall be identified by the Exchange staff to the Board or its designee initially by symbol; provided, however, that if the Board or its designee needs further identification to perform its functions, then such further identification shall be supplied.

(e) In the event that the Exchange has reason to believe that a Member has violated any Exchange position limit rules, the matter shall be promptly reviewed by the Enforcement Staff which, if appropriate, shall issue a warning letter to the Member; provided, however, that, if there appears to be a more serious or systematic violation by the Member of the position limits, then the Enforcement Staff must proceed in accordance with Part 7 of these Rules.

414. Position Accountability.

In the case of any Contract for which a Position Accountability Level is set forth in Part 3 of these Rules, the following provisions shall apply:

(a) A Person who owns or controls Futures Contracts on the same side of the market, separately or in combination, net long or net short, in excess of the applicable Position Accountability Level shall:

(i) provide, as and when requested by the Exchange, information regarding the nature of the position, trading strategy, and hedging information if applicable; and

(ii) automatically consent, when so ordered by the Exchange in its discretion, to halt increasing further such positions.

(b) For purposes of this Rule, all positions in accounts for which a Person, by power of attorney or otherwise, directly or indirectly controls trading shall be included with the positions held by such Person. The provisions of this Rule shall apply to positions held by two or more Persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by a single Person.

Part 5 - Clearance

501. Clearance.

All Contracts effected by any Member on the Exchange shall immediately be submitted for clearance to the Clearing Organization, and all Contracts effected by any Member other than on the Exchange but subject to the Rules of the Exchange, shall be submitted for clearance when and as provided in these Rules or the Rules of the Clearing Organization.

Part 6 - Deliveries

601. Delivery of Treasury Securities.

Delivery of U.S. Treasury Bonds and Notes pursuant to Futures Contracts shall be made in accordance with the following procedures.

(a) All bonds or notes delivered under a Futures Contract must be of the same issue.

(b) All deliveries of bonds or notes pursuant to Futures Contracts shall be by book-entry transfer between accounts of Clearing Members at Qualified Banks in accordance with Treasury Circular 300 of the U.S. Department of the Treasury, Subpart O.

(c) The delivery price of any bond or note to be delivered pursuant to any Futures Contract shall be the Settlement Price of such Futures Contract on the second Business Day preceding the Delivery Day for such bond or note, multiplied:

(i) by 2,000 in the case of a note referred to in Rule 301, or by 1,000 in the case of any other note or any bond; and

(ii) if such bond or note has a coupon rate other than 6%, by a conversion factor calculated in accordance with the following formula:

$$\text{Conversion factor} = a \times \frac{[\text{coupon} + c + d]}{2} - b$$

where factor is rounded to 4 decimal places and .00005 is rounded up to the fourth decimal place, and

coupon	is the annual coupon of the bond or note in decimals
n	is the number of whole years from the first day of the delivery month to the maturity (or call) date of the bond or note
z	is the number of months between n and the maturity (or call) date rounded down to the nearest quarter for bond and 10-year note futures (so z can take on the values 0, 3, 6, or 9) and to the nearest month for 5-year and 2-year note futures (so z can be any integer between 0 and 11)

v =	$\begin{cases} z & \text{if } z \leq 7 \\ 3 & \text{if } z \geq 7 \text{ (bond and 10-year note futures)} \\ (z - 6) & \text{if } z \geq 7 \text{ (5-year and 2-year note futures)} \end{cases}$
a =	$\frac{1}{\frac{v}{6}}$

	1.03
b =	$\frac{\text{coupon} \times 6 - v}{2 \quad 6}$
c =	$\begin{cases} \frac{1}{2n} & \text{if } z \leq 7 \\ 1.03 & \\ \frac{1}{2n+1} & \text{otherwise} \\ 1.03 & \end{cases}$
d =	$\frac{\text{coupon} \times (1 - c)}{0.06}$

(d) Each long Clearing Member must report to the Clearing Organization all open positions in Futures Contracts for any Delivery Month by 9:00 p.m. on the second Business Day preceding the first Business Day of such Delivery Month and thereafter must report all changes in such open positions on a daily basis. Such reports shall be in such form and contain such information as the Clearing Organization may specify.

(e) Each short Clearing Member making delivery shall give Delivery Notices to the Clearing Organization in such form as may be prescribed by the Exchange by 9:00 p.m. on the second Business Day preceding the Delivery Day for the bonds or notes specified in the Delivery Notice. The Clearing Organization shall allocate such notices to long Clearing Members in accordance with the Rules of the Clearing Organization and shall promptly notify each short Clearing Member of the long Clearing Members obligated to accept delivery and a description of each bond or note tendered by each short Clearing Member which was allocated to each such long Clearing Member.

(f) Each such short Clearing Member making delivery shall deliver to the Clearing Organization, by 3:00 p.m. (or by 4:00 p.m., where delivery is to be made on the last permissible Delivery Day for the Delivery Month) on the Business Day following the Notice Day, invoices addressed to each such long Clearing Member. Each such invoice shall set forth the documents to be delivered to the particular long Clearing Member, the amount to be paid by such long Clearing Member (which shall be the delivery price determined as set forth in paragraph (c), plus any interest accrued to the Delivery Day on the bonds or notes being delivered, determined in accordance with Circular 300 of the U.S. Department of the Treasury, Subpart P), the name of the short Clearing Member's Qualified Bank, the number of the short Clearing Member's account at such Qualified Bank and the specific instructions for wiring federal funds to such account. The Clearing Organization shall promptly deliver such invoices to the long Clearing Members to which they are addressed. In the event that a long Clearing Member does not agree with any such invoice, it must notify the short Clearing Member forthwith, and the dispute must be settled by 10:30 a.m. on the Delivery Day.

(g) Any long Clearing Member to which an invoice shall have been delivered shall provide the short Clearing Member issuing the invoice by 5:00 p.m. on the Business Day

following the Notice Day with a notice specifying the name of the long Clearing Member's Qualified Bank, the number of the long Clearing Member's account at such Qualified Bank and specific federal wire instructions for the transfer of the Treasury bonds or notes to be delivered.

(h) On the Delivery Day:

(i) By 8:30 a.m., each long Clearing Member obligated to take delivery must have funds available in the Qualified Bank specified pursuant to paragraph (g) in sufficient amount to pay for the bonds or notes to be delivered to it and must instruct said Qualified Bank to accept the specified bonds or notes and to remit the price in federal funds to the account specified by the short Clearing Member in payment for delivery of such bonds or notes.

(ii) By 11:00 a.m., each short Clearing Member making delivery must have bonds or notes of Deliverable Grade on deposit at the Qualified Bank specified pursuant to paragraph (f) and must instruct such Qualified Bank to transfer said bonds or notes by book-entry to the account specified by the long Clearing Member against payment therefor in accordance with these Rules.

(iii) The bonds or notes must be delivered and payment must be made before 2:00 p.m. on the Delivery Day, except where the Delivery Day is a bank holiday, in which case delivery and payment must be made before 10:30 a.m. on the next Business Day that is not a bank holiday.

(i) Each Clearing Member must deliver to the Clearing Organization any Delivery Notices received by it from Customers that are short, regardless of whether the Clearing Member or other Customers of such Clearing Member wish to take delivery.

(j) In the event that any delivery cannot be completed on the Delivery Day specified in a Delivery Notice because of a failure of the Federal Reserve wire or because of a failure of any Qualified Bank's access to the Federal Reserve wire: (i) delivery shall be made not later than 10:30 a.m. on the next Business Day on which the Federal Reserve wire or bank access to the Federal Reserve wire is operable; (ii) the long Clearing Member shall not be required to pay the short Clearing Member for interest accrued on the bond or note being delivered subsequent to such specified Delivery Day; and (iii) both Clearing Members must on demand furnish the Exchange with evidence satisfactory to the Exchange that the provisions of this Rule were complied with.

(k) In the event that delivery of any bond or note, or payment therefor, cannot be made when and as provided in this Rule because of any act of God, act of war, act of government, civil disturbance, casualty, power failure or other extraordinary circumstance outside the control of the party affected thereby, the matter shall forthwith be referred to the Board, which shall determine whether to take emergency action in accordance with the Bylaws.

Part 7 - Disciplinary Proceedings

701. Rule Violations.

(a) Except as provided in Rule 707(a), the investigation of any suspected violation of the Bylaws or Rules by any Member or market participant (the "Respondent") shall be conducted by the Enforcement Staff in accordance with the Rules. After each such investigation, whether or not it believes a violation of the Bylaws or Rules may have occurred, the Enforcement Staff shall prepare a written investigation report describing the investigation conducted and setting forth the facts determined and the conclusions of the Enforcement Staff. The Enforcement Staff shall maintain a file of all investigation reports for a period of not less than five years after the completion of each such report.

(b) Within a reasonable period of time not to exceed 30 days after the completion of an investigation report, the Enforcement Staff shall take one of the following actions:

(i) If the Enforcement Staff determines that no reasonable basis exists for finding a violation or that prosecution is otherwise unwarranted, it may take no further action. Such determination must be set forth in the investigation report and be accompanied by a brief statement setting forth the reasons therefor.

(ii) If the Enforcement Staff determines that a reasonable basis exists for finding a violation, it may:

(A) negotiate and enter into a written settlement agreement with the Respondent; or

(B) commence disciplinary proceedings against such Respondent pursuant to these Rules.

(c) The Enforcement Staff may, in its discretion, permit a Respondent in any settlement agreement to accept a penalty without either admitting or denying the violation upon which the penalty is based. If the Enforcement Staff accepts any such proposal, it shall issue a written decision specifying the violations it has reason to believe were committed and any penalty to be imposed. If the settlement proposal specifies that the Respondent is agreeing to accept a penalty without either admitting or denying any violations, the decision shall so state.

702. Notice of Charges; Service of Papers.

If the Enforcement Staff commences disciplinary proceedings against any Respondent, the Enforcement Staff shall serve such Respondent with a written notice of charges, which shall:

(a) state the acts, practices or conduct in which the Respondent is alleged to have engaged;

(b) state the Rule alleged to have been violated (or about to be violated);

(c) state the predetermined penalty, if any;

(d) state that the Respondent is entitled, upon written request served upon the Enforcement Staff within 20 days of service of the notice of charges, to a hearing on the charges, and that failure so to request a hearing within such 20 days, except for good cause shown, shall be deemed a waiver of the right to a hearing; and

(e) state that failure in an answer to deny expressly any allegation or any charge in the notice of charges shall be deemed to be an admission of such allegation or charge.

Service of a notice of charges or any other document in a disciplinary proceeding on a Respondent shall be made by personal delivery to such Respondent, or by first class mail addressed to such Respondent at the last address filed by such Respondent with, or otherwise known to, the Exchange, or, if such Respondent is represented by counsel or any other representative, by personal delivery to such counsel or representative or by first class mail addressed to such counsel or representative at the last address filed by such counsel or representative with the Exchange. Service of any document on the Enforcement Staff shall be made by personal delivery to the Enforcement Staff, or by first class mail addressed to the Enforcement Staff, in either case at such address as is specified by the Enforcement Staff. Service by mail shall be complete when deposited in an official depository of the United States Postal Service, but in any case where service is made by mail, any time period in these Rules calculated with respect to the date of service shall be extended by a period of five days.

703. Answer from Respondent.

(a) A Respondent receiving a notice of charges may serve a written answer to such notice of charges upon the Enforcement Staff, provided that:

(i) The answer must be in writing and include a statement that the Respondent admits, denies or does not have and is unable to obtain sufficient information to omit or deny any allegation. A statement of a lack of sufficient information shall have the effect of a denial of an allegation.

(ii) Failure to serve an answer upon the Enforcement Staff within 20 days following the service of the notice of charges shall be deemed an admission of all allegations contained in the notice of charges.

(iii) Failure in an answer to deny expressly any charge or allegation shall be deemed to be an admission of such charge or allegation.

(b) If the Respondent admits or fails to deny any of the charges in a notice of charges, the Adjudication Committee may find that the violation of the Rule or Rules alleged in such charge has been committed, and may impose a penalty no greater than the predetermined penalty, if any, stated in the notice of charges for such violation or violations. If no such predetermined penalty was so stated, the Adjudication Committee shall impose a penalty for each violation found to have been committed. The Adjudication Committee shall promptly serve the Respondent and the Enforcement Staff with a written notice of any penalty to be imposed pursuant to this paragraph and shall advise the Respondent that it may request a hearing on such penalty,

provided that a written request for such a hearing is served upon the Enforcement Staff within 10 days following the service of such notice; but that, except for good cause shown, no hearing shall be permitted on a predetermined penalty stated in the notice of charges. If the Respondent fails to request a hearing within the period of time stated in the preceding sentence (or such longer time as the Adjudication Committee may permit for good cause shown), the Respondent shall be deemed to have accepted the penalty, and the decision of the Adjudication Committee shall be the final action of the Exchange.

703A. Reply.

The Enforcement Staff may serve on the Respondent a written reply within five days of the date of service of the Respondent's answer. The reply must be limited to the matters set forth in such answer.

704. Hearings in Disciplinary Proceedings.

(a) Any hearing on charges contained in a notice of charges shall be conducted before the Adjudication Committee.

(b) Upon being served with a notice of charges, a Respondent shall be entitled to be represented by legal counsel or any other representative of its choosing.

(c) The Respondent shall be entitled in advance of the hearing to examine all books, documents, or other tangible evidence in the possession or under the control of the Exchange which are to be relied upon by the Enforcement Staff in presenting the charges contained in the notice of charges or which are relevant to those charges.

(d) The formal rules of evidence need not apply; nevertheless, the procedures for the hearing may not be so informal as to deny a fair hearing.

(e) The Enforcement Staff shall be a party to the hearing and shall present its case on those charges and penalties which are the subject of the hearing.

(f) The Respondent shall be entitled to appear personally at the hearing.

(g) The Respondent shall be entitled to cross-examine any persons appearing as witnesses at the hearing.

(h) The Respondent shall be entitled to call witnesses and to present such evidence as may be relevant to the charges.

(i) The Exchange shall require Persons within its jurisdiction who are called as witnesses to appear at the hearing and to produce evidence. It shall make reasonable efforts to secure the presence of all other Persons called as witnesses whose testimony would be relevant.

(j) A substantially verbatim record of the hearing shall be made and shall become a part of the record of the proceeding. The record must be one that is capable of being accurately transcribed; however, it need not be transcribed unless the transcript is requested by Commission

staff or the Respondent, or the decision is appealed to or reviewed by the Commission. In all other instances, a summary record of the hearing is permitted.

(k) The cost of transcribing the record of the hearing shall be borne by a Respondent who requests the transcript or appeals the decision to the Commission. In all other instances, the cost of transcribing the record shall be borne by the Exchange.

(l) A penalty may be summarily imposed by the Adjudication Committee upon any person within its jurisdiction whose actions impede the progress of a hearing.

705. Decision of Adjudication Committee.

Promptly following the hearing, the Adjudication Committee shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall serve a copy of such decision upon the Enforcement Staff and the Respondent. The decision shall include:

- (a) The notice of charges or a summary of the charges;
- (b) The answer, if any, or a summary of the answer;
- (c) A brief summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the investigation report;
- (d) A statement of findings and conclusions with respect to each charge, including the specific Bylaws or Rules which the Respondent is found to have violated; and
- (e) A declaration of any penalty imposed and the effective date of such penalty. Any such penalty may include any one or more of the following:
 - (i) a censure or reprimand;
 - (ii) a fine in such amount as the Adjudication Committee deems appropriate;
 - (iii) limiting the positions which may be carried by such Member;
 - (iv) suspension of trading and/or clearing privileges, or, in the case of a Respondent which is not a Member, denying future access, either directly or indirectly, to any or all of the Exchange's markets for such period as the Adjudication Committee may determine;
 - (v) suspension as a Clearing Member or as a Member;
 - (vi) termination as a Clearing Member or as a Member; and
 - (vii) such other penalty as the Adjudication Committee in its discretion shall deem appropriate.

Such decision shall be the final action of the Exchange.

In the case of any penalty imposed on a Respondent which is not a Member denying access to any Exchange market, the Adjudication Committee may issue an order to all Members prohibiting them from granting such access, directly or indirectly, and any knowing violation of such order shall constitute a violation of the Rules.

706. Settlement.

(a) At any time after the issuance of a notice of charges and prior to the issuance of a decision pursuant to Rule 705, a Respondent may serve upon the Enforcement Staff a written proposal to settle the matter in question. The Adjudication Committee may accept or reject the settlement agreement, but may not alter its terms unless the Respondent agrees. The Adjudication Committee, in its discretion, may permit the Respondent to accept a penalty without either admitting or denying the violations upon which the penalty is based.

(b) If the Adjudication Committee accepts any such proposal, it shall issue a written decision specifying the violations it has reason to believe were committed and any penalty to be imposed. If the settlement proposal specifies that the Respondent is agreeing to accept a penalty without either admitting or denying any violations, the decision shall so state.

(c) If the Adjudication Committee does not accept a settlement proposal, the proceedings shall continue against the Respondent, but the Respondent shall not be deemed to have made any admissions by reason of the offer of settlement and shall not be otherwise prejudiced by having submitted the offer of settlement.

707. Summary Proceedings.

(a) The Enforcement Staff may summarily impose a fine against any Member:

(i) for failing to make timely payments of original or variation margin, option premiums, dues, fees, fines, assessments or other charges;

(ii) for failing to make timely and accurate submissions to the Exchange of notices, reports, or other information required under any provision of the Bylaws or Rules; and

(iii) for failing to keep any records required under any provision of the Bylaws or Rules.

The amounts of the fines for any category of violations which may be imposed pursuant to this Rule shall be set by the Board from time to time, provided that the maximum fine for any one violation shall not exceed \$10,000. Nothing contained in this Rule shall preclude any other action against a Member pursuant to the Rules. The imposition of a fine against a Member pursuant to this Rule shall be the final action of the Exchange if the Member does not request review when and as hereinafter provided.

(b) The Exchange shall serve a Member with written notice of a fine imposed pursuant to paragraph (a) of this Rule. Such notice shall specify the date of the occurrence for which the fine is being imposed, the provision or provisions of the Bylaws or Rules giving rise to the fine and

the amount of the fine. Within 10 days of the service of such notice, the Member shall either pay such fine, or serve the Exchange with a written request to review such fine. Any such request shall specify the basis for such review.

708. Financial or Operational Emergencies.

(a) If at any time the Board, in its sole discretion, determines that there is a substantial question as to whether a Financial or Operational Emergency exists with respect to any Member, the Board may suspend, or take any other summary action against, involving or with respect to such Member as the Board may deem necessary or appropriate to protect the best interests of the marketplace.

(b) Any action taken against, involving or with respect to any Member pursuant to this Rule shall be taken after notice and an opportunity to be heard, unless (i) such Member shall have waived the right to such notice and opportunity, or (ii) the Board in its sole discretion shall determine that (A) giving such notice or opportunity to be heard before taking such action is not practicable under the circumstances, and (B) there is reason to believe that immediate action is necessary to protect the best interests of the marketplace. Any such notice shall be given by telephone not later than one hour before the hearing.

(c) In any case in which action is taken against, involving or with respect to a Member without prior notice and opportunity to be heard, the Exchange shall give such Member notice and an opportunity to be heard promptly thereafter. Every such notice shall (i) state the action taken, (ii) briefly state the reasons for the action and (iii) state the effective time, date and duration of the action.

(d) In any hearing pursuant to this Rule the Board shall not be bound by formal rules of evidence or by technical considerations. The Board shall follow such procedures as it deems best calculated to ascertain material information and otherwise to insure a fair and impartial hearing.

(e) At the hearing, the Exchange shall present such evidence and considerations as may tend to show that there is a substantial question as to whether a Financial or Operational Emergency exists with respect to such Member, and the Member may present such evidence and considerations as may tend to show that no such question exists. The Member may be represented by legal counsel or any other representative of its choosing at such hearing. A substantially verbatim record of the hearing shall be made, but need not be transcribed unless the Member so requests or the Exchange so determines.

(f) Promptly following the hearing referred to in paragraph (e) of this Rule, the Board shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall serve a copy of such decision on the Member. The decision shall include:

- (i) A description of any summary action taken,
- (ii) The reasons for the summary action taken,

- (iii) A brief summary of the evidence produced at the hearing,
- (iv) Findings and conclusions,
- (v) A determination that the summary action taken should be affirmed, modified or reversed, and
- (vi) A declaration of any action to be taken pursuant to the determination specified in subparagraph (v) and the effective date and duration of such action. Such decision shall be the final action of the Exchange and shall not be subject to appeal within the Exchange.

(vii) Notwithstanding the other provisions of this Rule 708, if the President, in his or her sole discretion, shall determine that there is a malfunction in the system for transmitting orders or other communications from or through any Member into the BTEX Trading System and that such malfunction may impair, delay or otherwise adversely affect the operation of the BTEX Trading System, the President may instruct such Member to discontinue transmissions to the BTEX Trading System from any source and may cause such steps to be taken as will disconnect such Member from the BTEX Trading System, until such time as such malfunction shall have been resolved in a manner satisfactory to the President in his or her sole discretion. In taking any such action, the President shall endeavor to communicate with the Member in question prior to taking any such action, but the inability or failure of the President to do so shall not prevent, delay or otherwise affect the ability of the President to act pursuant to this paragraph.

709. Reinstatement of Suspended Member; Revocation or Modification of Other Actions.

A Respondent which has been suspended or has been the subject of any other Exchange action pursuant to this Part 7, may seek reinstatement or revocation or modification of such action by submitting an application therefor in such form and accompanied by such information as the Exchange may prescribe. Such application may be rejected or granted in whole or in part by the Board in its discretion.

710. Conflicts of Interest or Bias.

(a) No member of the Board or any Disciplinary Committee shall knowingly participate in such body's deliberations and voting on any matter involving a named party and interest where such member is precluded from doing so pursuant to Section 6.5(c) of the Bylaws.

(b) Prior to the consideration of any matter involving a named party in interest, each member of the Board or any Disciplinary Committee must disclose to the President of the Exchange whether he or she has any one of the relationships listed in Section 6.5(c)(i) of Bylaws with the named party in interest.

(c) Any Respondent which is a named party in interest in any proceeding under this Part 7 may serve a written request on the President of the Exchange for disqualification of any

member of the Board or any Disciplinary Committee on the grounds that such member has one of the relationships listed in Section 6.5(c)(i) of the Bylaws, or that any other cause exists which might cause such member to have a bias against such Respondent.

(d) The President shall determine whether or not any member of the Board or Disciplinary Committee will be disqualified from deliberating, voting or otherwise participating in any matter based upon:

(i) Information provided by such member pursuant to paragraph (b) of this Rule;

(ii) Information provided by a Respondent which is a named party in interest pursuant to paragraph (c) of this Rule; and

(iii) Any other source of information that is reasonably available to the Exchange.

(e) The President shall promptly serve written notice on the member of the Board or Disciplinary Committee, as the case may be, and on the Respondent which is the named party in interest, of his or her determination; and such determination shall be final and not subject to appeal within the Exchange.

711. Delegation of Authority.

(a) The Board may in its discretion delegate any or all of its authority under this Part 7 to a committee of the Board.

(b) The President may in his or her discretion delegate any or all of his or her authority under this Part 7 to any other employee of the Exchange.

Part 8 – Customer Disputes

801. Procedure for Resolution.

Any dispute between a Customer and a Member arising out of or in connection with the solicitation or acceptance of any order for execution of a Contract, or the execution or performance of any Contract, shall be resolved by and pursuant to the arbitration rules of the NFA or, in the case of any Customer which is an ECP, such other self-regulatory organization as the parties may agree to; provided, however, that the submission of any such dispute to arbitration as aforesaid shall be voluntary in the case of Customers which are not ECPs. The failure by any Member to comply with any decision issued by the NFA or such other self-regulatory organization in resolving any such dispute shall, unless such decision is the subject of judicial review, constitute a violation of these Rules.

Part 9 – Miscellaneous

901. Prohibition of Compensation to Exchange Employees.

No Member, Affiliate of a Member or employee of any of them shall give any compensation or gratuity to any Exchange employee, and no Exchange employee shall accept any compensation or gratuity from any Member, Affiliate of a Member or employee of any of them; provided that the foregoing shall not preclude giving or accepting items of nominal value.

902. Rule Amendments and Interpretations.

(a) Rules may be adopted, amended or repealed as provided in the Bylaws; provided, however, that (except where action is being taken in an emergency, as provided in the Bylaws), no Rule and no amendment or repeal of a Rule, shall apply to any Contract entered into prior to the adoption thereof if such Rule, amendment or repeal would affect the amount of money to be paid, or the specifications of the Underlying Commodity to be delivered, under such Contract.

(b) The correct interpretation or meaning of any Rule may be determined by the affirmative vote of a majority of the entire Board.

903. Confidentiality of Information.

All information received by the Exchange concerning past or current positions carried by the Exchange or any other clearing organization for a Member, or concerning margin or premium payments between the Exchange or any other clearing organization and a Member, or concerning deliveries made by or to a Member, and any financial statements filed with the Exchange by any Member, shall be held in confidence by the Exchange and shall not be made known to any other person except as follows:

(a) With the written consent of the Member involved;

(b) To the Commission or the United States Department of Justice pursuant to the requirements of the Act or any Commission Regulation;

(c) Pursuant to a subpoena issued by or on behalf of any person, or in the Exchange's discretion, pursuant to a written request from the Congress of the United States, any committee or subcommittee thereof, the General Accounting Office, or any department or agency of the United States, the State of New York or the City of New York;

(d) Pursuant to an order issued by a court having jurisdiction over the Exchange;

(e) To any SRO for audit, compliance or market surveillance purposes; provided that the furnishing of any such information shall be subject to such terms and conditions as the Board, from time to time, may deem appropriate;

(f) To any Person in the business of providing data processing or similar services for the purpose of performing computations or analysis, or of preparing reports or records, for the

Exchange, subject to such terms and conditions as the Board, from time to time, may deem appropriate;

(g) To counsel for the Exchange; or

(h) To any other Person if, to the extent and pursuant to such terms and conditions as the Board, from time to time, may deem appropriate.

If information concerning one or more named Members is requested pursuant to paragraphs (b), (c) or (d) above, the Exchange shall so notify each such Member prior to furnishing such information, unless in the judgment of the Exchange it would be contrary to the best interests of the Exchange to do so.

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BROKERTEC FUTURES EXCHANGE, L.L.C.

**LIMITED LIABILITY COMPANY
AGREEMENT
AND
BYLAWS**

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LIMITED LIABILITY COMPANY AGREEMENT AND BYLAWS
OF
BROKERTEC FUTURES EXCHANGE, L.L.C.

THIS LIMITED LIABILITY COMPANY AGREEMENT AND BY-LAWS OF BROKERTEC FUTURES EXCHANGE, L.L.C., a Delaware limited liability company (the "Exchange"), is made as of the 22nd day of June, 2001 among BTEX Holdings, L.P. and such other Persons who are admitted as Shareholders of the Exchange from time to time.

WHEREAS, the parties wish to establish an exchange for the electronic trading of futures and related options contracts on financial instruments;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I

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

"**Accession Agreement**" shall have the meaning set forth in Section 3.4(b).

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

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

"**Affiliated Person**" means:

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

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

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

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

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

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

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

“**Capital Account**” means, with respect to any Shareholder, the account maintained for such Shareholder in a manner that the Exchange determines is in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv) and this Agreement.

“**Certificate of Formation**” means the certificate of formation of the Exchange under the Delaware Act.

“**Class A Directors**” means:

(a) Prior to the date referred to in Section 5.2(b), the initial Directors referred to in Section 5.2(a) and any successors thereto;

(b) On and after the date referred to in Section 5.2(b) and until the election of Directors at the first annual meeting of Shareholders following such date, any Directors elected as Affiliated Persons of Class A Shareholders, and their respective successors; and

(c) Upon the election of Directors at the annual meeting of Shareholders referred to in paragraph (b) and thereafter, the Directors elected by the Class A Shareholders, voting as a class, and their respective successors.

“**Class B Directors**” means:

(a) Until the election of Directors at the first annual meeting of Shareholders following the date referred to in Section 5.2(b), any Directors elected as Affiliated Persons of Class B Shareholders, and their respective successors; and

(b) Upon the election of Directors at the annual meeting of Shareholders referred to in paragraph (a) and thereafter, the Directors elected by the Class B Shareholders, voting as a class, and their respective successors.

“**Class A Shareholders**” means holders of Class A Shares.

“Class B Shareholders” means holders of Class B Shares, whether Participating Class B Shareholders or Non-Participating Class B Shareholders.

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

“Class B Shares” means Shares in the Exchange that establish such rights and obligations of the holders thereof as set forth in Section 3.2(c) and other provisions of this Agreement.

“Clearing Member” means a Person who has the privilege to clear Contracts with the Clearing Organization pursuant to this Agreement, the Rules of the Exchange and the Bylaws and Rules of the Clearing Organization.

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

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

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

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

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

“Contract” means a Futures Contract or an Option.

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

“Customer” means “customer,” as such term is defined in Section 1.3(k) of the Commission Regulations.

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

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

“Disciplinary Committee” means the Adjudication Committee and any subcommittee or panel thereof.

“Entity” means any Person other than an individual.

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

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

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

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

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

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

“Non-Participating Class B Shareholder” shall have the meaning set forth in Section 3.4(c).

“Operational Date” means the first date on which any Contracts are open for trading on or subject to the Rules of the Exchange.

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

“Participating Class B Shareholder” shall have the meaning set forth in Section 3.4(c).

“Percentage Interest” means, with respect to any Shareholder of any class as of any date, the ratio (expressed as a percentage) of (i) the number of Shares of such class held by such Shareholder on such date to (ii) the aggregate number of Shares of such class held by all Shareholders of such class on such date; provided, however, that for purposes of Sections 4.3(a) and 4.5(a), clause (ii) above shall include neither (A) Shares held by Non-Participating Class B

Shareholders nor (B) for each Fiscal Year other than the Fiscal Year ending December 31, 2001, Shares held by Participating Class B Shareholders holding only one Class B Share.

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

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

(a) All items of income, gain, loss, or deduction required to be separately stated pursuant to Section 703(a)(1) of the Code shall be included;

(b) Tax-exempt income as described in Section 705(a)(1)(B) of the Code realized by the Exchange during such Fiscal Year shall be taken into account as if it were taxable income;

(c) Expenditures of the Exchange described in Section 705(a)(2)(B) of the Code for such year, including items treated under Treasury Regulation Section 1.704-1(b)(2)(iv)(i) as items described in Section 705(a)(2)(B) of the Code, shall be taken into account as if they were deductible items; and

(d) With respect to any property of the Exchange that has been revalued as required or permitted by Treasury Regulations under Section 704(b) of the Code, Profits and Losses shall be determined based upon the fair market value of such property as determined in such revaluation.

“**Public Director**” means any Director having the qualifications set forth in Section 5.2(e), who has been elected or appointed in accordance with Section 5.2 or 5.4.

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

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

“**Shares**” means shares in the Exchange, which are issued as Class A Shares and Class B Shares. Each class of Shares shall constitute a separate class of limited liability company interests.

“**Underlying Commodity**” means, with respect to any Futures Contract, the Commodity which (or the cash value of which) is required to be delivered pursuant to the terms of such Futures Contract.

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

ARTICLE II

ORGANIZATION

Section 2.1. **Formation.** The Exchange was formed as a Delaware limited liability company by the filing of the Certificate of Formation in the Office of the Secretary of State of Delaware in accordance with the Delaware Act.

Section 2.2. **Name.** The name of the Exchange shall be “BrokerTec Futures Exchange, L.L.C.” or such other name as the Board may determine. The Exchange may cause appropriate trade name and similar statements to be filed and published under the name as set forth in this Section, or such other names as the Exchange may have or use in any jurisdiction from time to time.

Section 2.3. **Principal Place of Business and Registered Office and Agent.** The principal place of business of the Exchange shall be such place as the Board may designate from time to time.

The address of the registered office of the Exchange in the State of Delaware shall be c/o Vanguard Corporate Services, Ltd., 15 East North Street, Dover, DE 19901 in the County of Kent. The name and address of the Registered Agent for service of process on the Exchange in the State of Delaware shall be c/o Vanguard Corporate Services, Ltd., 15 East North Street, Dover, DE 19901, or such other registered office or agent or address as the Board may designate from time to time.

Section 2.4. **Qualification in Other Jurisdictions.** The Board shall cause the Exchange to be qualified to do business or registered under assumed or fictitious names, statutes or similar laws in any jurisdiction in which such qualification or registration is required or desirable, and shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary to effect such qualification or registration.

Section 2.5. **Term.** The term of the Exchange shall commence upon the date of filing of the Certificate of Formation pursuant to the Delaware Act, and shall continue in full force and effect until the Exchange is dissolved in accordance with the provisions of this Agreement or the Delaware Act.

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Section 2.6. **Purposes.** The Exchange's business and general purpose is to engage in any lawful act or activity for which a limited liability company may be organized under the Delaware Act.

Section 2.7. **No State Law Partnership.** The Shareholders intend that the Exchange shall not be a partnership (including, without limitation, a general partnership or a limited partnership) or joint venture, and that no Shareholder or Director shall be a partner or joint venturer of any other Shareholder or Director with respect to the business of the Exchange, for any purposes other than U.S. federal, state and local tax purposes, and this Agreement shall not be construed to suggest otherwise. The Shareholders intend that the Exchange shall be a partnership or disregarded entity for U.S. federal, state and local tax purposes and agree not to take any position or make any election, in a tax return or otherwise, inconsistent with the treatment of the Exchange as a partnership or a disregarded entity for such purposes.

ARTICLE III

SHAREHOLDERS

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

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

(a) There shall be such number of Class A Shares as the Class A Directors may from time to time determine and 1,001,000 Class B Shares.

(b) The holders of the outstanding Class A Shares shall be entitled to elect Class A Directors and to remove any Class A Director at any time, with or without cause. Except as provided in Section 5.2(b), the holders of the outstanding Class A Shares shall not be entitled to elect or remove any Class B Directors. Otherwise, the holders of the outstanding Class A Shares shall be entitled to vote upon all matters on which the vote of members is required or permitted pursuant to applicable law, this Agreement or otherwise.

(c) Except as provided in Section 5.2(b), the holders of the outstanding Class B Shares shall be entitled to elect the Class B Directors and to remove any Class B Director at any time, with or without cause. Otherwise, the holders of the outstanding Class B Shares shall not be entitled to vote upon any matter.

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

*Section 3.3. **Admission of Shareholders.***

(a) BTEX Holdings, L.P., a Delaware limited partnership, shall be a Class A Shareholder. Additional Class A Shareholders shall be Persons admitted as such by resolution of the Class A Directors. Each Class A Shareholder shall have one Class A Share or such greater number of Class A Shares as may from time to time be fixed by the Class A Directors.

(b) Any Person may become a Class B Shareholder upon meeting the conditions and otherwise complying with the provisions of Section 3.4.

*Section 3.4. **Class B Shareholdings.***

(a) Any Person is eligible to become a Class B Shareholder, provided that such Person:

(i) if an Entity, is duly organized, existing and in good standing under the laws of its jurisdiction of organization;

(ii) is or has been approved as a Member pursuant to the Rules or is an Affiliate of a Person which is or has been approved as a Member; and

(iii) is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D of the Regulations of the Securities and Exchange Commission under the Securities Act of 1933.

(b) Any Person desiring to become a Class B Shareholder must file with the Exchange such financial statements and other information and documents as the Exchange may request and must execute and deliver to the Exchange an accession agreement substantially in the form of Annex A hereto (an "Accession Agreement").

(c) Each Class B Shareholder shall, at the time of admission as such, purchase one Class B Share from the Exchange for the price of either \$10,000 or \$50,000 or such other amount as may be fixed by the Board. Each Class B Shareholder that purchases its Class B Share for a price of \$10,000 (or such other amount as may be fixed by the Board) shall be a "Non-Participating Class B Shareholder." Each Class B Shareholder that purchases its Class B Share for a price of \$50,000 (or such other amount as may be fixed by the Board) shall be a "Participating Class B Shareholder."

(d) Additional Class B Shares shall be allocated, effective as of the end of the Fiscal Year in which the relevant calculation period ends, to Participating Class B Shareholders without further consideration in amounts to be determined by the Exchange as follows:

(i) As of the end of the period from the Operational Date through December 31, 2002:

(A) Divide the total number of Contracts which were cleared for each Participating Class B Shareholder (if such Participating Class B Shareholder is a Member) or for its Member Affiliate (if such Participating Class B Shareholder is not a Member) by the total number of Contracts cleared for all Members during such period and express the product as a percentage (the "Initial Proportionate Percentage"); and

(B) Allocate to the Participating Class B Shareholders which have (or the Member Affiliates of which have) Initial Proportionate Percentages in excess of 1% (or, if there are more than 30 such Participating Class B Shareholders, to the Participating Class B Shareholders which have (or the Member Affiliates of which have) the 30 highest Initial Proportionate Percentages) that proportion of 400,000 Class B Shares which each such Participating Class B Shareholder's (or its Member Affiliate's) Initial Proportionate Percentage bears to the total of the Initial Proportionate Percentages of all such Participating Class B Shareholders and Member Affiliates, rounded to the nearest whole Share.

(ii) As of the end of the period from January 1, 2003 through ~~December 31, November 26,~~ 2003:

(A) Divide the total number of Contracts which were cleared for any Participating Class B Shareholder (if such Participating Class B Shareholder is a Member) or for its Member Affiliate (if such Participating Class B Shareholder is not a Member) by the total number of Contracts cleared for all Members during such period and express the product as a percentage (the "Final Proportionate Percentage"); and

(B) Allocate to the Participating Class B Shareholders which have (or the Member Affiliates of which have) Final Proportionate Percentages in excess of 1% (or, if there are more than 30 such Participating Class B Shareholders, to the Participating Class B Shareholders which have (or the Member Affiliates of which have) the 30 highest Final Proportionate Percentages) that proportion of an additional 400,000 Class B Shares which each such Participating Class B Shareholder's (or its Member Affiliate's) Final Proportionate Percentage bears to the total of the Final Proportionate Percentages of all such Participating Class B Shareholders and Member Affiliates, rounded to the nearest whole Share.

(iii) Commencing after the close of the period referred to in subparagraph (ii), 200,000 of the remaining Class B Shares may be allocated and re-allocated by the Board from time to time in its discretion among Participating Class B Shareholders on the basis of such factors as the Board may determine to be in the best interests of the Exchange.

(iv) The Class B Shares purchased pursuant to paragraph (c) and the Class B Shares allocated to any Participating Class B Shareholder pursuant to subparagraphs (i) and (ii) of this paragraph (d) shall remain unchanged unless and until such Class B Shareholder is required to surrender Shares pursuant to Section 3.20.

(e) Notwithstanding any other provision of this Agreement:

(i) ~~No Class B Shares shall be issued to any Person in an amount which would cause such Person, together with all Affiliates of such Person, directly or indirectly to own more than 9.9% of the total outstanding interests in the Profits, Losses or capital of or in the Exchange; and~~ **RESERVED**

(ii) Each Participating Class B Shareholder shall, in accordance with such procedures as the Exchange may establish, certify to the Exchange in writing the amount (if any) by which the number of Contracts cleared for it or its Member Affiliate, and/or the amount (if any) by which the daily gross open interest carried for it or its Member Affiliate, should be reduced for purposes of calculating the number of Class B Shares to be allocated to it pursuant to Section 3.4(d) for the relevant calculation period in order to comply with applicable law, including without limitation the Employee Retirement Income Security Act of 1974 and the rules and regulations promulgated thereunder. The Exchange shall make such reductions as so certified in allocating Class B Shares pursuant to paragraph (d) of this Section.

*Section 3.5. **Limitation of Liability.*** Except as required by law and as otherwise provided in this Agreement, the debts, obligations and liabilities of the Exchange, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Exchange, and no Shareholder, Member or Director shall be obligated personally for any such debt, obligation or liability of the Exchange solely by reason of being a Shareholder, Member or Director of the Exchange.

*Section 3.6. **No Capital Calls; Right to Accept Additional Capital Contributions.*** Members and Shareholders shall not be subject to calls for capital. The Exchange shall have the right to accept such additional capital contributions to be made by any Shareholder as the Board may approve.

*Section 3.7. **Time and Place of Meetings.*** All meetings of Shareholders of the Exchange shall be held at such time and place, either within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

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Section 3.8. **Annual Meeting.** There shall be an annual meeting of each class of Shareholders of the Exchange, to be held at such date, time and place, either within or without the State of Delaware, as shall be determined by the Board and stated in the notice of meeting.

Section 3.9. **Special Meetings of Shareholders.** Special meetings of any class of Shareholders may be called at any time by the Board, the Chairman of the Board, the President, or the Secretary. Special meetings shall be called by the Secretary on receipt of a written demand therefor, setting forth the matter or matters to be considered at such meeting, duly executed by the holders of not less than 10% of the Shares entitled to vote at the meeting being called. The time of any such special meeting shall be fixed by the officer calling the meeting and shall be stated in the notice of such meeting, which notice shall specify the purpose or purposes thereof. Business transacted at any special meeting shall be confined to the purposes stated in the notice of meeting and matters germane thereto.

Section 3.10. **Notices.** Whenever under the provisions of this Article Shareholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. The notice of any meeting shall be given not less than 10 nor more than 30 days before the date of the meeting to each Shareholder entitled to vote at such meeting. Notice may be given by personal delivery, by mail, by telefacsimile or by electronic mail to such address or telefacsimile number as may appear on the records of the Exchange. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the Shareholder at such Shareholder's address as it appears on the records of the Exchange. An affidavit of the Secretary or an Assistant Secretary of the Exchange that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated.

Section 3.11. **Quorum.**

(a) Except as otherwise provided by this Agreement or by law, the holders of a majority of the Shares entitled to vote thereat shall constitute a quorum at any meeting of any class of Shareholders for the transaction of business, except that where a separate vote by a class is required, the holders of a majority of the Shares entitled to vote thereat of that class shall be required to constitute a quorum.

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

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*Section 3.12. **Voting.*** At every meeting of the Shareholders, each Shareholder having the right to vote shall be entitled to vote in person or by proxy. Except as provided in this Agreement or as required by law, all action to be taken by vote of the Shareholders or of any class of Shareholders shall be authorized by a majority (or, in the case of the election of Directors, by a plurality) of the votes cast by the Shareholders entitled to vote thereon. Shareholders shall not vote by class, except as may be required by this Agreement or any applicable provision of law.

*Section 3.13. **Votes per Share.*** Except as otherwise provided by this Agreement or by law, each Class A Shareholder of record and, as of any record date occurring on or before December 31, 2001, each Class B Shareholder of record shall be entitled to a number of votes equal to the number of Shares standing in his, her or its name on the books of the Exchange as of the relevant record date. As of any record date occurring on or after January 1, 2002, each Class B Shareholder of record shall have a number of votes determined as follows:

(a) Divide the total number of Contracts which were cleared for such Class B Shareholder (if such Class B Shareholder is a Member) or for its Member Affiliate (if such Class B Shareholder is not a Member) by the total number of Contracts cleared for all Members during the calendar year preceding such record date and express the product as a percentage (the "Voting Percentage"); and

(b) Allocate to each Class B Shareholder a number of votes equal to the product of the Voting Percentage for such Class B Shareholder (or such Class B Shareholder's Member Affiliate) and the total number of Class B Shares outstanding as of such record date, rounded to the nearest whole vote; ~~provided, however, that votes shall not be issued to any Class B Shareholder in an amount which would cause such Class B Shareholder, together with its Affiliates, to have more than a maximum number equal to 9.9% of the total votes allocated to all Class B Shareholders, and if the number of votes that would have been allocated to any Class B Shareholder in the absence of this proviso would exceed such maximum number, the excess shall be allocated to all the other Class B Shareholders in proportion to their respective voting rights at the time.~~

*Section 3.14. **Shareholder List.*** A complete list of the Shareholders entitled to vote at any meeting of Shareholders arranged in alphabetical order with the address of each and the number of Shares held by each, shall be prepared by the Secretary. Such list shall be open to the examination of any Shareholder for any purpose germane to the meeting during ordinary business hours for a period of at least 10 days prior to the meeting. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any Shareholder who is present.

*Section 3.15. **Proxies.*** Every Shareholder entitled to vote at a meeting of Shareholders or to express consent or dissent without a meeting may authorize any person or persons to act for such Shareholder by proxy. Every proxy must be signed by the Shareholder or the Shareholder's attorney-in-fact. No proxy shall be valid after the expiration of three years

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from the date thereof unless the proxy provides for a longer period. Every proxy shall be revocable at the pleasure of the Shareholder executing the proxy, except as otherwise provided by law and except that a proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power.

*Section 3.16. **Written Consent in Lieu of a Meeting.*** Any action required or permitted to be taken at any meeting of Shareholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken shall be signed by the holders of outstanding Shares having not less than the minimum number of votes that would have been necessary to authorize or take such action at a meeting at which all Shares entitled to vote thereon were present and voted, except that if such consent is given to the election of Directors by any class of Shareholders in lieu of an annual meeting of Shareholders, such consent must be unanimous as among the Shares of such class. Where action is taken in such manner by less than unanimous written consent, prompt written notice of the taking of such action shall be given to all Shareholders who have not consented in writing thereto and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting.

*Section 3.17. **Record Date.*** In order that the Exchange may determine the Shareholders entitled to notice of or to vote at any meeting of Shareholders or any adjournment thereof, or entitled to express consent to action in writing without a meeting, or entitled to receive payment of any distribution, or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not be more than 30 days before the date of such meeting, nor more than 30 days prior to any other action.

*Section 3.18. **Shareholders of Record.*** The Exchange shall be entitled to treat the holder of record of any Share or Shares as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such Share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of the State of Delaware.

*Section 3.19. **Transfers.***

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

(b) Class B Shares may not be sold, pledged, transferred or otherwise disposed of except with the prior consent of the Board or as expressly provided in these Bylaws, and any purported sale, pledge, transfer or other disposition thereof in violation of this Section shall be void and of no effect.

(c) Notwithstanding any other provision in this Agreement to the contrary, no transfer of Shares shall be permitted if such transfer, taken alone or in conjunction with other transactions, would cause the Exchange to lose its status as a partnership for U.S. federal income tax purposes. In addition, no Person may be admitted as a Shareholder of the Exchange if the

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admission of such Person as a Shareholder would cause the Exchange to lose its status as a partnership for U.S. federal income tax purposes.

*Section 3.20. **Termination of Shareholdings.***

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

(b) Any Class B Shareholder may be required to surrender all its Shares to the Exchange and withdraw from membership within the meaning of the Delaware Act if the Board shall determine, after notice and an opportunity to be heard, that:

(i) Such Class B Shareholder is no longer in compliance with any one or more of the eligibility standards set forth in Section 3.4(a)(i) or (iii);

(ii) Such Class B Shareholder has failed in any material respect to comply with any of its material obligations under the Bylaws or any agreement between such Class B Shareholder and the Exchange;

(iii) Any representation, statement, report or other information submitted by such Class B Shareholder to the Exchange contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, unless after reasonable investigation such Class B Shareholder had reasonable grounds to believe and did believe, at the time such representation, statement, report or other information was submitted, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading; or

(iv) Such Class B Shareholder or its Member Affiliate has been expelled as a Member pursuant to the Rules.

(c) In the event that the Board proposes to require any Class B Shareholder to surrender all its Shares to the Exchange and withdraw from membership within the meaning of the Delaware Act pursuant to paragraph (b) of this Section, it shall so notify such Class B Shareholder in writing, setting forth the grounds upon which the Board proposes to so require; and such Class B Shareholder, upon written request filed with the Exchange within 10 days after receipt of such notification, shall be entitled to a hearing before the Board. Any such hearing shall be conducted in such manner as shall, in the judgment of the Board, give such Class B Shareholder an opportunity to present fully and fairly to the Board the reasons why such Class B Shareholder should not be required to surrender its Shares to the Exchange and withdraw from membership within the meaning of the Delaware Act. If the Class B Shareholder does not so request a hearing within such 10 days, the Class B Shareholder shall be deemed to have waived its right to such a hearing. If there shall be such a hearing, and if after the completion of such a

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hearing the Board decides to require such Class B Shareholder to surrender its Shares to the Exchange and withdraw from membership within the meaning of the Delaware Act, the Exchange shall give such Class B Shareholder written notice of the decision of the Board, setting forth the grounds therefor, and such decision shall be the final action of the Exchange and not subject to appeal within the Exchange. Without limiting the generality of the provisions of Article VII of these Bylaws, the Board may in its discretion delegate all or any of its powers pursuant to this Section to a committee composed entirely of Directors.

~~(d) In the event that at any time any Class B Shareholder, together with all Affiliates of such Class B Shareholder, shall directly or indirectly own a percentage of the total outstanding interests in the Profits, Losses or capital of or in the Exchange which is more than 9.9% thereof, the Exchange may require such Class B Shareholder to surrender such number of Shares as may be necessary to reduce such percentage of Profits or Losses owned by such Class B Shareholder to 9.9% or distribute such amount of capital to such Class B Shareholder as may be necessary to reduce such percentage of capital owned by such Class B Shareholder to 9.9%.~~ **[RESERVED]**

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

(f) (i) As of October 29, 2003, the Class B Shares of the Non-Participating Class B Shareholders shall be deemed to have been redeemed and cancelled, and each Non-Participating Class B Shareholder shall receive the then positive balance, if any, of its Capital Account and shall cease to be a member of the Exchange within the meaning of the Delaware Act; and

(ii) Immediately after the allocation to be made in accordance with Section 3.4(d)(ii) takes effect, (x) the Class B Shares of Participating Class B Shareholders that then hold one Class B Share shall be deemed to have been redeemed and cancelled, (y) the Exchange shall pay to each such Participating Class B Shareholder that then holds one Class B Share the then positive balance, if any, of its Capital Account, and (z) each such Participating Class B Shareholder that then holds one Class B Share shall cease to be a member of the Exchange within the meaning of the Delaware Act.

ARTICLE IV

CAPITAL ACCOUNTS, ALLOCATIONS AND DISTRIBUTIONS

Section 4.1. Capital Accounts.

(a) A Capital Account shall be maintained for each Shareholder (regardless of the time or manner in which it acquires its interest in the Exchange) in accordance with the capital account rules of Section 704(b) of the Code, and the Treasury Regulations thereunder (including particularly Treasury Regulation Section 1.704-1(b)(2)(iv)). The initial value of a Shareholder's Capital Account shall be the amount such Shareholder paid to the Exchange for its initial Shares and any contributions to the capital of the Exchange.

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

(c) In the event the Exchange incurs any nonrecourse liabilities, income and gain shall be allocated in accordance with the "minimum gain chargeback" provisions of Treasury Regulation Sections 1.704-1(b)(4)(iv) and 1.704-2, nonrecourse deductions (as defined in Treasury Regulation Section 1.704-2(b)(1)) shall be specially allocated 80% to the Class A Shareholders and 20% to the Class B Shareholders, and within each class of Shareholders in proportion to their Percentage Interests, and partner nonrecourse deductions (as defined in Treasury Regulation Section 1.704-2(l)(2)) shall be specially allocated to the Shareholder who bears the economic risk of loss with respect to the partner nonrecourse debt (as defined in Treasury Regulation Section 1.704-2(b)(4)) to which such partner nonrecourse deductions are attributable in accordance with Treasury Regulation Section 1.704-2(i)(1).

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

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

*Section 4.2. **No Right of Withdrawal; No Interest.***

(a) No Shareholder shall have the right to withdraw or be repaid any part of such Shareholder's capital contributions to the Exchange or any earnings thereon, except as specifically provided in this Agreement.

(b) No interest shall be paid to any Shareholder on account of its interest in the capital of or on account of its investment in the Exchange.

*Section 4.3. **Allocation of Profit and Loss.***

(a) Subject to Section 4.1 and the remainder of this Section 4.3, Profits and Losses shall be allocated (i) 80% to the Class A Shareholders for any Fiscal Year and (ii) (A) in the Fiscal Year ending December 31, 2001, 20% to all Participating Class B Shareholders and (B) in any Fiscal Year thereafter, 20% to those Participating Class B Shareholders holding more than one Class B Share. Profits and Losses shall be allocated among the Class A Shareholders, all Participating Class B Shareholders or those Participating Class B Shareholders holding more than one Class B Share, as the case may be, in proportion to the respective Percentage Interests of the Class A Shareholders, all Participating Class B Shareholders or those Participating Class B Shareholders holding more than one Class B Share, as the case may be, as of the last day of the applicable Fiscal Year (for the avoidance of doubt, such Percentage Interests shall take into account any allocation of Shares with respect to such Fiscal Year pursuant to Section 3.4). Notwithstanding the foregoing provisions:

(i) in the event that Capital Accounts of the Participating Class B Shareholders would be reduced below zero as a result of the foregoing allocations in the Fiscal Year ending December 31, 2001, Losses otherwise allocable among the Participating Class B Shareholders shall be allocated first, among the Participating Class B Shareholders until each Participating Class B Shareholder's Capital Account is reduced to zero, and subsequently, on a pro rata basis, among the Non-Participating Class B Shareholders until the Capital Account of each Non-Participating Class B Shareholder is reduced to zero; and

(ii) in the event that the Capital Accounts of the Participating Class B Shareholders holding more than one Class B Share equal zero or would be reduced below zero as a result of the foregoing allocations in any subsequent Fiscal Year, Losses shall be allocated first, among the Participating Class B Shareholders holding more than one Class B Share until each such Participating Class B Shareholder's Capital Account is reduced to zero, second, on a pro rata basis, among the Participating Class B Shareholders holding only one Class B Share until each such Participating Class B Shareholder's Capital Account is reduced to zero, and third, on a pro rata basis, among the Non-Participating Class B Shareholders, until the Capital Account of each such Non-Participating Class B Shareholder is reduced to zero; and

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(iii) in the event that the Capital Accounts of all the Shareholders of any Class equal zero or would be reduced below zero as a result of the foregoing allocations in any Fiscal Year, Losses shall be allocated first, in accordance with the allocation methodology set forth above in this Section 4.3 until the Capital Account of each Shareholder of such Class is reduced to zero, and subsequently, among the Shareholders of the remaining Class, in accordance with the allocation methodology applicable to such Class of Shareholders until the Capital Account of each such Shareholder is reduced to zero; and

(iv) in the event that Losses are allocated to a Class of Shareholders in any Fiscal Year pursuant to the provisions of clause (iii) immediately above, any subsequent Profits shall first be allocated first, in accordance with the allocation methodology applicable to such Class of Shareholders, to the extent of such Losses, among the Shareholders of the Class so affected, and subsequently, in accordance with the allocation methodology set forth elsewhere in this Section 4.3; and

(v) in the event that Losses are allocated to Class B Shareholders owning only one Class B Share or to Non-Participating Class B Shareholders in any Fiscal Year pursuant to the provisions of clause (i) or (ii) above, any subsequent Profits shall be allocated first (subject to clause (iv) immediately above), to the extent of such Losses, among all Class B Shareholders on a pro rata basis, and subsequently, in accordance with the allocation methodology set forth above in this Section 4.3.

(b) If there is a change in any Shareholder's Percentage Interest during a Fiscal Year, each Shareholder's share of Profits and Losses or any item thereof for such Fiscal Year shall be determined by any method prescribed by Section 706(d) of the Code or the Treasury Regulations thereunder that takes into account the varying interests of the Shareholders in the Exchange during such Fiscal Year; *provided*, that, Profits and Losses (or items of income, gain, loss and deduction, as necessary) shall be allocated among the Shareholders in a manner that results, as nearly as possible, in a net allocation to each Shareholder in an amount equal to the amount that would have been allocated to such Shareholder pursuant to Section 4.3(a) as if the Shares held by each Shareholder as of the last day of such Fiscal Year (including Shares allocated to in respect of such Fiscal Year pursuant to Section 3.4) had been held for the entire Fiscal Year.

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

(d) Notwithstanding any provision in this Section, no item of Profit or Loss shall be allocated to a Shareholder to the extent such allocation would cause a negative balance in such Shareholder's Capital Account (after taking into account the adjustments, allocations and distributions described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6)). In the event some but not all of the Shareholders would have such Capital Account deficits as a

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consequence of such allocation, the limitation set forth in this Section 4.3(d) shall be applied on a Shareholder-by-Shareholder basis so as to allocate the maximum permissible Loss to each Shareholder under Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

(e) If a Shareholder unexpectedly receives any adjustment, allocation, or distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), Profits and Losses shall be specially allocated to such Shareholder in an amount and manner sufficient to eliminate as quickly as possible any deficit balance in its Capital Account in excess of that permitted under Section 4.3(d) created by such adjustments, allocations or distributions. Any special allocations of Profits and Losses pursuant to this Section 4.3(e) shall be taken into account in computing subsequent allocations pursuant to this Article so that the net amount of any items so allocated and all other items allocated to each Shareholder pursuant to this Article shall, to the extent possible, be equal to the net amount that would have been allocated to each such Shareholder pursuant to the provisions of this Article if such unexpected adjustments, allocations or distributions had not occurred.

*Section 4.4. **Allocation of Tax Items.***

(a) Except as otherwise provided in this Section, for income tax purposes each item of income, gain, loss and deduction will be allocated generally among the Shareholders in the same manner as its correlative item of Profits and Losses is allocated pursuant to Section 4.3.

(b) If there is a difference between the adjusted tax basis of any Exchange asset and its fair market value (i) as of the date of contribution of the asset or (ii) as a consequence of an adjustment pursuant to Section 4.3, in each case allocations of depreciation, amortization and gain or loss with respect to such asset, as computed for U.S. federal income tax purposes, shall be made among the Shareholders for U.S. federal income tax purposes in accordance with applicable U.S. federal tax law, rules and regulations.

*Section 4.5. **Distributions.***

(a) The Exchange may, at any time and from time to time, make a distribution to the Shareholders as decided by the Board. All distributions shall be made (i) 80% to the Class A Shareholders and (ii) (A) in the Fiscal Year ending December 31, 2001, 20% to all Participating Class B Shareholders and (B) in any Fiscal Year thereafter, 20% to those Participating Class B Shareholders holding more than one Class B Share. Distributions shall be made among the Class A Shareholders, all Participating Class B Shareholders or those Participating Class B Shareholders holding more than one Class B Share, as the case may be, (x) in proportion to the respective Percentage Interests of the Class A Shareholders, all Participating Class B Shareholders or those Participating Class B Shareholders holding more than one Class B Share, as the case may be, (y) in proportion to the ratio of the amount of each such Shareholder's Capital Account over the aggregate amount of the Capital Accounts of all Class A Shareholders, Participating Class B Shareholders or Participating Class B Shareholders holding more than one Class B Share, as the case may be, or (z) as the Board may otherwise determine.

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(b) Notwithstanding any provision in this Agreement to the contrary, neither the Exchange nor the Class A Directors on behalf of the Exchange may make a distribution to any Shareholder on account of such Shareholder's Shares if such distribution would violate the Delaware Act.

ARTICLE V

DIRECTORS

Section 5.1. Duties, Powers and Eligibility.

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

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

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

- (i) Take such steps as may be necessary in order to make effective the final orders or decisions entered pursuant to the provisions of Section 6(c) of the Act, and comply in all respects with all requirements applicable to the Exchange under the Act;
- (ii) Designate any Person as a Clearing Organization to clear transactions effected on or subject to the Rules of the Exchange;
- (iii) Impose dues or other charges upon Members of the Exchange;

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

(v) Adopt, amend and repeal such Rules as the Board may in its discretion deem necessary or appropriate in the best interests of the Exchange; provided, however, that no such Rule may be inconsistent with any provision of the Certificate of Formation of the Exchange or this Agreement, except as provided in Section 5.8 of this Agreement;

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

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

(d) In the case of the matters hereafter listed in this paragraph (d) and any similar matters, action may be taken or authorized by vote of a majority of the Class A Directors, voting as a class, without the vote of any other Directors, and no action shall be taken or authorized on any such matters without the affirmative vote of a majority of the Class A Directors, voting as a class, regardless of the votes of any other Directors:

(i) The merger or consolidation of the Exchange, or sale or other disposition of all or any substantial part of the Exchange, or the assets thereof, or any similar transaction;

(ii) The entering into by the Exchange of any joint venture, partnership, alliance or similar arrangement with any other Person (including without limitation any arrangement with respect to the clearing of Contracts);

(iii) The redemption of any Class A Shares;

(iv) The creation of any new class of Shareholders;

(v) The conversion of the Exchange to a business corporation or any other corporate form;

(vi) Any change or modification to the name or principal place of business of the Exchange;

(vii) Any substantial change in the trading system used by the Exchange in any exchange or market operated by it;

(viii) Any amendment of this Agreement necessary or appropriate to implement any of the authorities reserved to the Class A Directors under this Section 5.1;

(ix) Any amendment to Sections 5.1(d) or (e), Section 5.2 or Section 12.2 hereof;

(x) Any action to change the Fiscal Year of the Exchange; and

(xi) The acceptance of additional capital contributions from any Shareholder.

(e) No action shall be taken or authorized with respect to any of the following matters or any similar matters without the affirmative vote of a majority of the Class A Directors, voting as a class:

(i) The appointment of a chief executive officer of the Exchange;

(ii) The selection or change of auditors;

(iii) Any action to approve or modify the budget for capital or other expenditures of the Exchange; and

(iv) Any action to rebate, or extend credit against future, Exchange fees.

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

(g) To the fullest extent permitted by applicable law, the Class A Directors shall have and exercise fiduciary duties only to the Class A Shareholders and the Class B Directors shall have and exercise fiduciary duties only to the Class B Shareholders.

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

(a) The Board shall initially consist of the following three Directors: William H. Hinkle, Tara Leskanic and James Spencer. Each such initial Director shall hold office until the earlier of (i) the date referred to in the first sentence of paragraph (b) of this Section, or (ii) the date of his or her resignation or removal.

(b) Commencing on a date to be fixed by the Board, which date shall be prior to the date on which the Exchange first opens for trading, the total number of Directors shall be 15, all of whom shall be elected by the Class A Shareholders, voting as a class, one of whom shall be an Affiliated Person of a Class A Shareholder, 11 of whom shall be Affiliated Persons of Class B Shareholders (at least five of whom shall be Affiliated Persons of Clearing Members), and three of whom shall be individuals having the qualifications set forth in paragraph (e) of this Section (the "Public Directors").

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(c) Commencing at the first annual meeting of Shareholders following the date fixed pursuant to paragraph (b), and except as otherwise provided by this Agreement or by law:

(i) The Class A Shareholders shall elect successors to the Class A Directors whose terms are then expiring and the Class B Shareholders shall elect successors to the Class B Directors whose terms are then expiring.

(ii) The total number of Directors, the number of Directors elected by each class of Shareholders and the number of Public Directors may be increased from time to time by the Shareholders or by the Board or may be decreased by the Shareholders, provided that:

(A) no decrease in the number of Directors shall shorten the term of any incumbent Director; and

(B) the number of Directors elected by any class of Shareholders may not be reduced without the affirmative vote of such class.

(iii) Directors (other than Public Directors) shall be elected each year at the annual meeting of Shareholders, and Public Directors shall be appointed at the first meeting of the Board following the annual meeting of Shareholders. Not less than 60 days prior to the first annual meeting of Shareholders referred to in paragraph (b) of this Section and each annual meeting thereafter, the Board shall appoint a Nominating Committee consisting of five Affiliated Persons of Class B Shareholders (two of whom shall be Affiliated Persons of Class B Shareholders which are not, and which are not Affiliated Persons of, Clearing Members), none of whom shall be members of the Board. Not less than 50 days prior to each such annual meeting, the Nominating Committee shall nominate one or more candidates to succeed each of the Class B Directors whose terms will expire at such annual meeting and shall report the names of such candidates to the President. The President shall forthwith notify the Class B Shareholders of the names of the candidates so nominated. Any five Class B Shareholders may nominate any other candidates by filing a petition with the President not later than 40 days prior to such annual meeting. A list of all candidates nominated as provided in this paragraph (c) shall be sent to the Class B Shareholders with the notice of such annual meeting.

(d) Except as otherwise provided in this Agreement or by law, each Director (other than Public Directors) shall hold office until the annual meeting of Shareholders next succeeding his or her election and until his or her successor is elected and has qualified, or until his or her earlier resignation or removal. Each Public Director shall hold office until the first meeting of the Board following the annual meeting of Shareholders occurring after such Public Director shall have been elected or appointed and until his or her successor is appointed and has qualified, or until his or her earlier resignation or removal.

(e) The regular voting members of the Board may include individuals who:

(i) are knowledgeable of futures trading or financial regulation or are otherwise capable of contributing to deliberations of the Board; and

(ii) are not currently

(A) Members,

(B) salaried employees of the Exchange,

(C) primarily performing services for the Exchange in a capacity other than as a member of the Board, or

(D) officers, principals or employees of a Member.

(f) [Reserved.]

(g) The composition of the Board shall fairly represent the diversity of interests of the Exchange's market participants.

*Section 5.3. **Resignation and Removal.***

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

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

(c) Any one or more of the Public Directors may be removed, either with or without cause, at any time by the affirmative vote of a majority of the Board at any special meeting of the Board called for such purpose.

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

*Section 5.4. **Vacancies.***

(a) A vacancy occurring among the Directors named in Section 5.2(a) for any reason may be filled by the Class A Shareholders.

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

(c) A vacancy occurring among the Public Directors for any reason and newly created Public Directorships shall be filled by the Board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Section 5.8. **Emergency Powers.***

(a) As used in this Section:

(i) The term "emergency" means any occurrence or circumstance which, in the opinion of the Board, requires immediate action and threatens or may threaten such

things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any Contract traded on the Exchange. Occurrences and circumstances which the Board may deem emergencies include but are not limited to the following:

(A) Any manipulative activity or attempted manipulative activity;

(B) Any actual, attempted, or threatened corner, squeeze, congestion or undue concentration of positions;

(C) Any circumstance which may materially affect the performance of Contracts, including failure of the payment system;

(D) Any action taken by the United States or any foreign government or any state or local government body, any other contract market, board of trade, or any other exchange or trade association (foreign or domestic), which may have a direct impact on trading on the Exchange;

(E) Any circumstance which may have a severe, adverse effect upon the physical functions of the Exchange, including, for example, fire or other casualty, bomb threat, substantial inclement weather, power failure, communication or transportation breakdown, computer malfunction, breakdown of screen-based trading systems, malfunction of plumbing, heating, ventilation and air conditioning systems, or other similar events;

(F) The bankruptcy or insolvency of any Member or the imposition of any injunction or other restraint by any Government Agency, court or arbitrator upon any Member which may affect the ability of that Member to perform its Contracts;

(G) Any circumstance in which it appears that a Member or any other Person has failed or may fail to perform Contracts, is or may be insolvent, or is in such financial or operational condition or is conducting business in such a manner that such Person cannot be permitted to continue in business without jeopardizing the safety of Customer funds, the Members, the Exchange itself, or the Clearing Organization; and

(H) Any other unusual, unforeseeable and adverse circumstance with respect to which it is not practicable for the Exchange to submit, in a timely fashion, a reviewable rule to the Commission for prior approval.

(ii) The term "two-thirds vote of the Board" means the affirmative vote of persons constituting not less than two-thirds of the members of the Board either (A) physically present and voting at a meeting of the Board at which a quorum is physically in attendance or (B) voting in any manner other than at a meeting at which a

quorum is physically in attendance as may from time to time be permitted by applicable state corporation law.

(iii) The term "the Board" shall include any committee of Board members appointed by the Board, to which the Board has delegated its authority pursuant to this Section 5.8.

(b) Notwithstanding any other provisions of this Agreement or any provisions of the Rules, in the event of any emergency, the Exchange by a two-thirds vote of the Board, may (in consultation or cooperation with the Commission, where necessary and appropriate), subject to the applicable provisions of the Act and the Commission Regulations and subject to Section 5.1(d) of this Agreement, provide for, or may authorize the Exchange or the Board or any committee to undertake, actions which, in the opinion of the Board are necessary or appropriate to meet the emergency, including, but not limited to, such actions as:

(i) Limiting trading to liquidation only, in whole or in part, or limiting trading to liquidation only except for new sales or grants of Contracts by parties who have the Underlying Commodity of such Contracts;

(ii) Extending or shortening the expiration date for trading of Contracts;

(iii) Extending the time of delivery under or expiration of Contracts;

(iv) Altering delivery terms or conditions;

(v) Ordering the liquidation of Contracts, the fixing of a settlement price or premium, or the reduction in positions;

(vi) Ordering the transfer of Contracts, and the money, securities, and property securing such Contracts, held on behalf of Customers by a Member to another Member or other Members willing to assume such Contracts or obligated to do so;

(vii) Extending, limiting or changing hours of trading;

(viii) Suspending or curtailing trading;

(ix) Changing the amount of money to be paid or the type of Commodity to be delivered under Contracts, whether theretofore or thereafter entered into;

(x) Imposing position limits on any delivery month under any Contract, including without limitation the current delivery month;

(xi) Imposing or modifying price limits;

(xii) Calling for additional margin either from Customers or Clearing Members;

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- (xiii) Ordering the fixing of a settlement price;
- (xiv) Ordering a reduction of positions; and
- (xv) Modifying or suspending any provision of this Agreement, the Rules, or resolutions, decisions, orders or binding interpretations thereof of the Exchange.

(c) In the event the physical functions of the Exchange are, or are threatened to be, severely and adversely affected by a "physical emergency," such as fire or other casualty, bomb threat, substantial inclement weather, power failure, communication or transportation breakdown, computer malfunction, breakdown of screen-based trading systems, malfunction of plumbing, heating, ventilation and air conditioning systems, backlog or delay in clearing or in the processing related to clearing trades, or other similar event, the President or in his or her absence any Vice President, or in all of their absences any other officer, may take any action which, in the opinion of such officer is necessary or appropriate to deal with the emergency, including, but not limited to, suspending trading in any one or more Contracts, delaying the opening of trading in any one or more Contracts, and/or extending the last day of trading and/or the time of trading. In the event any such officer has ordered suspension of trading, the President, or in his or her absence any Vice President, or in all of their absences any other officer, may order restoration of trading, 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 Exchange to continue in an orderly manner.

(d) The Exchange shall promptly notify the Commission of any exercise of its regulatory emergency authority.

ARTICLE VI

MEETINGS OF THE BOARD

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

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

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

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

*Section 6.5. **Quorum and Voting.***

(a) A majority of the entire Board shall constitute a quorum at any meeting of the Board, except that one-third of the total number of directors shall constitute a quorum for the taking of emergency action pursuant to Section 5.8 of this Agreement.

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

(c) In taking action where certain relationships exist:

(i) No member of the Board or any Disciplinary Committee or any oversight panel shall knowingly participate in such body's deliberations and voting on any matter involving a named party in interest where such member:

(A) is a named party in interest;

(B) is an employer, employee, or fellow employee of a named party in interest;

(C) is associated with a named party in interest through a "broker association" as defined in Section 156.1 of the Commission Regulations;

(D) has any other significant, ongoing business relationship with a named party in interest, not including relationships limited to executing futures or option transactions opposite each other or to clearing futures or option transactions through the same Clearing Member; or

(E) has a family relationship with a named party in interest.

(ii) Prior to the consideration of any matter involving a named party in interest, each member of the Board, Disciplinary Committee or oversight panel (as the case may be) must disclose to the President of the Exchange, or the designee of the President,

whether he or she has one of the relationships listed in subparagraph (i) of this paragraph (c) with a named party in interest.

(iii) The President or such designee shall determine whether any such member of the Board, Disciplinary Committee or oversight panel is subject to the restrictions set forth in this paragraph (c) in any matter involving a named party in interest, which determination, taking into consideration the exigency of the action to be taken, shall be based upon:

(A) information provided by such member pursuant to subparagraph (ii) of this paragraph (c); and

(B) any other source of information that is held by and reasonably available to the Exchange.

(d) In taking certain actions where participants have interests:

(i) No member of the Board, Disciplinary Committee or oversight panel shall participate in such body's deliberations and voting on any significant action if such member knowingly has a direct and substantial financial interest in the result of the vote based upon either Exchange or non-Exchange positions that could reasonably be expected to be affected by the action.

(ii) Prior to the consideration of any significant action, each member of the Board, Disciplinary Committee or oversight panel (as the case may be) must disclose to the President or designee of the President the information referred to in subparagraph (iii) of this paragraph (d) that is known to him or her, unless such member chooses to abstain from deliberations and voting on the significant action in question.

(iii) The President or such designee shall determine whether the member of the Board, Disciplinary Committee or oversight panel is subject to the restrictions contained in this paragraph (d) in any significant action, after a review of:

(A) gross positions held at the Exchange in such member's personal accounts or "controlled accounts," as defined in Section 1.3(j) of the Commission Regulations;

(B) gross positions held at the Exchange in "proprietary accounts," as defined in Section 1.17(b)(3) of the Commission Regulations, at such member's affiliated firm;

(C) gross positions held at the Exchange in accounts in which such member is a "principal," as defined in Section 3.1(a) of the Commission Regulations;

(D) net positions held at the Exchange in "customer" accounts, as defined in Section 1.17(b)(2) of the Commission Regulations, at such member's affiliated firm; and

(E) any other types of positions, whether maintained at the Exchange or elsewhere, held in such member's personal accounts or the proprietary accounts of such member's affiliated firm that the Exchange reasonably expects could be affected by the significant action.

(iv) Taking into account the exigency of the significant action, such determination should be based upon:

(A) the most recent large trader reports and clearing records available to the Exchange;

(B) information provided by such member with respect to positions pursuant to subparagraph (iii) of this paragraph (d); and

(C) any other source of information that is held by and is reasonably available to the Exchange.

(v) Any member of the Board or any Disciplinary Committee or oversight panel who would otherwise be required to abstain from deliberations and voting pursuant to this paragraph (d) may participate in deliberations, prior to a vote on a significant action for which he or she otherwise would be required to abstain pursuant to this paragraph (d), if in the judgment of the deliberating body such participation would be consistent with the public interest, and if such member excuses himself or herself from voting on such action. In making a determination as to whether to permit such member to so participate in such deliberations, the deliberating body shall consider (A) whether such member's participation in the deliberations is necessary for the deliberating body to achieve a quorum in the matter, and (B) whether the member has unique or special expertise, knowledge or experience in the matter under consideration. Prior to making any such determination, the deliberating body must fully consider the position information which is the basis for the member's direct and substantial financial interest in the result of a vote on a significant action.

(e) The Board, each Disciplinary Committee and each oversight panel must reflect in their minutes or otherwise document that the conflicts determination procedures required by paragraphs (c) and (d) of this Section have been followed. Such records also must include:

(i) the names of all members who attended the meeting in person or who otherwise were present by electronic means;

(ii) the name of any member who voluntarily excused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the refusal or abstention, if stated; and

(iii) the information on the position information that was reviewed for each member.

(f) Terms used in paragraphs (c), (d) and (e) of this Section shall have the meanings set forth in Section 1.69(a) of the Commission Regulations.

*Section 6.6. **Notices.***

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

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

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

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

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

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

ARTICLE VII

COMMITTEES

Section 7.1. Designation and Powers.

(a) The Board may in its discretion appoint one or more committees of the Board consisting of one or more of the Directors of the Exchange, and may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in a resolution of the Board or in this Agreement, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange; but no such committee shall have power or authority in reference to: (i) approving or adopting, or recommending to the Shareholders, any action or matter expressly required by the Delaware Act to be submitted to Shareholders for approval, (ii) amending this Agreement, or (iii) approving or adopting any action or matter set forth in Sections 5.1(d) or 5.1(e). In the absence or disqualification of any such member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another Director to act at the meeting in place of any such absent or disqualified member.

(b) The Board shall appoint an Adjudication Committee, a Membership Committee, a Nominating Committee and a Trade Review Committee, each of which shall have the powers and perform the duties set forth in this Agreement or the Rules. Each such committee shall consist of three or more persons, who may but need not be Directors.

Section 7.2. Meetings of Committees.

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

(b) A majority of the entire committee shall constitute a quorum at any meeting of a committee. Subject to Section 5.1(d), the act of a majority of the members of a committee shall be the act of the committee, except as provided in Section 6.5(c) and (d) with respect to any Disciplinary Committee or oversight panel, and except as may otherwise be specifically provided by law, this Agreement or the Rules.

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

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

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

ARTICLE VIII

NOTICES

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

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

ARTICLE IX

OFFICERS

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

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

Section 9.3. **Tenure; Resignation; Removal; Vacancies.** Each officer of the Exchange shall hold office until his or her successor is elected and qualified, or until his or her earlier resignation or removal; provided, that if the term of office of any officer shall have been fixed by the Board, he or she shall cease to hold such office no later than the date of expiration of such term regardless of whether any other person shall have been elected or appointed to succeed him or her. Any officer may be removed at any time, with or without cause, by the Board; provided that any such removal shall be without prejudice to the rights, if any, of the officer so employed under any employment contract or other agreement with the Exchange. An officer may resign at any time upon written notice to the Board. If the office of any officer becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the Board may appoint a successor or successors to hold office for such term as may be specified by the Board.

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

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

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

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

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authorized to delegate to the other officers such of his or her powers and such of his or her duties as he or she may deem to be advisable.

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

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

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

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

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

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

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

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

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

(iv) Trading in commodity interests traded on any contract market not operated by the Exchange or cleared by any clearing organization other than the Clearing Organization under circumstances in which the employee's access to material non-public information as to those commodity interests is sufficiently minimal or attenuated so as to be insignificant; and

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

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

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

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

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

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

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

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

ARTICLE X

EXCULPATION AND INDEMNIFICATION

*Section 10.1. **Exculpation; Litigation.***

(a) EXCEPT IN INSTANCES WHERE THERE HAS BEEN A FINDING OF WILLFUL OR WANTON MISCONDUCT, IN WHICH CASE THE PARTY FOUND TO HAVE ENGAGED IN SUCH CONDUCT CANNOT AVAIL ITSELF OF THE PROTECTIONS IN THIS SECTION, NEITHER THE EXCHANGE (INCLUDING ANY AFFILIATES OF THE EXCHANGE), ITS SHAREHOLDERS, ITS MEMBERS OR ITS CLEARING MEMBERS, NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, SHALL BE LIABLE TO ANY PERSON, INCLUDING BUT NOT LIMITED TO A CUSTOMER, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES), ARISING FROM (i) ANY FAILURE OR MALFUNCTION, INCLUDING BUT NOT LIMITED TO ANY INABILITY TO ENTER OR CANCEL ORDERS, OF THE BTEX TRADING SYSTEM OR ANY EXCHANGE SERVICES OR FACILITIES USED TO SUPPORT THE BTEX TRADING SYSTEM, OR (ii) ANY FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY OR TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF THE BTEX TRADING SYSTEM OR ANY EXCHANGE SERVICES OR FACILITIES USED TO SUPPORT THE BTEX TRADING SYSTEM. THE FOREGOING SHALL APPLY REGARDLESS OF WHETHER A CLAIM ARISES IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. THE FOREGOING SHALL NOT LIMIT THE LIABILITY OF ANY SHAREHOLDER, MEMBER, CLEARING MEMBER, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS FOR ANY ACT, INCIDENT, OR OCCURRENCE WITHIN THEIR CONTROL.

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

(c) ANY ACTIONS, SUITS OR PROCEEDINGS AGAINST THE EXCHANGE, ANY AFFILIATES OF THE EXCHANGE OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS OR EMPLOYEES MUST BE BROUGHT WITHIN TWO YEARS FROM THE TIME THAT A CAUSE OF ACTION HAS ACCRUED. ANY PARTY BRINGING ANY SUCH ACTION, SUIT OR PROCEEDING CONSENTS TO JURISDICTION IN THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF

NEW YORK AND THE SUPREME COURT OF NEW YORK COUNTY, NEW YORK, AND WAIVES ANY OBJECTION TO VENUE THEREIN. THIS PROVISION SHALL IN NO WAY CREATE A CAUSE OF ACTION AND SHALL NOT AUTHORIZE AN ACTION THAT WOULD OTHERWISE BE PROHIBITED BY THIS AGREEMENT OR THE RULES OF THE EXCHANGE.

(d) ANY SHAREHOLDER, MEMBER OR AFFILIATE OF A MEMBER OR EMPLOYEE OF ANY OF THEM, WHICH OR WHO COMMENCES ANY ACTION OR PROCEEDING, WHETHER IN COURT, ARBITRATION OR ANY OTHER FORUM, AGAINST THE EXCHANGE, ANY MEMBERS OF THE BOARD OR ANY COMMITTEE, OR ANY OFFICERS, EMPLOYEES OR AGENTS OF THE EXCHANGE, ARISING OUT OF OR IN ANY WAY CONNECTED TO ANY TRANSACTIONS EFFECTED ON THE EXCHANGE OR THE CONDUCT OF THE EXCHANGE'S AFFAIRS, WHICH OR WHO FAILS TO PREVAIL IN SUCH ACTION OR PROCEEDING SHALL REIMBURSE ON DEMAND THE EXCHANGE AND ANY SUCH MEMBER OF THE BOARD OR COMMITTEE, OFFICER, AGENT OR EMPLOYEE FOR ANY AND ALL REASONABLE EXPENSES AND DISBURSEMENTS (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COSTS) INCURRED BY IT OR ANY OF THEM IN THE DEFENSE OF SUCH ACTION OR PROCEEDING.

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

*Section 10.2. **Indemnification.***

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

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be, to the extent that such person receives funds pursuant to an indemnification from any such other limited liability company, corporation, partnership, joint venture, trust or enterprise. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person seeking indemnification did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Exchange, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

(b) **Actions or Suits by or in the Right of the Exchange.** The Exchange shall indemnify any current or former Director or officer of the Exchange, and may at the discretion of the Board, indemnify any current or former employee or agent of the Exchange who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit, by or in the right of the Exchange to procure a judgment in its favor by reason of the fact that such person is or was a Director, officer, employee or agent of the Exchange, or is or was serving at the request of the Exchange as a director, officer, employee or agent (including trustee) of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans) to the fullest extent permitted under the Delaware Act, as then in effect, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Exchange; except that (i) no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Exchange unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper; and (ii) any funds paid or required to be paid to any person as a result of the provisions of this Section shall be returned to the Exchange or reduced, as the case may be, to the extent that such person receives funds pursuant to an indemnification from any such other limited liability company, corporation, partnership, joint venture, trust or enterprise.

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

(d) **Determination of Right to Indemnification.** Any indemnification under paragraph (a) or (b) of this Section (unless ordered by a court) shall be made by the Exchange only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the

applicable standard of conduct set forth in paragraphs (a) and (b) of this Section. Such determination shall be made (i) by the Board by a majority vote of the Directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) if there are no such Directors, or if such Directors so direct, by independent legal counsel in a written opinion, or (iii) by the holders of the Class A Shares.

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

(f) **Other Rights.** The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under this Agreement, any agreement, vote of Shareholders or disinterested Directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office. Nothing contained in this Agreement shall prevent the Board from approving the indemnification of or advancement of expenses for any Person against and for any liability, cost or expense (including attorneys' fees) incurred by such Person in connection with defending any claim or any civil, criminal, administrative or investigative action, suit or proceeding arising out of any alleged act or omission by or on behalf of the Exchange, to the extent the Board considers it in the best interests of the Exchange to do so.

(g) **Insurance.** By action of the Board, notwithstanding an interest of the directors in the action, the Exchange may purchase and maintain insurance, in such amounts as the Board deems appropriate, on behalf of any person who is or was a Director, officer, employee or agent of the Exchange, or is or was serving at the request of the Exchange as a director, officer, employee or agent (including trustee) of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans), against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Exchange shall have the power to indemnify such person against such liability under the provisions of this Section.

*Section 10.3. **Enforcement.***

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

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

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

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

*Section 10.4. **Indemnification by Members and Shareholders.***

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

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

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

(ii) Neither the Exchange nor any such Official may settle a claim to the extent it seeks the recovery of money damages without the prior consent of such Member; provided that if such Member does not consent to any proposed settlement within 10 days following the date it receives written notice of the terms of such settlement, the Exchange or such Official may require such Member to post such security for the payment of its

indemnification obligations to the Exchange or such Official as the Exchange or such Official deems necessary, but not in excess of the money damages claimed plus interest and anticipated expenses.

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

ARTICLE XI

DISSOLUTION AND WINDING UP

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

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

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

(c) Third, to the Shareholders in accordance with the then remaining positive balances in their Capital Accounts, in proportion to the amount of such balances.

ARTICLE XII

MISCELLANEOUS PROVISIONS

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

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*Section 12.2. **Amendments of this Agreement.*** Except as provided in Section 5.1(d) and (e), this Agreement may be amended, in whole or in part, by majority vote of the Board as a whole, with the concurrence of a majority of the Class A Directors.

*Section 12.3. **Governing Law, Severability.***

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

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

*Section 12.5. **Tax Matters Partner.*** BTEX Holdings, L.P. shall be the "tax matters partner" of the Exchange pursuant to Section 6231(a)(7) of the Code until a successor shall be named by the Class A Directors. The "tax matters partner" shall take such action as may

be necessary to cause each other Shareholder to become a “notice partner” within the meaning of Section 6223 of the Code. The “tax matters partner” shall inform each other Shareholder of all significant matters that may come to its attention in its capacity as “tax matters partner” by giving notice thereof on or before the fifth Business Day after becoming aware thereof and, within that time, shall forward to each other Shareholder copies of all significant written communications it may receive in that capacity.

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

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

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

*Section 12.9. **Partition.*** The Shareholders hereby agree that no Shareholder nor any successor-in-interest to any Shareholder shall have the right while this Agreement remains in effect to have the property of the Exchange partitioned, or to file a complaint or institute any proceeding at law or in equity to have the property of the Exchange partitioned, and each Shareholder, on behalf of itself, and its successors, successors-in-title, executors, administrators, representatives, heirs and assigns, hereby waives any such right. It is the intention of the Shareholders that during the term of this Agreement, the rights of the Shareholders and their successors-in-interest, as among themselves, shall be governed by the terms of this Agreement and the Rules, and that the right of any Shareholder or successor-in-interest to assign, transfer, sell or otherwise dispose of such Shareholder’s Shares or other rights in the Exchange shall be subject to the limitations and restrictions of this Agreement and the Rules.

*Section 12.10. **No Waiver.*** The failure of any Shareholder or the Directors to insist upon strict performance of any covenant or obligation hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such Shareholder’s or the Directors’ right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation hereunder, shall constitute a consent to or waiver of any other breach or default in the performance of the same or any other obligation hereunder.

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*Section 12.11. **Further Assurances.*** Each party hereto agrees to execute, acknowledge, deliver, file, record and publish such further agreements, certificates, amendments of certificates, instruments or documents as may be required by law or may, in the opinion of the Board be necessary or desirable to carry out the provisions of this Agreement and the Rules.

*Section 12.12. **Remedies.***

(a) No remedy conferred by any of the provisions of this Agreement and the Rules is intended to be exclusive of any other remedy which is otherwise available at law, in equity, by statute or otherwise, and each and every other remedy shall be cumulative and shall be in addition to every remedy given hereunder or now or hereafter existing at law, in equity, by statute or otherwise. The election of any one or more of such remedies by any of the parties hereto shall not constitute a waiver by such party of the right to pursue any other available remedy.

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

*Section 12.13. **Captions.*** Section titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

BTEX HOLDINGS, L.P.

By: _____
General Partner

Form of Accession Agreement

ACCESSION AGREEMENT

This Accession Agreement (the "Accession Agreement") is made as of [insert date] by and between [insert name of Firm], a [insert form of organization] organized under the laws of [insert jurisdiction of organization] (the "Prospective Shareholder") and BrokerTec Futures Exchange, L.L.C. (the "Exchange"). Capitalized terms used but not defined herein shall have the meaning set forth in the Limited Liability Company Agreement and By-laws of the Exchange, as amended, restated or supplemented from time to time (the "LLC Agreement").

WHEREAS, the Prospective Class B Shareholder has agreed to make a capital contribution to the Exchange in the amount of U.S.\$[50,000] [10,000] (the "Capital Contribution");

WHEREAS, in connection with such Capital Contribution, the Prospective Shareholder desires to become a [Participating Class B Shareholder] [Non-Participating Class B Shareholder] of the Exchange and a party to the LLC Agreement and the Exchange desires to admit the Prospective Shareholder as a [Participating Class B Shareholder] [Non-Participating Class B Shareholder];

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. On the date hereof, the Prospective Shareholder shall pay to the Exchange its Capital Contribution in U.S. Dollars, in freely available funds, in accordance with the following wiring instructions:

Bank Name: [_____]
ABA Number: [_____]
Account Number: [_____]
Beneficiary Name: BrokerTec Futures Exchange, L.L.C.

2. The Prospective Shareholder shall become a [Participating Class B Shareholder] [Non-Participating Class B Shareholder] of the Exchange, subject in all respects to the LLC Agreement, on the date hereof upon, and only upon, the receipt by the Exchange of the Capital Contribution.

3. By executing and delivering this Accession Agreement, the Prospective Shareholder shall be deemed to have executed and delivered the LLC Agreement. The

Prospective Shareholder hereby agrees to perform and abide by all the provisions of the LLC Agreement to be performed by or which are applicable to it as a Class B Shareholder.

[4. The Prospective Shareholder hereby designates, appoints, authorizes and empowers, as its agent for service of process, [insert entity with presence in New York City] to accept and acknowledge for and on behalf of the Prospective Shareholder service of any and all process, notices or other documents that may be served in any suit, action or proceeding relating to the LLC Agreement or this Accession Agreement.]¹

5. Each of the other Shareholders shall be a direct third party beneficiary of this Accession Agreement.

6. THIS ACCESSION AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of the day and year first above written.

BROKERTEC FUTURES EXCHANGE, L.L.C. [INSERT PROSPECTIVE SHAREHOLDER]

By: _____
Name:
Title:

By: _____
Name:
Title:

¹ This Section 4 is to be used if the Prospective Shareholder is an entity without a presence in New York City.
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Document comparison done by DeltaView on Tuesday, November 11, 2003 2:31:09 PM

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Document 2	pcdocs://nylib1/578866/6
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Split/Merged cell	
Padding cell	

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Moved to	0
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Format changed	0
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