

July 11, 2007

Ms. Eileen A. Donovan
Acting Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

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Reference File # 2807.01
Rule Certification

Dear Ms. Donovan:

Pursuant to Commission Regulation 40.6(a), the Chicago Board of Trade (CBOT[®]) hereby submits the following:

- **Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws of the Board of Trade of the City of Chicago, Inc. as indicated in the attached texts.**

These amended and restated corporate documents are components of CBOT's merger initiative with the Chicago Mercantile Exchange (CME). These documents will become effective no sooner than one day after the Commission's receipt of this submission, concurrently with the closing of the CME/CBOT merger. These amended and restated corporate documents will completely replace and supersede the previous versions of these documents, which also are attached with the heading "To Be Deleted".

The Amended & Restated Certificate of Incorporation was approved by a vote taken at a July 9, 2007 special meeting of the CBOT members. Approximately 11.4% of the member votes cast on this matter were negative. Substantive opposing views were not otherwise expressed.

The CBOT certifies that these amended and restated corporate documents comply with the Commodity Exchange Act and the rules thereunder.

Sincerely,

Paul J. Draths
Vice President and Secretary

TO BE DELETED

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
BOARD OF TRADE OF THE
CITY OF CHICAGO, INC.
(ORIGINALLY INCORPORATED IN THE STATE OF DELAWARE UNDER THE NAME
DELAWARE CBOT, INC. ON MAY 12, 2000)**

ARTICLE I

NAME

The name of the corporation is Board of Trade of the City of Chicago, Inc. (hereinafter referred to as the "Corporation").

ARTICLE II

REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is Suite 1B, 9 East Loockerman Street, in the City of Dover, County of Kent, Delaware 19901. The name of the registered agent of the Corporation at such address is National Registered Agents, Inc.

ARTICLE III

CORPORATE PURPOSES

The nature of the business or purposes to be conducted or promoted by the Corporation are to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law (as amended from time to time, the "DGCL").

ARTICLE IV

MEMBERSHIP

A. General.

The Corporation shall have no authority to issue capital stock. The terms and conditions of membership in the Corporation shall be as provided in or pursuant to this Certificate of Incorporation and the Bylaws of the Corporation which incorporate by reference the Rules and Regulations (collectively, the "Rules") of the Corporation (the "Bylaws"), which shall be part of the Bylaws in all respects.

B. Classes and Series of Membership.

Membership in the Corporation shall be divided into classes and series as set forth in this Article IV.

1. Class A Membership.

There shall be one Class A Membership in the Corporation (the "Class A Membership" and the holder thereof, the "Class A Member"), which Class A Membership shall be held by CBOT Holdings, Inc., a Delaware corporation ("CBOT Holdings"). It shall be a term and condition of such Class A Membership that such membership may not be transferred to or held by any person or entity other than CBOT Holdings unless authorized by an amendment to this Section B(1) of Article IV. Except to the extent (if any) expressly provided herein or required by law, the Class A Member shall have the right to vote on any matter to be voted on by the members of the Corporation other than on those matters expressly reserved to the vote of the holders of Series B-1 Memberships and Series B-2 Memberships (each as defined in Section B(2) of this Article IV) and shall have the exclusive right to receive any dividend or other distribution (including upon liquidation, dissolution, winding-up or otherwise) to be declared, paid or

distributed by the Corporation (except as provided in Section B(2) of this Article IV), and no other member of or class or series of membership in the Corporation shall be entitled to vote on any matter except as set forth below or to receive any such dividend or other distribution (except as provided in Section B(2) of this Article IV). In addition to those general voting rights of the Class A Membership set forth in this Section B(1) of this Article IV, the affirmative vote of the Class A Membership shall be required to permit the Corporation to approve, in one transaction or in a series of related transactions: (a) any merger or consolidation of the Corporation with or into another entity, (b) any purchase by, investment in, or other acquisition or formation by the Corporation of any business or assets which are, or are intended to be, competitive, as determined by the board of directors of the Corporation (the "Board of Directors") in its sole and absolute discretion, with the business conducted or proposed to be conducted at such time by the Corporation, (c) any sale (or other transfer) to a third party of assets of the Corporation that constitute a significant amount of the total assets of the Corporation, or (d) any dissolution or liquidation of the Corporation. For purposes of clause (c) of the foregoing provision, a significant amount of the total assets of the Corporation shall mean 10% of the fair market value of the assets, both tangible and intangible, of the Corporation as of the time of the approval by the Board of Directors of the proposed sale (or other transfer), as determined by the Board of Directors in its sole and absolute discretion.

2. *Class B Membership.*

(a) Class B Memberships in the Corporation (each a "Class B Membership" and the holder thereof, a "Class B Member") shall represent the right to trade on and otherwise utilize the facilities of the Corporation in accordance with and to the extent permitted by this Certificate of Incorporation, the Bylaws and the Rules. There shall be authorized three thousand six hundred eighty-one (3,681) Class B Memberships, which shall be divided into five (5) series ("Series") as follows:

1,402 Series B-1 Memberships (each, a "Series B-1 Membership" and the holder thereof, a "Series B-1 Member");

867 Series B-2 Memberships (each, a "Series B-2 Membership" and the holder thereof, a "Series B-2 Member");

128 Series B-3 Memberships (each, a "Series B-3 Membership" and the holder thereof, a "Series B-3 Member");

641 Series B-4 Memberships (each, a "Series B-4 Membership" and the holder thereof, a "Series B-4 Member"); and

643 Series B-5 Memberships (each, a "Series B-5 Membership" and the holder thereof, a "Series B-5 Member");

(b) Notwithstanding Section (B)(2)(a) of this Article IV, (i) following the issuance of memberships of the Corporation in the merger of the Corporation with a subsidiary of CBOT Holdings (the "Merger") to be effected in connection with the Restructuring (as defined in this Section (B)(2) of Article IV), the Corporation may issue additional authorized but unissued Series B-2 Memberships only in connection with the conversion of Series B-3 Memberships into Series B-2 Memberships pursuant to Section (D)(3) of this Article IV and no person may become or qualify as a Series B-2 Member following consummation of the Merger at any time by acquiring a theretofore authorized but unissued Series B-2 Membership except as a result of such a conversion, and (ii) the Corporation may issue authorized but unissued Series B-3 Memberships only pursuant to the terms of the agreement and plan of merger relating to the Merger and no person may become or qualify as a Series B-3 Member following consummation of the Merger at any time by acquiring a theretofore authorized but unissued Series B-3 Membership.

(c) Class B Memberships shall have no right to receive any dividend or other distribution (including upon liquidation, dissolution, winding-up or otherwise) to be declared, paid or distributed by the Corporation with the sole exception of the dividend of shares of CBOT Holdings to be declared and paid in connection with the restructuring of the Corporation and the creation of the Class B Memberships (the "Restructuring"). The respective rights and privileges of each Series of Class B Membership shall be as provided in or pursuant to this Certificate of Incorporation, the Bylaws and the Rules.

C. *Class B Voting Rights.*

Except as otherwise expressly provided in this Certificate of Incorporation, the holders of Class B Memberships shall not be entitled to vote on any matter. On any matter on which the holders of Series B-1

Memberships and Series B-2 Memberships are entitled to vote together as a single class pursuant to this Certificate of Incorporation, each holder of Series B-1 Memberships shall be entitled to one (1) vote per such membership and each holder of Series B-2 Memberships shall be entitled to one-sixth (1/6) of one (1) vote per such membership.

D. *Special Rights of Class B Membership.*

The holders of each Series of Class B Membership shall have the trading rights and other rights and privileges, and shall be subject to the restrictions, terms and conditions, set forth below.

1. *Series Trading Rights.*

(a) *Series B-1 Memberships.* Each holder of a Series B-1 Membership who satisfies the qualifications for and requirements of Full Membership in the Corporation as set forth in the Rules shall be entitled to the rights and privileges of, and shall be subject to the restrictions, conditions and limitations on, a Full Member as set forth in this Certificate of Incorporation, the Bylaws and the Rules.

(b) *Series B-2 Memberships.* Each holder of a Series B-2 Membership who satisfies the qualifications for and requirements of Associate Membership in the Corporation as set forth in the Rules shall be entitled to the rights and privileges of, and shall be subject to the restrictions, conditions and limitations on, an Associate Member as set forth in this Certificate of Incorporation, the Bylaws and the Rules.

(c) *Series B-3 Memberships.* (1) Each holder of a Series B-3 Membership who satisfies the qualifications for and requirements of being a holder of a one-half Associate Membership as set forth in clause (2) of Rule 296.00 of the Rules shall be entitled to the rights and privileges of, and subject to the restrictions, conditions and limitations on, a holder of a one-half Associate Membership as set forth in the Certificate of Incorporation, the Bylaws and the Rules.

(2) Each holder of a Series B-3 Membership who satisfies the qualifications for and requirements of being a holder of a GIM Membership Interest in the Corporation as set forth in clause (1) of Rule 296.00 of the Rules shall be entitled to the rights and privileges of, and shall be subject to the restrictions, conditions and limitations on, a holder of a GIM Membership Interest as set forth in this Certificate of Incorporation, the Bylaws and the Rules.

(d) *Series B-4 Memberships.* Each holder of a Series B-4 Membership who satisfies the qualifications for and requirements of being a holder of an IDEM Membership Interest in the Corporation as set forth in the Rules shall be entitled to the rights and privileges of, and shall be subject to the restrictions, conditions and limitations on, a holder of an IDEM Membership Interest as set forth in this Certificate of Incorporation, the Bylaws and the Rules.

(e) *Series B-5 Memberships.* Each holder of a Series B-5 Membership who satisfies the qualifications for and requirements of being a holder of a COM Membership Interest in the Corporation as set forth in the Rules shall be entitled to the rights and privileges of, and shall be subject to the restrictions, conditions and limitations on, a holder of a COM Membership Interest as set forth in this Certificate of Incorporation, the Bylaws and the Rules.

(f) In addition to the rights and privileges set forth above, except as otherwise provided in the Certificate of Incorporation, the Bylaws or the Rules, each holder of a Class B Membership of any Series shall be entitled to all trading rights and privileges with respect to those products that such holder is entitled to trade on the open outcry exchange system of the Corporation or any electronic trading system maintained by the Corporation or any of its affiliates or any of their respective successors or successors-in-interest.

2. *Series B-1 Membership and B-2 Membership Voting Rights.*

(a) In addition to any approval of the Board of Directors required by this Certificate of Incorporation, the Bylaws or applicable law, the affirmative vote of the holders of a majority of the votes cast by the holders of Series B-1 Memberships and Series B-2 Memberships, voting together as a class based on their respective voting rights at any annual or special meeting of the Corporation, shall be required to adopt any amendment to this Certificate of Incorporation.

(b) In addition to any approval of the Board of Directors required by this Certificate of Incorporation, the Bylaws or applicable law, the affirmative vote of the holders of a majority of the votes cast, except in the case of paragraph (4) below, by the holders of Series B-1 Memberships and Series B-2 Memberships, voting together as a class based on their respective voting rights at any annual or special meeting of the Corporation, shall be required to adopt any amendment to the Bylaws or the Rules that, in the sole and absolute determination of the Board of Directors, adversely affects:

(1) the allocation of products that a holder of a specific Series of Class B Membership is permitted to trade on the exchange facilities of the Corporation (including both the open outcry trading system and the electronic trading system),

(2) the requirement that, except as provided in that certain Agreement, dated August 7, 2001, between the Corporation and the Chicago Board Options Exchange (the "CBOE"), as modified by that certain Letter Agreement, dated October 7, 2004, between the Corporation, CBOT Holdings and the CBOE, in each case, as may be amended from time to time in accordance with their respective terms, holders of Class B Memberships who meet the applicable membership and eligibility requirements will be charged transaction fees for trades of the Corporation's products for their accounts that are lower than the transaction fees charged to any participant who is not a holder of Class B Membership for the same products, whether trading utilizing the open outcry trading system or the electronic trading system,

(3) the membership qualifications or eligibility requirements for holding any Series of Class B Membership or exercising any of the membership rights and privileges associated with such Series, or

(4) the commitment to maintain open outcry markets set forth in Section F of Article IV of this Certificate of Incorporation, which must be approved by a majority of the voting power of the outstanding Series B-1 Memberships and Series B-2 Members, voting together as a class.

For purposes of Section D(2)(b)(1) of Article IV, the allocation of products that the holders of any Series of Class B Membership are permitted to trade on the exchange facilities of the Corporation shall be deemed to be adversely affected only if a product is eliminated from the allocation of products the holders of a particular Series of Class B Memberships are permitted to trade.

(c) In addition to their right to vote on the matters specified in the preceding paragraph (a), holders of Series B-1 Memberships and Series B-2 Memberships shall also be entitled, at any annual or special meeting of members, to (i) adopt, repeal or amend the Bylaws of the Corporation, or (ii) make non-binding recommendations that the Board of Directors of the Corporation consider proposals that require the approval of the Board of Directors, including recommendations that the board consider a specific proposal, in each case subject to such requirements and conditions for the initiation of proposals by members as may be stated in this Certificate of Incorporation or in the Bylaws. Any proposal brought pursuant to Section D(2)(c) of this Article IV shall require the affirmative vote of the holders of a majority of the votes cast by the holders of Series B-1 Memberships and Series B-2 Memberships, voting together as a single class based on their respective voting rights at any annual or special meeting of the Corporation.

(d) On any matter on which holders of Series B-1 Memberships and Series B-2 Memberships are entitled to vote pursuant to paragraphs (a), (b) and (c) of this Section D(2) of Article IV, such holders of Series B-1 Memberships and Series B-2 Memberships shall be the only members of the Corporation entitled to vote thereon. Holders of Series B-1 Memberships and Series B-2 Memberships shall have no other voting rights except as expressly set forth herein and shall not have the right to take action by written consent in lieu of a meeting. One-third of the total voting power of the Series B-1 Memberships and Series B-2 Memberships present in person or by proxy shall constitute a quorum at any meeting to take action on the matters as to which such holders are entitled to vote pursuant to paragraphs (a), (b) and (c) of Section (D)(2) of this Article IV. Series B-3 Memberships, Series B-4 Memberships and Series B-5 Memberships shall have no right to vote on any matters or to initiate any proposals at or for any meeting of members. For purposes of any vote of the holders of Series B-1 Memberships and Series B-2 Memberships permitted by this Certificate of Incorporation, the Board of Directors shall be entitled to fix a record date, and only holders of record as of such record date shall be entitled to vote on the matter to be voted on.

3. *Conversion Rights of Series B-3 Memberships.*

(a) *Conversion.* Subject to, and upon compliance with, the provisions of this Section D(3) of Article IV, any two (2) Series B-3 Memberships shall be convertible at the option of the holder into one (1) Series B-2 Membership.

(b) *Mechanics of Conversion.* A holder of Series B-3 Memberships may exercise the conversion right specified in Section D(3)(a) of Article IV by delivering to the Corporation or any transfer agent of the Corporation written notice stating that the holder elects to convert such memberships, accompanied by the certificates or other instruments, if any, representing the memberships to be converted. Conversion shall be deemed to have been effected on the date when delivery of such written notice, accompanied by such certificate or other instrument, if any, is made, and such date is referred to herein as the Conversion Date. As promptly as practicable after the Conversion Date, the Corporation may issue and deliver to or upon the written order of such holder a certificate or other instrument, if any, representing the number of Series B-2 Memberships to which such holder is entitled as a result of the exercise of such conversion right. The person in whose name the certificates or other instruments representing Series B-2 Memberships are to be issued shall be deemed to have become the holder of record of such Series B-2 Memberships on the applicable Conversion Date.

(c) *Memberships Reserved for Issuance.* The Corporation shall take all actions necessary to reserve and make available at all times for issuance upon the conversion of Series B-3 Memberships, such number of Series B-2 Memberships as are issuable upon the conversion of all outstanding Series B-3 Memberships.

E. *Restriction on Transfer.*

1. Except as otherwise provided in this Section E of Article IV, no Class B Membership may be sold, transferred or otherwise disposed of (excluding any hypothecation thereof) except (a) by operation of law, (b) in a bona fide pledge to a commercial bank, a savings and loan institution or any other lending or financial institution or any Class B Member or clearing member of the CBOT Subsidiary as security for obligations of the holder incurred to acquire a membership in the CBOT Subsidiary, or (c) in a transaction consummated in connection with and conditioned upon the sale, transfer or disposition of shares of Series A-1, Class A Common Stock of CBOT Holdings ("Series A-1 Common Stock"), Series A-2, Class A Common Stock of CBOT Holdings ("Series A-2 Common Stock") or Series A-3 Class A Common Stock of CBOT Holdings ("Series A-3 Common Stock," and together with Series A-1 Common Stock and the Series A-2 Common Stock, the "Restricted Class A Common Stock"), that results in the number of shares of Restricted Class A Common Stock associated with the series of such Class B Membership, as set forth hereinafter in this Section E of Article IV, being simultaneously sold, transferred or disposed of to the same transferee of such Class B Membership. The number of shares of Common Stock that must be sold, transferred or otherwise disposed of in accordance with the preceding sentence is as follows: at least nine thousand one hundred fourteen (9,114) shares of Series A-1 Common Stock, nine thousand one hundred twelve (9,112) shares of Series A-2 Common Stock and Series A-3 Common Stock with one (1) Series B-1 Membership; at least three thousand three hundred thirty-four (3,334) shares of Series A-1 Common Stock, three thousand three hundred thirty-three (3,333) shares of Series A-2 Common Stock or three thousand three hundred thirty-three (3,333) shares of Series A-3 Common Stock with one (1) Series B-2 Membership; at least one thousand six hundred sixty-eight (1,668) shares of Series A-1 Common Stock, one thousand six hundred sixty-six (1,666) shares of Series A-2 Common Stock or one thousand six hundred sixty-six (1,666) shares of Series A-3 Common Stock with one (1) Series B-3 Membership; at least three hundred sixty-eight (368) shares of Series A-1 Common Stock, three hundred sixty-six (366) shares of Series A-2 Common Stock or three hundred sixty-six (366) shares of Series A-3 Common Stock with one (1) Series B-4 Membership; and at least eight hundred thirty-four (834) shares of Series A-1 Common Stock, eight hundred thirty-three (833) shares of Series A-2 Common Stock or eight hundred thirty-three (833) shares of Series A-3 Common Stock with one (1) Series B-5 Membership. Notwithstanding the foregoing, for purposes of satisfying the requirements of this Section E(1) of Article IV, a holder of Restricted Class A Common Stock shall not be obligated to sell, transfer or dispose of any Class A Common Stock for which the applicable transfer restrictions have expired in connection with the lapse of the applicable transfer restriction period and have converted into unrestricted Class A Common Stock.

2. The restrictions contained in this Section E of Article IV shall be terms and conditions of membership in the Corporation and any purported sale, transfer or other disposition of a Class B Membership not in accordance

with this Section E of Article IV shall be void and shall not be recorded on the books of or otherwise recognized by the Corporation.

3. If and when a majority of the outstanding Class A Common Stock of CBOT Holdings, voting together as a single class, approves a proposal to provide the board of directors of CBOT Holdings the power to authorize CBOT Holdings to issue all or any portion of the authorized shares of capital stock of CBOT Holdings that remain unissued after the issuance of shares in conjunction with the Restructuring in one or more transactions of any nature when and if determined by the board of directors of CBOT Holdings in its sole discretion (the "Second Approval") the reciprocal restrictions on transfer described in Section E(1) above will terminate and Class B Memberships will thereafter be transferable without the applicable Series A-1 Common Stock, Series A-2 Common Stock and Series A-3 Common Stock, subject to any applicable membership requirements of the Corporation and any other restrictions imposed by the Bylaws, Rules and Regulations or applicable law.

F. *Commitment to Maintain Open Outcry Markets.* Subject to the terms and conditions of this Section F of Article IV, the Corporation shall maintain open outcry markets operating as of the effective date of the amendment and restatement of this Certificate of Incorporation creating Class B Memberships (the "Effective Date") and provide financial support to each such market for technology, marketing and research, which the Board of Directors determines, in its sole and absolute discretion, is reasonably necessary to maintain each such open outcry market.

Notwithstanding the foregoing or any other provision of this Certificate of Incorporation, the Board of Directors may discontinue any open outcry market at such time and in such manner as it may determine if (1) the Board of Directors determines, in its sole and absolute discretion, that a market is no longer "liquid" or (2) the holders of a majority of the voting power of the then outstanding Series B-1 Memberships and Series B-2 Memberships, voting together as a single class based on their respective voting rights, approve the discontinuance of such open outcry market.

For purposes of the foregoing, an open outcry market will be deemed "liquid" for so long as it meets either of the following tests, in each case as measured on a quarterly basis:

(a) if a comparable exchange-traded product exists, the open outcry market has maintained at least 30 percent (30%) of the average daily volume of such comparable product (including for calculation purposes, volume from Exchange-For-Physicals transactions in such open outcry market); or

(b) if no comparable exchange-traded product exists, the open outcry market has maintained at least 40 percent (40%) of the average quarterly volume in that market as maintained by the Corporation in 2001 (including, for calculation purposes, volume from Exchange-For-Physicals transactions in such open outcry market).

The commitment to maintain open outcry markets set forth in this Section F of Article IV will not apply to markets introduced after the Effective Date.

ARTICLE V

MANAGEMENT OF AFFAIRS

The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

A. In accordance with Sections 141(a) and 141(j) of the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, the composition of which shall be as set forth in Article VI of this Certificate of Incorporation. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation, the Bylaws or the Rules, the directors are hereby empowered to exercise all powers and do all acts and things as may be exercised or done by the Corporation.

B. A special meeting of members shall be called by the Chairman of the Board or the Board of Directors upon receipt by the Chairman of the Board or the Secretary of the Corporation of a written demand of the holders of Series B-1 Memberships and Series B-2 Memberships entitled to cast 10% of the total number of votes entitled to be cast at such meeting. Any such written demand shall specify the purpose of

such special meeting and the special meeting so called shall be limited to the purpose so set forth. The written demand shall also specify the date of such special meeting that shall be a business day not less than ten (10) nor more than sixty (60) days from the date of such written demand. The purpose of any special meeting shall be stated in the notice thereof.

C. Any action required or permitted to be taken by the members of the Corporation must be effected at a duly called annual or special meeting of members of the Corporation and may not be effected by any consent in writing by such members, provided that the Class A Member shall have the right to effect by consent in writing any action which would require the approval of the Class A Member at a duly called annual or special meeting of the members of the Corporation.

ARTICLE VI

BOARD OF DIRECTORS

A. *Designation of Directors Prior to a Qualified Initial Public Offering.* After the Effective Date but prior to a Qualified Initial Public Offering, the members of the Board of Directors of the Corporation shall not be elected by the members of the Corporation but, rather, shall be those persons who are serving as directors of CBOT Holdings from time to time; such persons shall automatically become directors of the Corporation if they are directors of CBOT Holdings, and shall automatically cease to be directors of the Corporation if they cease to be directors of CBOT Holdings. The Chairman of the Board of CBOT Holdings shall, whenever he or she is serving as a member of the Board of Directors, be Chairman of the Board of Directors and the Vice Chairman of the Board of CBOT Holdings shall, whenever he or she is serving as a member of the Board of Directors, be Vice Chairman of the Board of Directors. Pursuant to Section 141(a) of the DGCL, the person appointed to serve as President and Chief Executive Officer of CBOT Holdings shall, whenever he or she is serving as a member of the Board of Directors, not be entitled to any voting rights held by other directors. For purposes of this Certificate of Incorporation, the term "Qualified Initial Public Offering" shall mean an initial public offering of Class A Common Stock of CBOT Holdings, which has occurred following the Second Approval, that has been underwritten by one or more nationally recognized underwriting firms, following which shares of Class A Common Stock of CBOT Holdings are listed on a national securities exchange.

B. *Designation and Election of Directors Following a Qualified Initial Public Offering.* Upon completion of a Qualified Initial Public Offering, the Board of Directors will be reconstituted such that it is composed of seventeen directors and classified into two classes of nine and eight directors, respectively, each elected to serve for two-year terms. There will be eleven directors designated as "Parent Directors" and six directors designated as "Subsidiary Directors." Upon election or appointment as Parent Directors of CBOT Holdings, the Parent Directors shall automatically become members of the Board of Directors and shall continue to hold such directorships for so long as they remain members of the board of directors of CBOT Holdings. The Subsidiary Directors shall be elected by the holders of Series B-1 Memberships ("Series B-1 Members") and the holders of Series B-2 Memberships ("Series B-2 Members"), voting together as a single class according to their respective voting power, beginning with the first annual election following completion of a Qualified Initial Public Offering for two-year terms. The following qualifications for Subsidiary Directors shall apply: four directors, on the date of their first nomination or selection as nominees for the Board of Directors, shall be Series B-1 Members and shall satisfy the qualifications for and requirements of the applicable class and series of membership as set forth in the Bylaws, Rules and Regulations and two directors, on the date of their first nomination or selection as nominees for the Board of Directors, shall be Series B-2 Members and shall satisfy the qualifications for and requirements of the applicable class and series of membership as set forth in the Bylaws, Rules and Regulations. The Chairman of the Board of CBOT Holdings shall, whenever he or she is serving as a member of the Board of Directors, be Chairman of the Board of Directors and the Vice Chairman of the Board of CBOT Holdings shall, whenever he or she is serving as a member of the Board of Directors, be Vice Chairman of the Board of Directors. The President and Chief Executive Officer of CBOT Holdings shall, whenever he or she is serving as a member of the Board of Directors, be entitled to the same voting rights held by other directors.

ARTICLE VII

NOMINATING COMMITTEE

Upon completion of a Qualified Initial Public Offering, the Corporation shall maintain an elected nominating committee (the "Nominating Committee"), which shall receive proposals from the holders of Series B-1

Memberships and Series B-2 Memberships, review the qualifications of proposed individuals and such other individuals as the Nominating Committee may from time to time select, and advise the Board of Directors of the Corporation as to its recommendations for the nomination of individuals to serve as directors of the Corporation or as members of the Nominating Committee. The members of the Nominating Committee shall be subject to the qualifications set forth below in Section A of Article VII.

A. *Composition.* The Nominating Committee shall be composed of five persons, including (a) four persons who shall, on the date of their first nomination or selection as nominees for election to the Nominating Committee, be Series B-1 Members and (b) one person who shall, on the date of his or her first nomination or selection as a nominee for election to the Nominating Committee, be a Series B-2 Member. Any member of the Nominating Committee who, at any time during his or her term of office, fails to continue to satisfy the qualifications under which he or she was last elected to the Nominating Committee shall thereupon cease to be qualified to serve as a member of the Nominating Committee and the term of office of such person on such committee shall automatically end.

B. *Election.* Members of the Nominating Committee shall be elected by Series B-1 Members and Series B-2 Members, voting together as a single class according to their respective voting power, for a term of three years.

C. *Organization.* The Nominating Committee shall elect its own chairman, who for so long as he or she serves in such capacity shall at all times be a Series B-1 Member.

D. *Term Limits.* Members of the Nominating Committee may not be elected or appointed to serve again as a member of the Nominating Committee until the third annual meeting following the annual meeting at which his or her term ended. However, there is no other limit to the number of terms a member of the Nominating Committee may serve.

E. *Removal; Vacancies.* Members of the Nominating Committee may be removed by a majority of the Series B-1 Members and Series B-2 Members, voting together as a single class according to their respective voting power, with or without cause. Any vacancies in the Nominating Committee shall be filled by the Board of Directors of the Corporation, and members so chosen shall hold their position for a term expiring at the next annual meeting of the members of the Corporation.

ARTICLE VIII

AMENDMENT OF BYLAWS

The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Corporation, provided that any change to the matters set forth in Section D(2)(b) of Article IV shall also require the approval of holders of Series B-1 Memberships and Series B-2 Memberships as specified therein. The Series B-1 Members and Series B-2 Members shall also have power to adopt, amend or repeal the Bylaws. The only members of the Corporation with any power to adopt, amend or repeal the Bylaws or the Rules of the Corporation shall be the Series B-1 Members and Series B-2 Members, as set forth in Section (D)(2) of Article IV of this Certificate of Incorporation, and no other member of, or class or series of membership in, the Corporation shall have any such power.

ARTICLE IX

LIMITATION OF LIABILITY

A director of the Corporation shall not be personally liable to the Corporation or its members for monetary damages for breach of fiduciary duty as a director, except for liability (A) for any breach of the director's duty of loyalty to the Corporation or its members, (B) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (C) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification. For purposes of this Article IX, the term "director" shall, to the fullest extent permitted by the DGCL, include any person who, pursuant to this

Certificate of Incorporation, is authorized to exercise or perform any of the powers or duties otherwise conferred upon a board of directors by the DGCL.

ARTICLE X

AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware, and all rights conferred upon the members of the Corporation are granted subject to this reservation. Any amendment of, or repeal of any provision contained in, this Certificate of Incorporation shall require, first, the approval of the Board of Directors and, second, the approval of the Series B-1 Members and Series B-2 Members, voting together as a single class. No other Members or Membership class shall be entitled to vote thereon and such amendment or repeal shall require the approval of the holders of a majority of the votes cast on any such properly presented proposal at any annual or special meeting of the members of the Corporation.

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TO BE DELETED

**AMENDED AND RESTATED BYLAWS
OF
BOARD OF TRADE OF THE
CITY OF CHICAGO, INC.**

These Bylaws shall take effect at the effective time (the "Effective Time") of the Amended and Restated Certificate of Incorporation (as amended from time to time, the "Certificate of Incorporation") of Board of Trade of the City of Chicago, Inc. (the "Corporation") to be filed with the Secretary of State of the State of Delaware in connection with the merger of the Corporation and the restructuring thereof (the "Restructuring") as described in the Registration Statement filed with the Securities and Exchange Commission in connection with the Restructuring; provided that, any limitation or restriction heretofore contained in the Bylaws, Rules and Regulations of the Corporation with respect to the rights of any holder of a Full Membership, Associate Membership, one-half participation interest in an Associate Membership, which shall constitute a membership in the Corporation of the same class as a GIM Membership Interest, GIM Membership Interest, IDEM Membership Interest or COM Membership Interest to receive the dividend to be declared and distributed in connection with the Restructuring shall be and hereby is eliminated immediately upon the adoption of these Bylaws and the holders of each of the foregoing classes of membership shall be deemed to be members of the Corporation (of their respective class) as that term is used in the Delaware General Corporation Law (as amended from time to time, the "DGCL").

Capitalized terms used but not otherwise defined herein (including the Rules) shall have the meaning given to such terms in the Certificate of Incorporation.

ARTICLE I—RULES AND REGULATIONS

Section 1. Incorporation of Rules and Regulations.

In accordance with the Certificate of Incorporation of the Corporation, the Rules and the Regulations, each as they may be amended from time to time, are hereby incorporated by reference into and made part of these Bylaws.

Section 2. Member Consent to Be Bound.

Applicants for membership and any person or entity holding any membership in the Corporation shall be required to sign a written agreement to observe and be bound by the Certificate of Incorporation, the Bylaws and the Rules of the Corporation, as each may be amended from time to time. In addition, the Board of Directors may adopt interpretations of the Certificate of Incorporation, Bylaws and the Rules ("Interpretations") which shall be incorporated into and deemed to be Rules.

ARTICLE II—MEMBERSHIP

Section 1. Terms and Conditions.

The terms and conditions of membership in the Corporation, including, without limitation, the rights and obligations of members, member firms and delegates, shall be as provided herein, in the Certificate of Incorporation and in the Rules. Without limiting the foregoing, requirements with respect to, and restrictions and limitations on, the ownership, use, purchase, sale, transfer or other disposition of any membership or interest therein, or any other interest of or relating to the Corporation or membership therein, including the payment of proceeds from the sale, transfer or other disposition of any membership or interest therein, shall be as provided herein, in the Certificate of Incorporation and in the Rules, or as otherwise provided in accordance with applicable law.

Section 2. Voting Rights.

Members shall have such voting rights as are specified in the Certificate of Incorporation. To the extent authorized by the Certificate of Incorporation, the Board of Directors shall be entitled to fix a record date for purposes of determining the members entitled to vote on any matter. Except as expressly provided in the Certificate of Incorporation of the Corporation, on any matter upon which the holders of Series B-1 Memberships and Series B-

2 Memberships are entitled to vote, such members shall have the authority to authorize such proposal on the affirmative vote of a majority of votes cast at any annual or special meeting of the members of the Corporation.

Section 3. *Annual and Special Meetings.*

1. Nominations of persons for election to the Board of Directors or the Nominating Committee may be made at the Annual Meeting (a) pursuant to the Corporation's notice with respect to such meeting, (b) by or at the direction of the Board of Directors or (c) by any Series B-1 Member or any Series B-2 Member in good standing with the Corporation who was a member in good standing at the time of the giving of the notice provided for in the following paragraph, who is entitled to vote at the meeting and who has complied with the notice procedures set forth in this section.

2. For nominations to be properly brought before an Annual Meeting by a Series B-1 Member or Series B-2 Member pursuant to clause (c) of the foregoing paragraph, (1) the member must have given timely notice thereof in writing to the Secretary of the Corporation, (2) if the member has provided the Corporation with a Solicitation Notice, as that term is defined in subclause (b)(iii) of this paragraph, such member must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of a percentage of the Corporation's voting shares reasonably believed by such member to be sufficient to elect the nominee or nominees proposed to be nominated by such member, and must, in either case, have included in such materials the Solicitation Notice and (3) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the member proposing such nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this section. To be timely, a member's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than twenty (20) or more than sixty (60) days prior to the first anniversary (the "Anniversary") of the date on which the Corporation first mailed its proxy materials for the preceding year's Annual Meeting; provided, however, that for purposes of the first Annual Meeting following the Effective Time, or if the date of an Annual Meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's Annual Meeting, notice by the member to be timely must be so delivered not earlier than the 90th day prior to such Annual Meeting and not later than the close of business on the later of (i) the 45th day prior to such Annual Meeting or (ii) the 10th day following the day on which public announcement of the date of such meeting is first made. Such member's notice shall set forth: (a) as to each person whom the member proposes to nominate for election or reelection as a director or member of the Nominating Committee (x) the person's name and a brief description of the current positions and directorships such person holds; (y) whether the member proposes to nominate such person to be a Series B-1 Director, a Series B-2 Director or a member of the Nominating Committee and, if applicable, a statement that such person satisfies the applicable criteria for Series B-1 Directors, Series B-2 Directors or members of the Nominating Committee, as applicable, and (z) such person's written consent to serve as a director or member of the Nominating Committee, as applicable if elected and, if applicable, a written undertaking to promptly provide to the Secretary of the Corporation upon request any information that the Corporation deems to be relevant to the determination of whether such person satisfies the applicable criteria for Series B-1 Directors, Series B-2 Directors or members of the Nominating Committee, as applicable; (b) as to the member giving the notice (i) the name and address of such member, as they appear on the Corporation's books, (ii) the series and number of memberships of the Corporation that are owned by such member, and (iii) whether such member intends to deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of the Corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the Corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a "Solicitation Notice").

3. In the event that (a) a member proposes to nominate an individual for election or reelection as a director of the Corporation or as a member of the Nominating Committee; (b) such member has satisfied each of the terms and conditions set forth in paragraph (2) of this Section 3 for the nomination of such nominee; and (c) such member has delivered to the Secretary of the Corporation a written petition executed by at least forty (40) persons who are holders of a Series B-1 Membership proposing to nominate such nominee, the Corporation shall, to the extent it prepares and delivers a proxy statement and form of proxy, at its own expense, use commercially reasonable efforts to include the name of such nominee and all other information required as a matter of law in such proxy statement and form of proxy.

4. Notwithstanding anything in the second sentence of the second paragraph of this Section 3 to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors

made by the Corporation at least fifty-five (55) days prior to the Anniversary, a member's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

5. Only persons nominated in accordance with the procedures set forth in this Section 3 shall be eligible to be elected as directors or members of the Nominating Committee at an Annual Meeting. The chairman of the meeting shall have the power and the duty to determine whether a nomination to be brought before the meeting has been made in accordance with the procedures set forth in these Bylaws and, if any proposed nomination is not in compliance with these Bylaws, to declare that such defectively proposed nomination shall not be presented for member action at the meeting and shall be disregarded.

6. For purposes of these Bylaws, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service.

Section 4. *Notice of Meetings.*

Written notice of the place, date, and time of all meetings of the members shall be given, not less than ten (10) nor more than sixty (60) days before the date on which the meeting is to be held, to each member entitled to vote at such meeting, except as otherwise provided herein or required by law (meaning, here and hereinafter, as required from time to time by the DGCL or the Certificate of Incorporation of the Corporation). The notice of any special meeting of members shall also state the purpose or purposes for which such meeting is called.

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which members and proxy holders may be deemed to be present in person and vote at such adjourned meeting is announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, notice of the place, if any, date, and time of the adjourned meeting and the means of remote communications, if any, by which members and proxy holders may be deemed to be present in person and vote at such adjourned meeting shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting without regard to the presence of a quorum at such adjournment.

Section 5. *Quorum.*

The presence of the holder of the Class A Membership, in person or by proxy, shall constitute a quorum with respect to any matter on which the holder of the Class A Membership is entitled to vote pursuant to the Certificate of Incorporation, or any meeting called to vote on such matters.

With respect to any matter on which the holders of Class B Memberships are entitled to vote pursuant to the Certificate of Incorporation, or any meeting called to vote on such matters, the presence of holders of Class B Memberships, in person or by proxy, representing one-third of the votes entitled to be cast on such matters, shall constitute a quorum. If a quorum shall fail to attend any meeting, the chairman of the meeting or, in his or her absence, the Chairman of the Board of Directors or the President may adjourn the meeting to another place, if any, date or time.

Section 6. *Organization.*

Such person as the Board of Directors may have designated or, in the absence of such a person, the Chairman of the Board of Directors or, in his or her absence, such person as may be chosen by the holder of the Class A Membership, shall call to order any meeting of the members and act as chairman of the meeting. In the absence of the Secretary of the Corporation, the secretary of the meeting shall be such person as the chairman appoints.

Section 7. *Conduct of Business.*

The chairman of any meeting of members shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him or her in order.

Section 8. *Proxies and Voting.*

At any meeting of the members, every member entitled to vote may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this paragraph may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

ARTICLE III—BOARD OF DIRECTORS

Section 1. *General.* The Board of Directors shall be composed of such persons, who shall be subject to such qualifications, shall be appointed in such manner and shall have and exercise such powers, as provided in the Certificate of Incorporation.

Section 2. *Quorum.* A majority of the total number of directors then in office shall constitute a quorum of the Board of Directors.

Section 3. *Attendance at Board Meetings.*

Members of the Board of Directors or any committee who are physically present at a meeting of the Board of Directors or any committee may adopt as the procedure of such meeting that, for quorum purposes or otherwise, any member not physically present but in continuous communication with such meeting shall be deemed to be present. Continuous communication shall exist only when, by conference telephone or similar communications equipment, a member not physically present is able to hear and be heard by each other member deemed present, and to participate in the proceedings of the meeting.

Section 4. *Regular Meetings.*

The Board of Directors shall hold regular meetings at such times as the Board of Directors may determine from time to time.

Section 5. *Special Meetings.*

Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors or the President, and shall be called by the Secretary upon the written request of three Directors. The Secretary shall give at least one hour's notice of such meetings either by announcement on Change or by call letter.

Section 6. *Certain Rights and Restrictions.*

The right of any person to vote, participate or take any action in any capacity as a member of the Board of Directors or any committee, panel or other body shall be subject to such requirements and restrictions as may be provided herein, in the Certificate of Incorporation and in the Rules.

ARTICLE IV—COMMITTEES AND DEPARTMENTS

Section 1. *General.*

To the fullest extent permitted by law and the Certificate of Incorporation, the Board of Directors shall have the power to appoint, and to delegate authority to, such committees of the Board of Directors as it determines to be appropriate from time to time.

Section 2. *Additional and Standing Committees.*

In addition to such committees as may be authorized by the Board of Directors from time to time, the Corporation shall have such additional and standing committees, which shall be composed of such persons having such powers and duties, as provided in the Rules. Any person may be disqualified from serving on or participating in the affairs of any committee to the extent provided in the Rules.

Section 3. *Departments.*

The Corporation shall have such departments as are authorized in or in accordance with the Rules.

ARTICLE V—OFFICERS

Section 1. *General.*

The Corporation shall have such officers, with such powers and duties, as provided herein and in the Certificate of Incorporation.

Section 2. *Chairman of the Board.*

The Chairman of the Board of Directors of CBOT Holdings shall, whenever he or she is serving as a member of the Board of Directors of the Corporation, be the Chairman of the Board of Directors of the Corporation.

Section 3. *President.*

The President shall be the Chief Executive Officer of the Corporation. Subject to the provisions of these Bylaws and to the direction of the Board of Directors, he or she shall have the responsibility to carry on the day to day activities of the Corporation, subject to the Board's authority to review the activities of the President and determine the policies of the Corporation, and for the general management and control of the business and affairs of the Corporation and shall perform all duties and have all powers which are commonly incident to the office of chief executive and which are delegated to him or her from time to time by the Board of Directors.

Section 4. *Officers Other Than President.*

The Board of Directors shall appoint such Vice Presidents as it may deem necessary or desirable for the efficient management and operation of the Corporation. The Executive Vice President and any other Vice Presidents shall be responsible to the President. The Board of Directors shall also appoint such other officers as may be necessary. The Board of Directors may prescribe the duties and fix the compensation of all such officers and they shall hold office during the will of the Board of Directors.

Section 5. *Bonding of Employees.*

The President, Secretary, Assistant Secretary, Treasurer and Assistant Treasurer shall be placed under bond of \$50,000 each, premiums to be paid out of the general funds of the Corporation; and such other employees of the Office of the Secretary, who handle funds of the Corporation, shall be bonded in the sum of \$5,000 each, premiums to be paid out of the general funds of the Corporation.

Section 6. *Secretary.*

The Secretary shall perform such duties as may be delegated to him or her by the Board of Directors or the President. In addition he or she shall be charged with the following specific duties:

- (a) To take charge of the books, papers, and corporate seal of the Corporation;
- (b) To attend all meetings of the Corporation and the Board of Directors, and to keep official records thereof;
- (c) To give notices when required of all Board of Directors and membership meetings;
- (d) To conduct the correspondence of the Corporation under the direction of the proper officers;
- (e) To furnish to the Chairman of every Special Committee a copy of the resolution whereby such Committee was created;
- (f) To post all notices which may be required to be posted upon the bulletin board;
- (g) To keep his or her office open during usual business hours;
- (h) To see that the rooms and property of the Corporation are kept in good order;
- (i) To attest, upon behalf of the Corporation, all contracts and other documents requiring authentication;

(j) To permit members to examine the records of the Corporation upon reasonable request; and

(k) To post on the bulletin board from time to time the names of all warehouses, the receipts of which are declared regular for delivery, and also, upon direction of the Board of Directors, to post any fact tending to impair the value of receipts issued by such warehouses.

Section 7. Assistant Secretaries.

Assistant Secretaries shall perform such duties as the Secretary or the Board of Directors may require, and shall act as Secretary in the absence or disability of the Secretary.

Section 8. Treasurer.

The Treasurer (or, in the absence of a Treasurer, the Chief Financial Officer) shall have general charge of all funds belonging to the Corporation, and shall be charged with the following specific duties:

(a) He or she shall receive and deposit funds belonging to the Corporation. Checks in amounts over \$10,000 shall be signed by either the President and Chief Executive Officer, the Chief Financial Officer, the Chief Accounting Officer, the Treasurer or the Secretary;

(b) To make an annual report to the Corporation of all receipts and disbursements; and

(c) To keep all of his or her accounts in permanent books of account belonging to the Corporation, which books shall at all times be open to the examination of the Board of Directors or any committee thereof.
(05/26/06)

Section 9. Assistant Treasurer.

The Assistant Treasurer shall perform such duties as the Treasurer or the Board of Directors may require, and shall act as Treasurer in the absence or disability of the Treasurer.

ARTICLE VI—NOTICES

Section 1. Notices.

Except as otherwise specifically provided herein or required by law, all notices required to be given to any member, director, committee member, officer, employee or agent shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, or by sending such notice by prepaid telegram or mailgram. Any such notice shall be addressed to such member, director, committee member, officer, employee or agent at his or her last known address as the same appears on the books of the Corporation. The time when such notice is received, if hand delivered, or dispatched, if delivered through the mails or by telegram or mailgram, shall be the time of the giving of the notice.

Section 2. Waivers.

A written waiver of any notice, signed by a member, director, committee member, officer, employee or agent, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such member, director, committee member, officer, employee or agent. Neither the business nor the purpose of any meeting need be specified in such a waiver.

ARTICLE VII—MISCELLANEOUS

Section 1. Facsimile Signatures.

Facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

Section 2. Corporate Seal.

The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 3. *Reliance upon Books, Reports and Records.*

Each director and each member of any committee designated by the Board of Directors, shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 4. *Fiscal Year.*

The fiscal year of the Corporation shall be as fixed by the Board of Directors from time to time.

Section 5. *Time Periods.*

Except as otherwise specifically provided, in applying any provision of these Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

ARTICLE VIII—INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. *Right to Indemnification.*

Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a Director, officer, committee member or employee of the Corporation or is or was serving at the request of the Corporation as a Director, officer, trustee, committee member or employee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a Director, officer, trustee, committee member or employee or in any other capacity while serving as a Director, officer, trustee, committee member or employee, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; provided, however, that, except as provided in Section 3 of this Article VIII with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Section 2. *Right to Advancement of Expenses.*

The right to indemnification conferred in Section 1 of this Article VIII shall include the right to be paid by the Corporation the expenses (including attorney's fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the DGCL requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a Director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 2 or otherwise. The rights to indemnification and to the advancement of expenses conferred in Sections 1 and 2 of this Article VIII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a Director, officer, committee member or employee and shall inure to the benefit of the indemnitee's heirs, executors and administrators.

Section 3. *Right of Indemnitee to Bring Suit.*

If a claim under Section 1 or 2 of this Article VIII is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its members) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its members) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Corporation.

Section 4. *Non-Exclusivity of Rights.*

The rights to indemnification and to the advancement of expenses conferred in this Article VIII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Corporation's Certificate of Incorporation, Bylaws, agreement, vote of members or disinterested Directors or otherwise.

Section 5. *Insurance.*

The Corporation may maintain insurance, at its expense, to protect itself and any Director, officer, committee member, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

Section 6. *Indemnification of Agents of the Corporation.*

The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any agent of the Corporation to the fullest extent of the provisions of this Article VIII with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 7. *Corporation Defense Expenses.*

Any member or member firm who fails to prevail in a lawsuit or any other type of legal proceeding instituted by that member or member firm against the Corporation or any of its officers, Directors, committee members, employees or agents must pay to the Corporation all reasonable expenses, including attorney's fees, incurred by the Corporation in the defense of such proceeding. Any member or member firm required to compensate the Corporation pursuant to this section shall be assessed interest on such amount at the rate of Prime plus one percent (1%), which interest shall accrue from the date such amount was demanded in writing after the member or member firm failed to prevail in a lawsuit or any other type of legal proceeding against the Corporation.

ARTICLE IX—AMENDMENTS

The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Corporation; provided that any change to the matters set forth in Section (D)(2)(a) of Article IV of the Certificate of Incorporation shall also require the approval of Series B-1 Members and Series B-2 Members as specified therein. Series B-1 Members and Series B-2 Members shall also have power to adopt, amend or repeal the Bylaws of the Corporation;

provided, however, that any adoption, amendment or repeal of the Bylaws of the Corporation by Series B-1 Members and Series B-2 Members shall require the affirmative vote of a majority of the votes cast on any such properly presented proposal at any annual or special meeting of the members of the Corporation.

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