

AMENDED AND RESTATED  
LIMITED PARTNERSHIP AGREEMENT

OF

ESX Futures, L.P.

dated as of December 21, 2007

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AMENDED AND RESTATED  
LIMITED PARTNERSHIP AGREEMENT  
OF  
ESX FUTURES, L.P.

This AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT (this "Agreement") of ESX Futures, L.P., a Delaware limited partnership (the "Partnership"), is made and entered into as of December 21, 2007 (the "Execution Date"), by and among ESX Futures Holdings, LLC, a Delaware limited liability company ("ESX Futures Holdings" or the "Company", and together with the Partnership, each individually an "ESX Entity" and collectively the "ESX Entities"), and the Limited Partners (as defined in Exhibit A hereto).

**WITNESSETH:**

WHEREAS, the Partnership was formed on June 6, 2007 and is governed pursuant to that certain Limited Partnership Agreement made and entered into as of such date (the "Original Agreement");

WHEREAS, (i) eSpeed and the Partnership have entered into the Administrative Services Agreement, dated as of December 21, 2007 (the "Administrative Services Agreement"); (ii) eSpeed Technology Services, L.P., eSpeed and the Partnership have entered into the Technology Services Agreement, dated as of December 21, 2007 (the "Technology Services Agreement"); (iii) contemporaneously with the execution and delivery hereof, each Initial Limited Partner other than the eSpeed Partner (or an Affiliate thereof) is (or, in the case of any Subsequent Initial Partners, will be) entering into an ESX Futures Transaction Services Fee Agreement with the Partnership (a "Futures TSFA"); and (iv) contemporaneously with the execution and delivery hereof, each Initial Limited Partner other than the eSpeed Partner (or an Affiliate thereof) is (or, in the case of any Subsequent Initial Partners, will be) entering into an eSpeed Transaction Services Fee Agreement with Cantor Fitzgerald & Co. (an "eSpeed TSFA") ((i), (ii), (iii) and (iv), collectively with such other Futures TSFAs and eSpeed TSFAs as may be entered into pursuant to Section 3.06, the "Ancillary Documents");

WHEREAS, concurrently herewith, each Limited Partner (or an Affiliate thereof) is entering into a limited liability company agreement of ESX Futures Holdings (as amended or modified from time to time, the "ESX Futures LLC Agreement");

WHEREAS, in connection with the foregoing, this Agreement amends and restates the Original Agreement; and

WHEREAS, this Agreement shall constitute the "partnership agreement" (within the meaning of the Act (as defined in Exhibit A hereto)) of the Partnership;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF the mutual covenants, rights, and obligations set forth in this Agreement, the benefits to be derived from them, and other good and valuable consideration, the receipt and the sufficiency of which each Partner hereby acknowledges, the Partners agree, and the Original Agreement is hereby amended and restated, as follows:

## ARTICLE I

### DEFINITIONS

1.01 Definitions. Certain capitalized terms used herein without definition shall have the meanings assigned to them (i) in Exhibit A, Schedule I or Schedule II hereto, each of which is hereby incorporated into this Agreement as if set forth in full herein, and (ii) if not defined in Exhibit A, Schedule I or Schedule II hereto, in the ESX Futures LLC Agreement.

## ARTICLE II

### ORGANIZATION

2.01 Formation. Effective with the filing of the Certificate, the Partnership was formed under the laws of the State of Delaware on June 6, 2007. The Partnership shall execute, file and publish such documents and instruments with such appropriate authorities or in such publications as may be necessary or appropriate from time to time to comply with all requirements for the operation of a limited partnership in Delaware.

2.02 Name. The name of the Partnership is "ESX Futures, L.P." and all Partnership business must be conducted in that name or such other names that comply with applicable law as the General Partner may select from time to time.

2.03 Registered Office; Registered Agent; Other Offices. The Partnership shall maintain a registered office and registered agent in Delaware to the extent required by the Act, which office and agent shall be as determined by the General Partner from time to time. Initially (and until otherwise determined by the General Partner), the registered office in Delaware, and the name and address of the Partnership's registered agent in Delaware, shall be as specified in the certificate of limited partnership of the Partnership as originally filed. The Partnership may have such other offices as the General Partner may designate from time to time.

2.04 Purposes and Powers. The purpose of the Partnership is to engage in and conduct, and only to engage in and conduct, the Business. The Partnership shall have all powers necessary or convenient, and may engage in any and all activities necessary or convenient, to accomplish the purposes of the Partnership or consistent with the furtherance thereof.

2.05 Term. The Partnership commenced on the date the Certificate was filed with the Secretary of State of the State of Delaware and, subject to Article X, shall perpetually continue in existence.

ARTICLE III

CAPITAL CONTRIBUTIONS; LIQUIDITY PROVISIONS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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ARTICLE IV

CAPITAL ACCOUNT ALLOCATIONS AND DISTRIBUTIONS

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[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE V

MANAGEMENT AND OPERATION

5.01 Management of Partnership Affairs; the General Partner. (a) The management of the business and affairs of the Partnership is vested exclusively in the General Partner. The Limited Partners shall have no part in the management or control of the Partnership and shall have no authority or right to act on behalf of the Partnership in connection with any matter. In addition to the powers now or hereafter granted a general partner of a limited partnership under the Act, the General Partner shall have full power and authority (and no other consent of the Limited Partners shall be required to order to) to do all things deemed necessary or desirable by it to conduct the business of the Partnership, including: (i) the making of any expenditures, the borrowing of money, the guaranteeing of indebtedness and other liabilities, the issuance of evidences of indebtedness, and the incurring of any obligations it deems necessary for the conduct of the activities of the Partnership; (ii) the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation or exchange of any or all of the assets of the Partnership Person; (iii) the use of the assets of the Partnership (including, cash on hand) for any purpose and on any terms it sees fit, including the financing of the conduct of the operations of the Partnership, the lending of funds to other Persons and the repayment of obligations of the Partnership; (iv) the negotiation and execution on

any terms deemed desirable in its sole discretion and the performance of any contracts, conveyances or other instruments that it considers useful or necessary to the conduct of the Partnership's operations or the implementation of its powers under this Agreement; (v) the distribution of Partnership cash; (vi) the selection and dismissal of employees and outside attorneys, accountants, consultants and contractors and the determination of their compensation and other terms of employment or hiring; (vii) the maintenance of such insurance for the benefit of the Partnership and the Partners as it deems necessary; (viii) the formation of any subsidiaries, joint ventures or other relationships that it deems desirable; (ix) the control of any matters affecting the right and obligations of the Partnership, including the conduct of litigation and the incurring of legal expense and the settlement of claims and litigation; (x) the purchase, sale or other acquisition or disposition of LP Units, and cancellation of acquired LP Units, at such times and on such terms as it deems to be in the best interest of the Partnership and the Partners; and (xi) the adoption, amendment from time to time or repeal of rules concerning the governance, management, operations, products, trading standards and protocols, disciplinary and dispute resolution procedures of, and participation in, the markets for derivative instruments offered by ESX Futures (the "Rules").

(b) Without limitation of the generality of Section 5.01(a), the General Partner shall have the specific rights (including approval rights) and powers conferred upon it pursuant to any other provision of this Agreement.

(c) To the fullest extent permitted by applicable law, ESX Futures Holdings shall not be liable for monetary damages to the Partnership or its Limited Partners for losses sustained or liabilities incurred by the Partnership as a result of any act or omission of the General Partner.

(d) The Partnership shall be responsible for, and shall pay, all of the expenses of ESX Futures Holdings (including all compensation of Governing Board Members and GP Officers) in excess, in the aggregate, of amounts distributed to the General Partner from time to time pursuant to this Agreement.

(e) The Limited Partners shall not have any right to remove the General Partner.

## 5.02 Officers.

(a) Powers and Duties. The General Partner may from time to time appoint, remove and replace "officers" of the Partnership (collectively, the "LP Officers"). The LP Officers shall have such titles and authority as the General Partner shall determine from time to time; subject to any such determination, such titles and authority initially shall be those specified below in this Section 5.02. Each LP Officer constitutes a delegate of the General Partner pursuant to Section 17-403(c) of the Act, provided for the avoidance of doubt that such delegation shall not cause any LP Officer to constitute a general partner of the Partnership or ESX Futures Holdings to cease to be the sole general partner of the Partnership. Except to the extent, if any, that such authority is granted to them by the General Partner pursuant to the second sentence of this Section 5.02(a) or below in this Section



5.02, the LP Officers shall not have the authority to bind the Partnership. The authority of the LP Officers in any event is subject to Section 5.03.

(b) Titles and Number. The LP Officers may (without limitation) include a Chief Executive Officer, one or more Vice Presidents, a Compliance Director, a Secretary, a Treasurer and one or more Assistant Secretaries and Assistant Treasurers. Any person may hold two or more offices.

(c) Appointment and Term of Office. The LP Officers shall be appointed at such time and for such term as the General Partner shall determine. Any LP Officer may be removed, with or without cause, only by the General Partner. Vacancies in any office may be filled only by the General Partner.

(d) Chief Executive Officer. Subject to the limitations imposed by this Agreement or any determination of the General Partner, the Chief Executive Officer, subject to the control of the General Partner, shall be responsible for the management and direction of the day-to-day business and affairs of the Partnership and its other LP Officers, employees and agents, shall supervise generally the affairs of the Partnership and have the authority to implement any action contemplated by or approved in connection with the Annual Budget, and in connection therewith shall have full authority to execute all documents and take all actions that the Partnership may legally take. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to him by this Agreement or the General Partner. The initial Chief Executive Officer shall be [REDACTED]

(e) Vice Presidents. In the absence of the Chief Executive Officer, each Vice President appointed by the General Partner shall have all of the powers and duties conferred upon the Chief Executive Officer, including the same power as the Chief Executive Officer to execute documents on behalf of the Partnership. Subject to the limitations imposed by this Agreement or any determination of the General Partner, each Vice President shall perform such other duties and may exercise such other powers as may from time to time be assigned to him by the General Partner or the Chief Executive Officer.

(f) Compliance Director. The Compliance Director will supervise the collecting, arraying and transmitting of the bid offer and trade data to the National Futures Association ("NFA"), or any third-party provider of the Partnership's trading and market surveillance audit and investigatory functions, and will act as the liaison to the NFA or such other third-party provider, all with the oversight from the Regulatory Oversight Committee. The Compliance Director also will have such further functions, duties and powers set forth in the Rules, and will report directly to the Regulatory Oversight Committee and the General Counsel of the Partnership.

(g) Secretary and Assistant Secretaries. The Secretary shall record or cause to be recorded in books provided for that purpose the minutes of the meetings or actions of the General Partner, shall see that all notices are duly given in accordance with the provisions of this Agreement, shall be custodian of all records (other than financial records) of the Partnership, and shall see that the

books, reports, statements and certificates, and all other documents and records, required by law are properly kept and filed. Subject to the limitations imposed by this Agreement or any determination of the General Partner, the Secretary shall perform all other duties, and have such other powers, as are commonly incident to the office of secretary of a corporation or as this Agreement, the General Partner or the Chief Executive Officer shall designate from time to time. The Assistant Secretaries shall exercise the powers of the Secretary during that LP Officer's absence or inability or refusal to act.

(h) Treasurer and Assistant Treasurers. The Treasurer shall keep or cause to be kept the books of account of the Partnership and shall render statements of the financial affairs of the Partnership in such form and as often as required by this Agreement, the General Partner or the Chief Executive Officer. Subject to the limitations imposed by this Agreement or any determination of the General Partner, the Treasurer shall have the custody of all funds and securities of the Partnership and shall perform all other duties, and have such other powers, as are commonly incident to the office of treasurer of a corporation or as this Agreement, the General Partner or the Chief Executive Officer shall designate from time to time. The Assistant Treasurers shall exercise the power of the Treasurer during that LP Officer's absence or inability or refusal to act. Each of the Assistant Treasurers shall possess the same power as the Treasurer to sign all certificates, contracts, obligations and other instruments of the Partnership.

(i) Emergency Powers of LP Officers.

(i) In the event of an emergency that threatens or may threaten the fair and orderly trading in or liquidation of or delivery pursuant to any contract traded on or through a market operated by the Partnership, the Chief Executive Officer, or a person designated by the Chief Operating Officer and approved by the General Partner, may place into immediate effect a temporary emergency rule which may provide for, or may authorize the General Partner or any committee appointed by the General Partner to undertake, actions necessary or appropriate to respond to the emergency. Any such action placed into effect in accordance with the preceding sentence shall be reviewed by the General Partner as soon as practicable under the circumstances and may be revoked, suspended or modified by the General Partner.

(ii) In the event that the physical functions of a market operated by the Partnership are, or are threatened to be, severely and adversely affected by a physical emergency, the Chief Executive Officer, or any individual designated by the Chief Executive Officer and approved by the General Partner, shall have authority to take such action as he or she may deem necessary or appropriate to respond to such physical emergency. In the event that any action has been taken pursuant to the immediately preceding sentence, any person who is authorized to take such action may order the removal of any restriction previously imposed pursuant to such sentence, upon a determination by such person that the physical emergency that gave rise to such restriction has sufficiently abated to permit the physical functions of a market operated by the Partnership to continue in

an orderly manner. Any order by any person pursuant to this sentence shall be subject to review, modification or reversal by the General Partner.

(j) Other Delegations. In addition to the foregoing provisions of this Section 5.02, the General Partner otherwise from time to time may delegate its rights and powers pursuant to Section 17-403 of the Act (including by granting powers of attorney).

(k) Committees/Panels. Without limitation of the foregoing provisions of this Section 5.02, the General Partner may create additional committees of the Partnership, or panels, for such purposes as may from time to time be necessary or advisable. (For the avoidance of doubt, committees of a Governing Board shall not be considered to constitute "committees of the Partnership" within the meaning of the preceding sentence, and vice versa.) Members of each such committee may be members of a Governing Board, Authorized Traders, Authorized Trader Representatives or such other individuals as may be qualified to serve on such committee. A percentage of members of each such committee equal to at least the Required Independent Percentage shall be Independent MB Members.

#### 5.03 Matters Requiring Requisite Approval.

(a) Subject to Section 5.02(i) and except as consistent with or contemplated by, or approved in connection with the approval of, the Annual Budget, but otherwise anything in Section 5.02 to the contrary notwithstanding, the following actions ("Extraordinary Actions") shall not be authorized or taken by the Partnership (including by any LP Officer) without the express approval or authorization of the General Partner:

(i) approval of the Annual Budget;

(ii) the incurrence by the Partnership or any of its Subsidiaries of any Debt (other than Debt of the Partnership to any of its wholly-owned Subsidiaries or of any of the Partnership's wholly-owned Subsidiaries to either the Partnership or any of the Partnership's other wholly-owned Subsidiaries);

(iii) the grant by the Partnership or any of its Subsidiaries of any Security Lien or additional Security Lien for (x) any Debt of the Partnership or any of its Subsidiaries or (y) the performance of any other material obligation of the Partnership, other than Security Liens granted to trade creditors in the ordinary course of business;

(iv) the making by the Partnership or any of its Subsidiaries of any loans, or advances in the nature of loans, to others (other than loans and advances by the Partnership to its wholly-owned Subsidiaries or by a Subsidiary of the Partnership to another wholly-owned Subsidiary of the Partnership, or the acquisition by the Partnership of debt securities of other Persons (other than in connection with any of the matters described in subclauses (x) and (y) of this clause (iv)), in each case other than in the ordinary course of business;

(v) the making of discretionary distributions to the Partners;

(vi) the making of (or commitment to make) any discretionary expenditures by the Partnership or any of its Subsidiaries in any calendar year that are not consistent with or contemplated by, or approved in connection with the approval of, the Annual Budget and which are in excess of \$250,000 in the aggregate for all such unbudgeted discretionary expenditures in such fiscal year;

(vii) the disposition by the Partnership or any of its Subsidiaries, by sale or otherwise, of assets having an aggregate Fair Market Value in excess of \$500,000 for any one disposition or related series of dispositions in any fiscal year, except for (and excluding from any determination as to whether such \$500,000 limit has been or would be exceeded) (x) dispositions consistent with or contemplated by, or approved in connection with the approval of, the Annual Budget, (y) dispositions from the Partnership or any Subsidiary of the Partnership to the Partnership or any wholly-owned Subsidiary of the Partnership and (z) dispositions in the ordinary course of business;

(viii) (x) the making by the Partnership of any of its Subsidiaries of any equity investment in any Person (other than (I) nominal initial investments by the Partnership or any such Subsidiary, as the case may be, incident to the establishment by the Partnership or such Subsidiary, as the case may be, of a new wholly-owned Subsidiary of itself and (II) equity investments by the Partnership or any such Subsidiary, as the case may be, in wholly-owned Subsidiaries of the Partnership or such Subsidiary, as the case may be) or (y) the acquisition by the Partnership or any of its Subsidiaries, directly or indirectly, of any business of a Person;

(ix) the appointment or removal of the independent auditors of the Partnership;

(x) the commencement, abandonment or settlement by the Partnership or any of its Subsidiaries of any litigation or arbitration, if (x) such litigation or arbitration (I) involves a dispute in excess of \$250,000 or (II) has been brought or commenced by or against any Governmental Authority, or (y) such settlement or abandonment involves, or is reasonably likely to involve, (I) a payment by the Partnership and/or its Subsidiaries in excess of \$250,000 or (II) any relief against the Partnership and/or its Subsidiaries other than a monetary payment;

(xi) the entering into by the Partnership or any of its Subsidiaries of any material contract with, or the consummation by the Partnership or any of its Subsidiaries of any other material transaction with, any Limited Partner or any Affiliate of any Limited Partner (other than the matters expressly provided for herein) involving a payment, or aggregate payments, by or to the Partnership and/or its Subsidiaries, or the lease or transfer of assets of the Partnership and/or its Subsidiaries, having an aggregate Fair Market Value in excess of \$500,000;

(xii) the filing by the Partnership or any of its Subsidiaries of a petition under the Federal Bankruptcy Code or any other insolvency law, or the admission in writing of its bankruptcy, insolvency or general inability to pay its debts as they come due;

(xiii) the appointment or removal of any GP Officer or LP Officer (other than the appointment of [REDACTED] as the initial Chief Executive Officer as provided in Section 5.02(d));

(xiv) the entering into by the Partnership or any of its Subsidiaries of any contract (other than any employment contract, bonus plan or contract relating to employee benefit plans or programs) involving mandatory or reasonably likely aggregate expenditures by the Partnership or any of its Subsidiaries of more than \$250,000 per annum or \$1,000,000 in the aggregate;

(xv) the entering into by the Partnership or any of its Subsidiaries of any written employment contract with any employee whose annualized compensation (including bonuses) could reasonably be expected to be in excess of \$250,000 per annum;

(xvi) the determination of the compensation for any employee of the Partnership or any of its Subsidiaries whose annualized compensation (including bonuses) could reasonably be expected to be in excess of \$250,000 per annum;

(xvii) the adoption by the Partnership or any of its Subsidiaries of (x) employee benefit plans or programs, (y) any material amendment to or change in any such plans or programs or (z) awards of bonuses or other incentive compensation under such plans;

(xviii) the execution by the Partnership or any of its Subsidiaries of any collective bargaining agreement regarding or otherwise affecting employees of the Partnership or any of its Subsidiaries;

(xix) any material amendment or modifications of any contract, agreement, commitment or arrangement the original execution of which was required to be approved by the General Partner pursuant to this Section 5.05(a); and

(xx) any other action that would be required to be approved by the board of directors of a corporation organized under the Delaware General Corporation Law (and not electing to be governed by Subchapter XIV thereof) comparable to the Partnership.

(b) The Partnership shall from time to time take such action as is necessary so that (except to the extent prohibited by applicable law) the governing documents of each of its wholly-owned Subsidiaries and (to the extent so determined by the General Partner from time to time) each of its other Subsidiaries contain terms concerning stockholder, member or analogous equityholder consent

such that the matters specified in Section 5.05(a) to require the approval of the General Partner in relation to any particular Subsidiary of the Partnership require (or ultimately require, in the case of indirectly-owned Subsidiaries) the approval of the Partnership as a stockholder, member or analogous equityholder thereof. References in Section 5.05(a) to the Partnership's Subsidiaries not taking specified actions without the approval of the General Partner mean that (and only that) the Partnership shall not, in the exercise of its voting rights with respect to its equity interests in its direct Subsidiaries, consent to the taking of any such specified actions without the approval of the General Partner.

5.04 Special eSpeed LP Units Voting Rights. Notwithstanding anything to the contrary in this Agreement, neither the Partnership nor any of its Subsidiaries shall have the power to authorize or consummate, and the Partnership shall prevent any of its Subsidiaries from authorizing or consummating, any of the following without the prior approval of a majority of the outstanding eSpeed LP Units:

- (i) the dissolution of, or the discontinuation of the business of, the Partnership or any of its Subsidiaries within 24 months of the Execution Date;
- (ii) any Sale, or any issuance of any LP Units (or other equity or voting interests), to, or any merger or consolidation with, any Inter-Dealer Broker;
- (iii) (x) any action, at any time, of the Partnership or any of its Subsidiaries to offer any trading in any United States Treasury securities (it being agreed that basis, EFP and EFS transactions (as such terms are defined in the Futures TSFAs being entered into contemporaneously herewith) and other combined, cross-market transactions each of which consists of both (A) futures contracts or options on futures contracts traded on the ESX Futures Platform and (B) United States Treasury securities shall not be deemed to constitute trading in United States Treasury securities, without regard to whether such trading of United States Treasury securities is effected with or through the facilities of Cantor Fitzgerald or any Subsidiary or Affiliate thereof, and it being further understood and agreed that none of the Partnership, the Company or any of their respective Subsidiaries shall be, own, operate, or Control any Entity that trades, brokers or clears transactions in United States Treasury securities), or (y) any action, at any time prior to the later of (A) January 1, 2014 and (B) the second anniversary of the expiration or termination of the Technology Services Agreement in accordance with its terms (other than any termination thereof pursuant to Section 2(b)(iii) thereof), of the Partnership or any of its Subsidiaries to offer any trading in any Non-Futures Product (other than any United States Treasury securities);
- (iv) any amendment to, or termination or replacement of, any Futures TSFA of any Initial Limited Partner or any Affiliate thereof; or
- (v) committing to effect any of the foregoing.

5.05 Filings; Duty of Partners to Cooperate. (a) The Partnership promptly shall cause to be executed, delivered, filed, recorded or published, as appropriate, and each Limited Partner will, as requested by the General Partner from time to time but at the sole expense of the Partnership, execute, deliver, swear to and acknowledge (and cause its Affiliates to execute, swear to, acknowledge and deliver) to the Partnership, (i) all certificates, documents and other instruments that the General Partner deems necessary or appropriate (w) to form, qualify, continue (or revive) or (with respect to jurisdictions other than (without limitation of clause (x)) the State of Delaware) terminate the existence or qualification of the Partnership as a limited partnership in the State of Delaware or as a foreign limited partnership in any jurisdiction or jurisdictions (other than Delaware) in which the Partnership may, or may desire to, conduct business or have Partnership Property, (x) to reflect the dissolution and liquidation of the Partnership pursuant to the terms of this Agreement, or the completion thereof, (y) to reflect or effectuate any amendment to this Agreement, or any change in the partners of the Partnership, in accordance with the terms of this Agreement, or (z) to consummate the transactions contemplated by this Agreement and (ii) such other certificates, documents and other instruments (including assumed or fictitious name certificates (or similar documents)) as are required by law or by any Governmental Authority to be executed by them in connection with the Business as conducted or proposed to be conducted by the Partnership or any of its Subsidiaries from time to time, *provided* that no Partner shall be required to take any action pursuant to this clause (ii) that it considers in good faith is inconsistent with Section 3.03 or otherwise may have an adverse effect (other than by reason of facilitating the conduct of the Business by the Partnership or any of its Subsidiaries) on it or any of its Affiliates.

(b) Without limitation of Section 5.05(a), each Limited Partner hereby covenants to cooperate as reasonably necessary, and as requested by the General Partner or any of the LP Officers, to facilitate the process for the approval of the Partnership as a "designated contract market" within the meaning of the CEA, including promptly responding to inquiries of the CFTC and providing such other assistance as the CFTC or the General Partner or any of the LP Officers shall reasonably request.

## ARTICLE VI

### INFORMATION AND TRADE SECRETS

6.01 Access to Books of Account. Each Limited Partner shall have the right to (i) audit, examine and make copies of the books of account of the Partnership and any wholly-owned subsidiary of the Partnership, (ii) visit the facilities of the Partnership and any wholly-owned subsidiary of the Partnership and (iii) discuss the affairs of the Partnership and any wholly-owned subsidiary of the Partnership with the officers, employees and auditors of the Partnership and any wholly-owned subsidiary of the Partnership. Such right may be exercised through any Agent of such Limited Partner designated by it. Each Limited Partner shall bear (or to the extent paid in the first instance by the Partnership, forthwith on demand reimburse the Partnership for) all out-of-pocket expenses (including reasonably allocable

internal expenses) incurred by the Partnership pursuant to any exercise by such Limited Partner of its rights pursuant to this Section 6.01 or otherwise pursuant to Section 17-305(a) of the Act. The General Partner, or (subject to the ultimate authority of the General Partner) the LP Officers, shall have the right to keep confidential from the Limited Partners, for such period of time as they deem reasonable, any information which they reasonably believe to be in the nature of trade secrets or other information the disclosure of which they in good faith believe is not in the best interest of the Partnership or could damage the Partnership or the Partnership's business or which the Partnership or any relevant Partnership Subsidiary is required by law or by agreement with a third party to keep confidential. Section 17-305(a) of the Act shall not apply to any Limited Partner not owning (together with any other Limited Partner that is an Affiliate of such first Limited Partner) 1% or more of the outstanding LP Units, and no such Limited Partner shall have any rights under this Section 6.01. Information provided to a Limited Partner or its Agents pursuant to this Section 6.01 shall be subject to Section 6.02.

**6.02 Confidential Information.** (a) Each Limited Partner (for the purposes this Section 6.02, a "Receiving Partner") agrees that, except and to the extent authorized by the General Partner from time to time (and subject to Section 6.02(b)), it shall not, and it shall cause its Affiliates and its and its Affiliates' respective Agents not to, disclose any Confidential Information to any Person, except (x) (A) as may be required by law (including in connection with any securities offering by the Receiving Partner or any of its Affiliates), by order of any court or arbitrator of competent jurisdiction or pursuant to any listing agreement with, or any applicable rule or regulation of, any domestic exchange, The NASDAQ Stock Market Inc. or any comparable foreign organization, or the Financial Industry Regulatory Authority or any comparable foreign organization (in each case described in this clause (A), as determined in good faith by the Receiving Partner or such Affiliate, as the case may be), or (B) as may be requested by any Governmental Authority, or any other regulatory authority, having jurisdiction, in each of which events described in clause (A) or (B) the Receiving Partner shall, to the extent permitted and practicable, so notify the Chief Executive Officer as promptly as practicable (and, if permitted and practicable, prior to such disclosure being made) and shall in any event not oppose action by, and will, to the extent reasonably requested by the Chief Executive Officer, cooperate with the Partnership to attempt to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the relevant Confidential Information, or (y) as may be necessary to establish or enforce the rights of the Receiving Partner or any of its Affiliates under this Agreement or any Related Party Agreement;

provided, however, that:

(I) Receiving Partner, any Affiliate of the Receiving Partner or any Agent of Receiving Partner or any such Affiliate may provide any such Confidential Information to (1) any Affiliate of the Receiving Partner, or any Agent of the Receiving Partner or any of its Affiliates, which the Receiving Partner (or any Person which Controls the Receiving Partner) determines in good faith needs to



know such Confidential Information, (2) any Person considering acquiring (whether by merger, consolidation or otherwise), directly or indirectly, any Partnership Interest held by Receiving Partner or an Affiliate of the Receiving Partner in a transaction that would not result in any violation of the terms of this Agreement (including Schedule II), or any Affiliate of such Person, or (3) without limiting the generality of clause (2), any Person considering entering into a transaction that would be considered to constitute a Merger/Sale Transaction with respect to the Receiving Partner's Ultimate Parent Entity (or any Person constituting such Ultimate Parent Entity), or to any Affiliate of such Person, so long as, prior to any such disclosure described in sub-clause (2) or (3), the Person so receiving such Confidential Information executes a confidentiality agreement that expressly provides that the Partnership is an intended third-party beneficiary of, and may enforce, such confidentiality agreement and contains customary provisions protecting against subsequent disclosure of such Confidential Information by the Person so receiving such Confidential Information, and provided that the Receiving Partner hereby agrees that it shall compensate the Partnership for all damages that the Partnership incurs directly arising from any violation of such confidentiality agreement by such Person;

(II) the Receiving Partner or any of its Affiliates may make such disclosure of such Confidential Information in its financial statements (including in the notes or schedules thereto) as it may determine in good faith to be necessary so that such financial statements comply with GAAP and may make such disclosure of such financial statements as it may determine in good faith; and

(III) the Members and their Affiliates may make such disclosure of such Confidential Information as they may determine in good faith to be necessary in order to perform their respective obligations under any Ancillary Document or other Related Party Agreement.

(b) The Receiving Partner's obligations under Section 6.02(a) shall continue to apply in relation to any former Affiliate of the Receiving Partner, with respect to (and only with respect to) Confidential Information of which such former Affiliate was aware of at the time it ceased to be an Affiliate of the Receiving Partner. Similarly, the Receiving Partner's obligations under Section 6.02(a) shall continue to apply in relation to any Person that was, but has ceased to be, an Agent of the Receiving Partner or of an Affiliate of the Receiving Partner, with respect to (and only with respect to) Confidential Information disclosed to such Agent (as such) while it was such an Agent. However, the Receiving Partner's obligations under Section 6.02(a) in relation to any particular current or former Agent shall not apply to, or shall prospectively cease to apply to, as the case may be, any information (or portion thereof) that would not be considered to be, or would be considered to have ceased to be, "Confidential Information" pursuant to the provisos to the definition of such term, applied, mutatis mutandis, to such particular Agent.

(c) The Receiving Partner agrees that it shall not, and it shall cause its Affiliates and its and its Affiliates' respective Agents not to, issue any press

release concerning the formation or operation of the Partnership without the prior approval of General Partner, subject to the exceptions set forth in sub-clauses (x) and (y) of clause (i) of Section 6.02(a). This Section 6.02(c) is in addition to, and not in limitation of, Sections 6.02(a) and (b).

(d) The obligations of a Person under Sections 6.02(a), (b) and (c) shall survive such Person ceasing to be a Partner or the dissolution of the Partnership only for a period of (i) with respect to any Confidential Information which constitutes a trade secret, the greater of the time period such Confidential Information remains a trade secret or the period of two years after such disassociation date or dissolution of the Partnership, as the case may be, and (ii) with respect to any Confidential Information which does not constitute a trade secret, and with respect to Section 6.02(c) in general, two years after such disassociation date or dissolution of the Partnership, as the case may be.

ARTICLE VII

TAXES

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE VIII

BOOKS, RECORDS, REPORTS AND BANK ACCOUNTS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE IX  
TRANSFERS OF INTERESTS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE X

DISSOLUTION, LIQUIDATION, AND TERMINATION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE XI

REPRESENTATIONS AND WARRANTIES

11.01 Representations and Warranties. Each Limited Partner hereby represents and warrants to each other Partner and the Partnership as follows:

(a) Such Partner has all requisite power to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereunder; the consummation by such Partner of the transactions contemplated hereunder will not result in a breach or a violation of, or a default under, any agreement or instrument by which such Partner or any of such Partner's properties is bound or any statute, rule, regulation, order or other law to which such Partner is subject, nor require the obtaining of any consent, approval, permit or license from or filing with, any Governmental Authority or other person by such Partner in connection with the execution, delivery and performance by such Partner of this Agreement; and this Agreement constitutes (assuming its due authorization and execution by the other Partners) such Partner's legal, valid and binding obligation

and is enforceable against such Partner in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws affecting the enforcement of creditors' rights generally, and except to the extent that equitable remedies, such as injunctive relief or specific performance are within the discretion of courts of competent jurisdiction. All corporate, or other comparable, proceedings required to be taken by such Partner to authorize the execution, delivery and performance of this Agreement have been taken.

(b) Such Partner is acquiring such Partner's Partnership Interest for investment solely for such Partner's own account and not for distribution, transfer or sale to others in connection with any distribution or public offering in violation of federal or state securities laws.

(c) Such Partner is financially able to bear the economic risk of an investment in the Partnership and has no need for liquidity in this investment. Furthermore, the financial capacity of such Partner is of such a proportion that the total costs of such Partner's investment in the Partnership is not material when compared with such Partner's total financial capacity.

(d) Such Partner has such knowledge, experience and skill in financial and business matters in general and with respect to investments of a nature similar to an investment in the Partnership so as to be capable of evaluating the merits and risks of, and making an informed business decision with regard to, this investment.

(e) Such Partner (i) has received all information that such Partner deems necessary to make an informed investment decision with respect to an investment in the Partnership and (ii) has had the unrestricted opportunity to make such investigation as such Partner desires pertaining to the Partnership and an investment therein and to verify any information furnished to such Partner.

(f) Such Partner understands that such Partner must bear the economic risk of an investment in the Partnership for an indefinite period of time because (i) the Partnership Interests have not been registered under the Securities Act or applicable state or foreign securities laws and (ii) the Partnership Interests may not be sold, transferred, pledged or otherwise disposed of except in accordance with this Agreement and then only if they are subsequently registered in accordance with the provisions of the Securities Act and applicable state or foreign securities laws or registration thereunder is not required.

(g) Such Partner understands that the Partnership is not obligated to register the Partnership Interests for resale under the Securities Act or any applicable state or foreign securities laws and that the Partnership is not obligated to supply such Partner with information or assistance in complying with any exemption under the Securities Act or any applicable state or foreign securities laws.

11.02 Survival. The representations and warranties contained in this Agreement shall survive (without time limitation) the execution and delivery of this Agreement and the consummation of the transactions contemplated by Section 3.02 and any investigation made by or on behalf of any of the parties hereto at any time with respect thereto.

## ARTICLE XII

### FIDUCIARY DUTIES

12.01 Article XII of General Partner Operating Agreement. Article XII of the ESX Futures LLC Agreement (as in effect on the date hereof) is hereby incorporated into this Agreement by reference.

12.02 Fiduciary Duties and Liability of LP Officers. The LP Officers shall owe fiduciary duties to the Partnership and all of its Partners, but such fiduciary duties shall be the same (and only the same) as the fiduciary duties owed to a corporation organized under the Delaware General Corporation Law (and not electing to be governed by Subchapter XIV thereof) by a similarly situated officer thereof. Anything in the preceding sentence of this Section 12.02 to the contrary notwithstanding (but without increasing the scope of fiduciary duties described therein), (i) no officer or employee of eSpeed or any of its Affiliates the services of which are made available to ESX Futures or ESX Futures Holdings pursuant to the Administrative Services Agreement shall owe any fiduciary duty to the Company or its Members or to the Partnership or its Partners and (ii) without limitation of clause (i), no person shall be liable for monetary damages to the Partnership or its Partners for losses sustained or liabilities incurred by the Partnership as a result of any act or omission of such person as an LP Officer, provided that clause (ii) of this sentence shall not apply to (x) acts or omissions of an LP Officer constituting a breach of such person's duty of loyalty to the Partnership or its Partners, or constituting bad faith, intentional misconduct or a knowing violation of law, or (y) any transaction from which such LP Officer derived an improper personal benefit. Without limitation of the foregoing, an LP Officer shall be fully protected in relying in good faith upon the records of the Partnership and upon information, opinions, reports or statements presented by another LP Officer, a Governing Board Member, an employee of the Partnership, or by any other Person as to matters the LP Officer reasonably believes are within such other Person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Partnership, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the Partnership or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to Partners or creditors might properly be paid.

12.03 Fiduciary Duties of Partners. (a) No Limited Partner, in its capacity as such, has any duty (including any fiduciary duties) to the Partnership or (by virtue of being partners in the Partnership) any other Partner(s), except for the duties (if



any) expressly set forth herein. Without limitation of the foregoing, each Limited Partner, in its capacity as such, may act (or refrain from acting) solely according to what it believes to be in the best interests of such Partner, and none of the foregoing shall be deemed to breach any fiduciary duty that, pursuant to this Agreement or at law or in equity, such Limited Partner otherwise would be deemed to have to the Partnership or any of its Partners. Sections 12.03(b) and 12.03(c) are intended to be in furtherance of, and not in limitation of, this Section 12.03(a).

(b) Without limiting the generality of Section 12.03(a), no Limited Partner, and no Affiliate of a Limited Partner, shall be expressly or implicitly restricted or proscribed pursuant to this Agreement, or otherwise by virtue of its status or that of its Affiliate as a Limited Partner from engaging in any other business or other activities (for profit or otherwise), whether in the businesses engaged in by the Partnership or any of its Subsidiaries or otherwise, including any businesses or activities in direct competition with the business or activities of the Partnership or any of its Subsidiaries. Without limitation of the immediately preceding sentence, each Limited Partner and each Affiliate of a Limited Partner shall have the right to engage in businesses of every type and description and to engage in and possess an interest in other business ventures of any and every type or description, independently or with others, including business interests and activities in direct competition with the business and activities of the Partnership or any of its Subsidiaries, and none of the same shall constitute a breach of this Agreement or of any fiduciary duty such Partner or Affiliate thereof otherwise might be deemed to owe to the Partnership or any of its Partners. Neither the Partnership nor any of its Subsidiaries shall have any rights in any business ventures of any Partner(s) or any Affiliate(s) of any Partner(s), and no Limited Partner and no Affiliate of any Limited Partner shall have any obligation to offer any interest in any such business ventures to the Partnership or any of its Subsidiaries, any other Partner(s) or any other Person(s). This Section 12.03(b) does not address usurpation of corporate, partnership or limited liability company opportunity, which is addressed in Section 12.03(c).

(c) Without limiting the generality of Sections 12.03(a) or (b), no Limited Partner or Affiliate of a Limited Partner shall be obligated to present or offer to the Partnership or any of its Subsidiaries any particular investment or business opportunity, regardless of whether the Partnership or any of its Subsidiaries could take advantage of such opportunity, but may avail itself of any such opportunity for its own benefit. Nothing in this Section 12.03(c) limits the fiduciary duties of an Affiliate of a Limited Partner that also is an GP Officer or an LP Officer (solely in relation to such service as a GP Officer or LP Officer, as the case may be), provided that this sentence does not apply to any personnel of eSpeed or any of its Affiliates the services of which are made available to ESX Futures or ESX Futures Holdings pursuant to the Administrative Services Agreement.

(d) Nothing in Section 12.01 or 12.02 or this Section 12.03 above (i) eliminates, limits or otherwise modifies, or permits any violation of, (x) the implied contractual covenant of good faith and fair dealing between the Partners in relation to the Partnership and this Agreement or (y) any of the express terms of

this Agreement (including Section 6.02) or any Related Party Agreement, or (ii) permits (x) conduct that under applicable law would otherwise constitute misappropriation of a trade secret of the Company, the Partnership or any of their respective Subsidiaries or (y) any other conduct that, even disregarding the terms hereof and the status of the Person that engages in such conduct as a Partner or an Affiliate of a Partner, otherwise would be actionable by the Company, the Partnership, a Member or a Limited Partner.

#### 12.04 Indemnitee Indemnification.

(a) To the fullest extent permitted by law but subject to the limitations expressly provided in this Agreement, the Partnership shall indemnify and hold harmless ("indemnify," and the words "indemnified," and "indemnification" shall have correlative meanings) (A) each Indemnitee from and against any and all Indemnified Losses incurred or suffered by such Indemnitee in connection with any and all Claims (including any Claim by or in the right of ESX Futures Holdings or the Partnership to procure a judgment in ESX Futures Holdings or the Partnership's favor) in which such Indemnitee may be involved, or is threatened to be involved, as a party or otherwise, by reason of the fact that such Indemnitee is or was a GP/Partnership Official, *provided*, that the Partnership shall not be required so to indemnify any Indemnitee with respect to (i) any Claim to the extent attributable to or arising out of (x) acts or omissions of such Indemnitee constituting bad faith, intentional misconduct or a knowing violation of law, (y) any breach of any duty of loyalty of such Indemnitee (or, if such Indemnitee is a Governing Board Member (other than an Independent MB Director) or former Governing Board Member (other than an Independent MB Director), of any duty of loyalty of the Member(s) that appointed such Governing Board Member to ESX Futures Holdings or the Partnership (all of the foregoing being determined after giving effect to Sections 12.01, 12.02 and 12.03)), or (z) any transaction from which such Indemnitee derived an improper personal benefit, (ii) any Claim against a Governing Board Member (other than an Independent MB Director) or former Governing Board Member (other than an Independent MB Director) by the Member(s) or former Member(s) that appointed such Indemnitee (or by an Affiliate of any such Member or former Member), in relation to the acts or omissions of such Indemnitee as a Governing Board Member, or (iii) any Claim initiated by such Indemnitee without the consent of the General Partner, and (B) without limitation of Section 5.01(d), ESX Futures Holdings from and against any and all Indemnified Losses incurred or suffered by ESX Futures Holdings in connection with any and all Claims (including any Claim by or in the right of the Partnership to procure a judgment in the Partnership's favor) in which ESX Futures Holdings may be involved, or is threatened to be involved, as a party or otherwise, by reason of the fact that it is or was, or (without limitation of the foregoing) by reason of any actions or omissions of ESX Future Holdings as, the general partner of the Partnership. (Any Claim within the ambit of the preceding sentence, disregarding clause (i) of the proviso thereto, a "Potentially Indemnified Claim".) The termination of any Potentially Indemnified Claim by judgment, order, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not, of itself, create a presumption that the

Indemnitee engaged in conduct specified in clause (i) of the proviso to the first sentence of this Section 12.04(a).

(b) To the fullest extent permitted by law, expenses (including attorneys' fees and expenses) actually and reasonably incurred by an Indemnitee in defending any Potentially Indemnified Claim shall, from time to time, be advanced by the Partnership prior to the final disposition of such Potentially Indemnified Claim upon receipt (in the case of Potentially Indemnified Claim under clause (A) of Section 12.04(a)) by the Partnership of an undertaking by or on behalf of such Indemnitee to repay such amount if it shall ultimately be determined (by a final decision of a court of competent jurisdiction) that such Indemnitee is not entitled to be indemnified pursuant to Section 12.04(a) (such an undertaking, an "Undertaking").

(c) (i) If any Indemnitee shall have knowledge of any Potentially Indemnified Claim in respect of which he or she intends to assert a right to be indemnified pursuant to Section 12.04(a), such Indemnitee shall give prompt written notice thereof to the Partnership, *provided* that failure to provide such notice shall not relieve the Partnership of its obligations under Section 12.04(a) except to the extent that the delay in provision of such notice is materially prejudicial to the Partnership. With respect to any amount which the Partnership is requested by an Indemnitee to pay by reason of Section 12.04(a) or 12.04(b), the Indemnitee shall, if requested by the Partnership and prior to any payment, submit such additional information to the Partnership as the Partnership reasonably may request properly to substantiate the requested payment.

(ii) The determination by the Partnership of an Indemnitee's entitlement to indemnification, or advancement of expenses (hereinafter "advancement"), under Section 12.04(a) or (b) shall be made not later than forty-five (or, in the case of advancement, twenty) days after receipt by the Partnership from such Indemnitee of the relevant request for indemnification or advancement (a "Request") and such supporting documentation as the Partnership reasonably may request.

(iii) If the Partnership fails to respond to a Request within such specified period, denies it in whole or in part, or fails to timely make any payment pursuant thereto (or any portion thereof), the Indemnitee claiming such indemnification or right to advancements shall be entitled at any time thereafter to bring suit against the Partnership to recover the unpaid amount of the claim.

(iv) If successful in whole or in part in any suit instituted pursuant to the preceding sentence, or in a suit brought by the Partnership to recover an advancement pursuant to the terms of an Undertaking delivered pursuant to Section 12.04(c), an Indemnitee shall be entitled to be paid also his or her expenses (including attorneys' fees and expenses), or if successful only in part an accordingly prorated portion of his or her expenses as determined by the court hearing such suit, actually and reasonably incurred by such Indemnitee in prosecuting or defending such suit.

(v) The Partnership and an Indemnitee may deviate from the procedures set forth in the preceding paragraphs of this Section 12.04(c) as, and to the extent, they mutually may agree in their discretion.

(vi) In any suit brought by an Indemnitee to enforce a right to indemnification or advancement under Section 12.04(a) or (b), or by the Partnership to recover an advancement pursuant to the terms of an Undertaking delivered pursuant to Section 12.04(b), the burden of proving that such Indemnitee is not entitled to be indemnified, or is required to repay such advancement, as the case may be, shall be on the Partnership. No determination, or failure to make a determination, by the Partnership as to an Indemnitee's entitlement to indemnification under Section 12.04(a), shall create a presumption that such Indemnitee is not entitled to indemnification under Section 12.04(a).

(vii) This Section 12.04(c) shall not apply to any Potentially Indemnified Claim under clause (B) of Section 12.04(a).

(d) (i) The Partnership shall be entitled, in relation to any particular Potentially Indemnified Claim and any particular Indemnitee (other than any Derivative/Member Claim in relation to such Indemnitee), at its option and at its sole cost and expense, (x) if such Potentially Indemnified Claim that does not also involve claims against such Indemnitee for which indemnification of such Indemnitee is not provided pursuant to Section 12.04(a) (disregarding clause (i) of the proviso to the first sentence thereof), to assume and control the defense and settlement thereof, (y) if such Potentially Indemnified Claim does also involve claims against such Indemnitee for which indemnification of such Indemnitee is not provided pursuant to Section 12.04(a) (disregarding clause (i) of the proviso to the first sentence thereof), to assume and control the defense and settlement thereof to the extent that such Potentially Indemnified Claims may be and are severed from such non-indemnified claims (and such Indemnitee shall use all reasonable efforts to obtain such severance), and (z) in any event, to be consulted by such Indemnitee with respect to such Potentially Indemnified Claim. Notwithstanding any of the foregoing provisions of this Section 12.04(d) to the contrary, the Partnership shall not be entitled, in relation to any particular Potentially Indemnified Claim and any particular Indemnitee (other than any Derivative/Member Claim in relation to such Indemnitee), to assume and control the defense and settlement of such Potentially Indemnified Claim (1) if the defendants in such Potentially Indemnified Claim include both such Indemnitee, on the other hand, and ESX Futures Holdings or the Partnership, on the other hand, such Indemnitee has legal defenses available to it which are different from or additional to those available to ESX Futures Holdings or the Partnership, as the case may be, and, as a result of the foregoing, such assumption of responsibility and control by the Partnership would involve the Partnership in a material conflict of interest, or (2) if such Potentially Indemnified Claim, if adversely determined, could reasonably be expected to result in criminal liability being imposed on such Indemnitee. Should the Partnership be entitled, and elect, to assume the defense of any particular Potentially Indemnified Claim in relation to any particular Indemnitee, the Partnership will not be liable to such Indemnitee for any legal expenses

subsequently incurred by such Indemnitee in connection with the defense thereof. An Indemnitee, solely at his or her own expense, may participate at his or her own expense and with his or her own counsel in (but not control) any Potentially Indemnified Claim involving such Indemnitee and controlled by the Partnership pursuant to the preceding provisions. The Partnership, solely at its own expense, may participate at its own expense and with its own counsel in (but not control) any Potentially Indemnified Claim controlled by an Indemnitee pursuant to the preceding provisions. Regardless of whether the Partnership is entitled to, or elects to, assume (or participate in) the defense of any particular Potentially Indemnified Claim in relation to any particular Indemnitee, the Partnership will have the authority on behalf of such Indemnitee to agree to, and in any event such Indemnitee will agree to (in each case except if such Indemnitee irrevocably and unconditionally relieves the Partnership from any obligation under this Section 12.04 in respect of such Potentially Indemnified Claim), any settlement of such Potentially Indemnified Claim which the Partnership may recommend, which (A) involves no order for non-monetary relief against such Indemnitee, (B) does not involve any plea of guilty or nolo contendere by such Indemnitee with respect to any statute or otherwise impose any limitation or non-monetary penalty on such Indemnitee and (C) by its terms obligates the Partnership (as between the Partnership and such Indemnitee), or in respect of which the Partnership (as between the Partnership and such Indemnitee) has expressly confirmed that it is obligated, to pay any amount that otherwise would be payable by such Indemnitee pursuant thereto; otherwise, the Indemnitee shall have the right to consent to such settlement, which consent may not be unreasonably withheld or delayed.

(ii) An Indemnitee shall supply the Partnership with such information, and otherwise cooperate with the Partnership (in each case at the sole expense of the Partnership), as may reasonably be requested by the Partnership from time to time in connection with the Partnership's control of or participation in the defense of any Potentially Indemnified Claim (other than a Derivative/Member Claim) involving such Indemnitee.

(iii) An Indemnitee's choice of counsel in connection with any Potentially Indemnified Claim the defense of which has not been assumed by the Partnership pursuant to this Section 12.04(d) (other than a Derivative/Member Claim) shall be reasonably satisfactory to the Partnership. Any term of Section 12.04(a) to the contrary notwithstanding, the Partnership shall not have any liability or obligation to any particular Indemnitee under Section 12.04(a) with respect to any settlement of any Potentially Indemnified Claim entered into by such Indemnitee, or as the result of such Indemnitee ceasing to diligently defend against any Potentially Indemnified Claim the defense of which has not been assumed by the Partnership pursuant to this Section 12.04(d), in each case without the prior written consent of the Partnership. The Partnership shall not unreasonably withhold or delay its consent to the settlement of any Potentially Indemnified Claim the defense of which has not been assumed by the Partnership pursuant to this Section 12.04(d).

(iv) Upon the payment of any Indemnified Loss pursuant to this Section 12.04 in relation to any particular Claim, the Partnership, without any further action on the part of the relevant Indemnitee, shall be subrogated to any rights or Claims against third parties that such Indemnitee in its individual capacity may have relating to such Indemnified Loss (other than any such rights or Claims under or against, or pursuant to any insurance policy purchased or maintained by, a Limited Partner or former Limited Partner or any present or former Affiliate thereof). The Indemnitee shall, to the extent reasonably requested by the Partnership from time to time and at the sole expense of the Partnership, cooperate with the Partnership, and take such other action as the Partnership may specify, in order to permit the Partnership to pursue such rights or Claims or otherwise to give effect to the intent of the preceding sentence.

(v) This Section 12.04(d) shall not apply to any Potentially Indemnified Claim under clause (B) of Section 12.04(a).

(e) The indemnification provided above by this Section 12.04 shall be in addition to any other indemnification to which an Indemnitee may be entitled (in their present or former capacities as GP/Partnership Officials or otherwise) under any agreement, as a matter of law or otherwise (including indemnification from, or pursuant to any insurance policy purchased or maintained by, a Limited Partner or former Limited Partner or any present or former Affiliate thereof), shall continue as to an Indemnitee who has ceased to serve as a GP/Partnership Official (in relation to his or her period of service as a GP/Partnership Official) and shall inure to the benefit of the heirs, successors, assigns and administrators of each Indemnitee. Anything in the preceding sentence, or the rest of this Section 12.04, to the contrary notwithstanding, the Partnership shall not be required to indemnify any particular Indemnitee against any Indemnified Losses, or to advance any expense (including legal fees and expenses), incurred in connection with any Potentially Indemnified Claim in which such Indemnitee is or was involved or threatened to be involved by reason of the fact that such Indemnitee is or was serving in any position described in clause (iv) of the term "GP/Partnership Official" in relation to any particular third-party Entity (other than an Entity that during the relevant period was a wholly-owned Subsidiary of the Partnership), to the extent that (i) such Indemnitee is indemnified against such Indemnified Losses, or has the right to obtain advances of such expenses (including legal fees and expenses), respectively, by or from such other Entity or under any insurance policy purchased or maintained by or on behalf of such other Entity (other than any insurance policy purchased or maintained by the Partnership) and (ii) such other Entity or the insurers under such third-party insurance policy, as the case may be, are not insolvent.

(f) For purposes of Section 12.04(a) (including the definition of the term "GP/Partnership Official"), the Partnership shall be deemed to have requested an Indemnitee to serve as fiduciary of an employee benefit plan whenever the performance by the Indemnitee of such Indemnitee's duties to the Partnership also imposes duties on, or otherwise involves services by, the Indemnitee to the plan or participants or beneficiaries of the plan; and excise taxes assessed on an

Indemnitee with respect to an employee benefit plan pursuant to applicable law shall constitute "fines" within the meaning of the term "Losses".

(g) Any indemnification, or advancement of expenses, pursuant to this Section 12.04 shall be made only out of the assets of the Partnership. In no event may an Indemnitee subject the Partners, or any of them (including the General Partner), to personal liability by reason of the indemnification, or advancement of expenses, provisions set forth in this Agreement.

(h) The provisions of this Section 12.04 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons.

12.05 Insurance for Article 12 Matters. The Partnership may purchase and maintain insurance, on behalf of the GP/Partnership Officials and such other Persons as the General Partner shall determine, against any liability that may be asserted against or expense that may be incurred by such Person (i) in respect of any act or omission in the actual or purported execution or discharge of such Person's duties or in the exercise or purported exercise of such Person's powers in relation to the General Partner or the Partnership or their respective Subsidiaries or (ii) otherwise in connection with the General Partner's or the Partnership's activities, regardless of whether the Partnership would have the power to indemnify such Person against such liability under the provisions of this Agreement.

12.06 Effect of Amendments. Each Person (other than the Limited Partners, who are direct beneficiaries of this Article XII) whose liability is limited, or who is indemnified, under this Article XII is hereby constituted an intended third-party beneficiary of this Article XII, and (without limitation of the foregoing) this Article XII may be enforced directly by each such person (and their respective heirs, executors and administrators). This Article XII may be amended, modified or repealed in the manner set forth elsewhere in this Agreement, but any amendment, modification or repeal of this Article XII or any provision hereof (including as a result of any amendment, modification or repeal of the Delaware General Corporation Law) shall (unless, with respect to any particular third-party beneficiary of this Article XII as specified in the preceding sentence, such person shall expressly have consented to such amendment, modification or repeal) be prospective in effect only and (without limitation of the foregoing) shall (unless, with respect to any such third-party beneficiary, such person shall expressly have consented to such amendment, modification or repeal) not in any way affect the protections afforded by this Article XII as in effect immediately prior to such amendment, modification or repeal with respect to acts or omissions, or Claims arising from or relating to acts or omissions, occurring (or to the extent occurring) prior to such amendment, modification or repeal (in the case of any such Claims, regardless of when such Claim may be asserted).

## ARTICLE XIII

### AMENDMENT OF AGREEMENT; CERTAIN PROSCRIBED ACTIONS

**13.01 Amendments.** Subject to Sections 5.04 and 13.02, this Agreement may be amended by, but only by, a written instrument signed by the General Partner and Limited Partners holding in the aggregate 65% of all of the then outstanding LLC Voting Member LP Units (other than GP LP Units).

**13.02 Certain Restrictions.** (a) Anything in this Agreement to the contrary notwithstanding, (i) no amendment of this Agreement that would materially adversely, and disproportionately, affect any particular Limited Partner(s) shall be effective, and neither the Partnership (nor the General Partner) may take any action (including but not limited to amendments) that materially adversely, and disproportionately, affects any particular Limited Partner(s) (as such) (other than enforcement of the terms hereof), in each case without the written consent of such Limited Partner(s), (ii) no amendment of this Agreement may directly and materially enlarge the obligations of any Limited Partner under this Agreement (including to impose any capital contribution obligation on any Partner) without such Limited Partner's written consent, (iii) neither the Partnership nor any of its Subsidiaries may form, acquire or otherwise have any Subsidiary unless (x) upon first becoming such a Subsidiary, such Subsidiary is a wholly-owned Subsidiary of the Partnership, and (y) all of the provisions hereof, including the governance provisions hereof and the provisions of Schedule I hereto, apply in relation to such Subsidiary in the same manner and with the same effect (including in relation to enforceability by the Limited Partners) as such provisions apply in relation to the Partnership itself, provided that this clause (iii) shall not apply to an Unrestricted Subsidiary, and (iv) any amendment of (or any amendment of this Agreement inconsistent with) this Section 13.02(a) or Section 13.02(d) may be effected by, but only by, a written instrument signed by all of the Partners.

(b) In addition to and without limitation of Section 13.02(a) but otherwise anything in this Agreement to the contrary notwithstanding, the following amendments may be effected by, but only by (in addition to any consent required under Section 13.02(a)), a written instrument signed by the General Partner and Limited Partners holding in the aggregate 80% of all of the then-outstanding LLC Voting Member LP Units (other than GP LP Units):

(i) any amendment of this Agreement that, directly or indirectly, would dilute or otherwise adversely affect the rights, powers or authority of the Supervisory Board in relation to the management of the business and affairs of the Partnership or any of its Subsidiaries; or

(ii) any amendment of (or any amendment of this Agreement inconsistent with) (x) Section 3.05, Section 3.06(b) (in relation to clause (y) thereof), Section 3.07, Section 5.04 or Section 9.01(b), this Section 13.02(b)), or Schedule I hereto; and/or (y) (for the avoidance of doubt) the definition of any defined terms to the extent used in any provision referred to in clause (x) above.



(c) For the avoidance of doubt, no amendment of this Agreement (including this Section 13.02(c)) after the date on which a Person shall cease to be a Partner shall be effective as against such Person as a former Partner without the consent of such former Partner.

(d) For the avoidance of doubt, for purposes of this Section 13.02, an "amendment" (or like term) includes (i) any amendment in connection with (including any replacement of this Agreement in connection with (including the adoption of a governing document for any Person surviving or resulting from)) any merger or consolidation involving the Partnership, other than a merger or consolidation (x) effecting a good faith, bona fide, Sale (other than a Sale described in clause (ii) of Section 5.04) and (y) the primary purpose of which in any event is other than to circumvent the restrictions set forth above in this Section 13.02, and (ii) any conversion of the Partnership into another form of Entity unless (x) the governing documents of the Partnership after giving effect to such conversion (including the provisions thereof concerning the management of the business and affairs of the Partnership) mirror in all material respects this Agreement (disregarding differences intrinsic to, and which cannot be avoided given, the change in form of Entity), and (y) such conversion is for bona fide, good faith reasons and in any event the primary purpose of such conversion is other than to circumvent the restrictions set forth above in this Section 13.02.

#### ARTICLE XIV

#### MISCELLANEOUS

14.01 Waiver of Rights of Partition and Dissolution. To the fullest extent that they may effectively do so under the Act, each of the Partners hereby irrevocably waives and renounces all rights it may have at any time to, and in any event agrees not to file, bring or maintain, (i) any action for application for dissolution (including any action seeking a court decree of dissolution) of the Partnership (including making any application pursuant to Section 17-802 of the Act), or division or sale of the Partnership Property, or the appointment of a court receiver for the Partnership, in each case as now or hereafter permitted under the Act or any other applicable law, or (ii) any action, application or bill for a Partnership accounting. Nothing in this Section 14.01 limits the right of any Partner to institute or maintain an appropriate action to enforce Article X (disregarding clause (iv) of Section 10.01) or to exercise any right expressly granted to it under this Agreement.

14.02 Entire Agreement. This Agreement, together with the Exhibits hereto (and any other instruments expressly contemplated hereby or thereby, or otherwise delivered contemporaneously herewith), constitute the entire agreement and understanding, and supersedes all other prior agreements and understandings, both written and oral, between the Partners or their Affiliates or any of them with respect to the subject matter hereof.

14.03 Governing Law; Jurisdiction. THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF

DELAWARE, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAWS OF ANOTHER JURISDICTION. In the event of a direct conflict between the provisions of this Agreement and any mandatory, non-waivable provision of the Act, such provision of the Act shall control to the extent necessary to eliminate such direct conflict; otherwise, if any provision of this Agreement is inconsistent with a provision of the Act, this Agreement will prevail to the fullest extent permitted by the Act.

14.04 Third Party Beneficiaries. Subject to Sections 12.04 and 14.15, (i) this Agreement is for the benefit solely of, and shall inure solely to the benefit of, each of the Partners and the Partnership and (ii) this Agreement is not enforceable by any Person (including any creditor of the Partnership or of any Partner(s)) other than the Partners and the Partnership; provided that an Indemnified Party may enforce the rights available to it pursuant to Article XII hereof.

14.05 Expenses. (a) Except as expressly provided in Section 14.05(b) or in any Related Party Agreement, each Partner shall pay its own expenses (including legal, accounting investment banker, broker or finders fees) incident to the negotiation and execution of this Agreement and the Related Party Agreements, the consummation of the transactions contemplated by Section 3.02 and the performance of its obligations hereunder.

(b) All expenses incurred by General Partner in connection with this Agreement and the transactions contemplated hereby shall be paid by the Partnership.

14.06 Waivers. Any right afforded hereunder to any particular Partner may be waived (solely in relation to such Partner) by such Partner.

14.07 Notices. All notices or other communications required or permitted to be given under this Agreement shall be sufficiently given if in writing and personally delivered, mailed by prepaid registered or certified mail, return receipt requested, sent by receipted overnight courier service or sent by facsimile transmission. Notices and other communications shall be effective upon receipt by the Person to be notified, provided, however, that any notice or communication that is received other than during regular business hours of the recipient on a Business Day shall be deemed to have been given at the opening of business on the next Business Day. The address for notices and other communications to a Partner is the address given for that Partner on the signature pages hereof (or any comparable instrument delivered in connection with any issuance pursuant to Section 3.04), or such other address as that Partner may specify by notice to the other Partners and the Partnership. Any notice or other communication to the Partnership must be given to the Partnership at the address set forth on the signature pages hereof or such other address as the Partnership may specify by notice to the Partners.

14.08 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together

constitute one and the same instrument. It shall not be necessary for any counterpart to bear the signature of all parties hereto.

14.09 Calculations. All calculations of Dollar amounts hereunder shall be rounded to the nearest whole cent, and all calculations of percentages shall be rounded to the nearest one-hundredth of one percent. Equidistant amounts shall be rounded upwards.

14.10 Successors and Assigns. Except as otherwise specifically provided in this Agreement (including Article IX and Schedule II), this Agreement shall be binding upon and inure to the benefit of the Partners and their respective successors and assigns. Without limitation of Article IX or Schedule II, this Agreement, as in effect on the date that any particular Person shall cease to be a Partner, shall continue to bind such Person in relation to the period during which it was a Partner (although such Person shall not thereby continue to be considered to be a current "Partner" or to continue to have any rights of a "Partner").

14.11 Captions; Section References. All article, section or sub-section titles or captions contained in this Agreement 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 provisions hereof.

14.12 Supplemental Provisions. The Rules of Usage and the Supplemental Provisions apply to this Agreement.

14.13 Submission to Jurisdiction; Waivers. Each Limited Partner (or former Limited Partner) hereby irrevocably and unconditionally:

(a) (i) agrees that any suit, action or proceeding against it by the Partnership or any present or former Partner(s) arising out of or relating to this Agreement may be instituted, and (subject to any contrary and non-waivable provision of the Act) that any suit, action or proceeding by it against the Partnership or any other present or former Partner(s) arising out of or relating to this Agreement shall be instituted only, in the Court of Chancery of the State of Delaware or the U.S. District Court for the District of Delaware (and appellate courts from any of the foregoing), (ii) consents and submits, for itself and its property, to the jurisdiction of such courts for the purpose of any such suit, action or proceeding instituted against it, and (iii) agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law;

(b) agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 14.13(a) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at its address for notices pursuant to Section 14.07, such service to become effective 30 days after such mailing, provided that nothing contained in this Section 14.13(b) shall affect the right of any party to serve process in any other manner permitted by law;

(c) (i) waives any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any court specified in Section 14.13(a), (ii) waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum and (iii) agrees not to plead or claim either of the foregoing; and

(d) WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

For the avoidance of doubt, this Section 14.13 applies to any action, suit or proceeding by any Limited Partner(s) by or in the name of the Partnership arising out of or relating to this Agreement.

14.14 Remedies Cumulative; No Implied Waivers. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof. Except where a specific period for action or inaction is provided herein, no failure on the part of any Partner(s) or the Partnership to exercise, and no delay on the part of any Partner(s) or the Partnership in exercising, any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of any Partner(s) or the Partnership of any such right, power or privilege, or any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other right, power or privilege; nor shall any waiver of the part of any Partner(s) or the Partnership, on any particular occasion or in any particular instance, of any particular right, power or privilege operate as a waiver of such right, power or privilege on any other occasion or in any other instance.

14.15 Guarantee of Obligations of Affiliated Partners. Each Partner hereby irrevocably and unconditionally covenants and agrees, for the several benefit of each ESX Entity and the Members and Limited Partners from time to time of such ESX Entity, that it will be responsible and liable for the acts and omissions (occurring while such Partner is a Partner) of any of its Affiliates that also are Members or Limited Partners of either ESX Entity (jointly and severally with such Affiliates), including for any breach by any such Affiliate of any representation, warranty, covenant or other term of the Governing Document of such ESX Entity applicable to such Affiliate, all to the same extent as would prevail if such Partner had been the Member or Limited Partner of such ESX Entity in the stead of such Affiliate and such act or omission had been the act or omission of such Partner. ESX Futures Holdings, and the Members thereof from time to time, are hereby constituted express third-party beneficiaries of this Section 14.15.

**[Rest of Page Intentionally Left Blank]**

Amended and Restated Limited Partnership Agreement of ESX Futures, L.P.

Date: December 21, 2007

IN WITNESS WHEREOF, the undersigned have executed the Agreement as of the date first set forth above.

  
ESX FUTURES HOLDINGS, LLC

By: 

**Confidential Treatment Requested by  
ELX Futures, L.P.**

Amended and Restated Limited Partnership Agreement of ESX Futures, L.P.

BANC OF AMERICA STRATEGIC INVESTMENTS CORPORATION

By: 

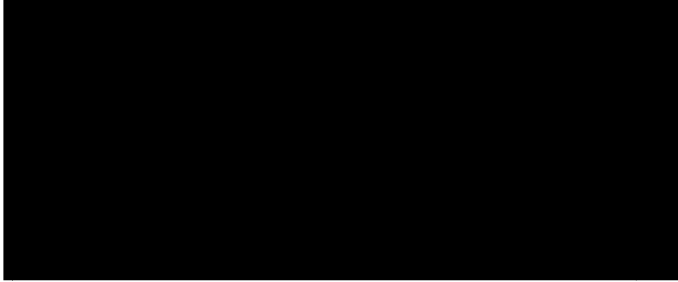
Date: 12/18/07

**Confidential Treatment Requested by  
ELX Futures, L.P.**

Amended and Restated Limited Partnership Agreement of ESX Futures, L.P.

BARCLAYS ELECTRONIC COMMERCE HOLDINGS INC.

By: 



Date: 12/21/07

**Confidential Treatment Requested by  
ELX Futures, L.P.**

Amended and Restated Limited Partnership Agreement of ESX Futures, L.P.

CITADEL TACTICAL INVESTMENTS LLC

By: 

Date: 12/18/07

**Confidential Treatment Requested by  
ELX Futures, L.P.**



Amended and Restated Limited Partnership Agreement of ESX Futures, L.P.

CITIGROUP FINANCIAL PRODUCTS INC.

By: 

Date: 21-Dec-2007

**Confidential Treatment Requested by  
ELX Futures, L.P.**

Amended and Restated Limited Partnership Agreement of ESX Futures, L.P.

CREDIT SUISSE NEXT II INVESTORS, L.P.

By: Credit Suisse NEXT II Investors Associates, L.P., its General Partner

By: DLJ Merchant Banking, Inc., its General Partner

By: 

Date: 12/19/07

**Confidential Treatment Requested by  
ELX Futures, L.P.**

Amended and Restated Limited Partnership Agreement of ESX Futures, L.P.

DBAH CAPITAL LLC

By: 

By: 

Date: 12/20/07

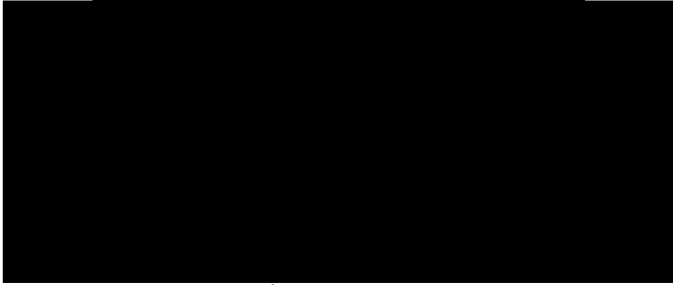
**Confidential Treatment Requested by  
ELX Futures, L.P.**

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Amended and Restated Limited Partnership Agreement of ESX Futures, L.P.

GETCO LLC

By: 



Date: 12/17/07

**Confidential Treatment Requested by  
ELX Futures, L.P.**

Amended and Restated Limited Partnership Agreement of ESX Futures, L.P.

LAMORGAN CORPORATION

By: 

Date: 12/19/07

**Confidential Treatment Requested by  
ELX Futures, L.P.**

Amended and Restated Limited Partnership Agreement of ESX Futures, L.P.

MERRILL LYNCH L.P. HOLDINGS INC.

By:



Date: 12/19/07

**Confidential Treatment Requested by  
ELX Futures, L.P.**

Amended and Restated Limited Partnership Agreement of ESX Futures, L.P.

PEAK6 INVESTMENTS, L.P.

By: Waterford Holdings, LLC, its General Partner

By: 

Date: 12/19/07

**Confidential Treatment Requested by  
ELX Futures, L.P.**

Amended and Restated Limited Partnership Agreement of ESX Futures, L.P.

RANDOM PROPERTIES ACQUISITION CORP. I

By: 

Date: 12-11-07

**Confidential Treatment Requested by  
ELX Futures, L.P.**



Amended and Restated Limited Partnership Agreement of ESX Futures, L.P.

ESPEED ESX HOLDINGS, L.P.

By ESPEED ESX HOLDINGS, LLC,  
its general partner

By: 

Date: December 21, 2007

**Confidential Treatment Requested by  
ELX Futures, L.P.**

**EXHIBIT A**

Definitions

1. For purposes of the Agreement to which this Exhibit A is attached, the following terms shall have the following meanings (terms defined in the singular to include the plural and vice versa and references in this Exhibit A to sections constitute references to sections of the Agreement unless otherwise expressly indicated):

"Act" shall mean the Delaware Revised Uniform Limited Partnership Act and any successor statute, as amended from time to time.

[REDACTED]

"Affiliate" shall mean, with respect to any specified Person, any other Person who or which, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such specified Person. Notwithstanding the foregoing, neither the Partnership nor any Person Controlled by the Partnership shall be deemed to be an "Affiliate" of (i) a Partner or (ii) any Affiliate of a Partner (determined after giving effect to clause (i)).

"Agent" shall mean, with respect to any specified Person, the officers (or persons performing similar functions), directors (or persons performing similar functions), employees, attorneys, auditors and agents of such specified Person.

[REDACTED]

[REDACTED]

"Annual Budget" shall mean, for any fiscal year of the Partnership, the budget and projected cash flow statement for the Partnership for such fiscal year.

[REDACTED]

"Business" shall mean the ownership and operation of a futures exchange (registered or unregistered), domestic or multinational clearing organization, and/or such other business as the General Partner shall determine from time to time, the ownership and operation of the Partnership Property acquired in connection with the foregoing, and all activities incidental to any of the foregoing.

"Business Day" shall mean a day other than Saturday, Sunday or any other day which commercial banks in New York, New York, are authorized or required by law to close.

[REDACTED]

[REDACTED]

[REDACTED]

"CEA" shall mean the Commodity Exchange Act of 1936, as amended, and the rules and regulations thereunder.

"Certificate" means the certificate of formation of the Partnership, as amended or restated from time to time.

"CFTC" means the Commodity Futures Trading Commission, and includes any successor agency or authority.

"Claim" shall mean any claim, demand, action, suit or proceeding, whether civil, criminal, administrative or investigative.

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

"Confidential Information" shall mean, in relation to any particular Receiving Partner:

(i) the terms of (but not the existence of) this Agreement and the Ancillary Documents;

(ii) all trade secrets and other proprietary information of, and all other information directly relating to, the Company or the Partnership transferred or otherwise disclosed to such Receiving Partner (x) in connection with (including in connection with any due diligence investigation conducted in connection with) the transaction whereby such Receiving Partner became a Partner or (y) by or on behalf of the Company (including by any Governing Board Member, any GP Officer or any LP Officer) while such Receiving Partner is a Partner;

provided, however, that "Confidential Information" shall not include, or shall prospectively cease to include, as the case may be, any information (or portion thereof) that:

(x) with respect to clause (ii) above, was known to the Receiving Partner or any of its Affiliates as of the date such information was first disclosed to the Receiving Partner as described in said clause (ii), or after such date becomes known to the Receiving Party, in each case from a source (other than the Partnership, any Governing Board Member, any GP Officer or any LP Officer) who (to the Receiving Partner's knowledge after reasonable inquiry) has not received such information in violation of, or subject to, any obligation (contractual, legal or fiduciary) of confidentiality owed to the Partnership or any other Person;

(y) is or becomes generally available to the public or otherwise in the public domain (other than as a result of a disclosure by the Receiving Partner or any of its Affiliates); or

(z) is independently developed by the Receiving Partner without using such, or any other, Confidential Information and without violating this Agreement or any other obligation (contractual, legal or fiduciary) of confidentiality owed to the Partnership or any other Person;

provided, further, however, that in relation to a Partner as a Receiving Partner, "Confidential Information" shall not include any of the terms of any Ancillary Document or Related Party Agreement to which such Partner or any Affiliate thereof is a party or any information disclosed to, or otherwise becomes known by, such Partner or any of its Affiliates in connection with the performance of any Ancillary Document or Related Party Agreement. References in this term to "Receiving Partner" shall be deemed to constitute references to the Receiving Partner, any Person then constituting a Affiliate of the Receiving Partner or any Person then constituting an Agent (as such) of the Receiving Partner or any such Affiliate. References in this term to the "Partnership" shall be deemed to constitute references to the Partnership, the Company or any Person then constituting a Subsidiary of the Partnership or the Company.

[REDACTED]

"Control" shall mean, as to any Person, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. The term "Controlled" shall have a correlative meaning.

"Debt" of any Person shall mean (i) all indebtedness of such Person for borrowed money, (ii) all obligations of such Person for the deferred purchase price of property or services (excluding trade payables arising in the ordinary course of business), (iii) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (iv) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (v) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, or (vi) all indebtedness or obligations of others of the kinds referred to in clauses (i) through (v) above in respect of which such Person has entered into or issued any Guarantee.

[REDACTED]

"Derivative/Member Claim" shall mean, in relation to any particular Indemnitee, an actual or threatened Claim against such Indemnitee (i) by or in the right of ESX Futures Holdings or the Partnership to procure a judgment in its favor or (ii) by a Member or a Partner or any Affiliate of either thereof.

[REDACTED]

"Economic Interest" shall mean a Person's (i) share of the profits and losses of the Partnership and (ii) right to receive distributions of Partnership Property.

"Economic Risk of Loss" shall have the meaning set forth in Treasury Regulations Section 1.752-2(a).

"Entity" shall mean any corporation, partnership (including any general, limited or limited liability partnership), limited liability company, joint venture, joint-stock company, trust, estate, unincorporated organization, governmental or regulatory body or other entity or association, but (for the avoidance of doubt) excluding any human being.

"eSpeed" shall mean eSpeed, Inc., a Delaware corporation; provided, however, that (if a Merger/Sale Transaction is consummated with respect to the Person constituting (immediately prior to the consummation of such Merger/Sale Transaction) "eSpeed", then "eSpeed" shall thereafter mean (subject to subsequent application of this proviso to such new "eSpeed") (i) in the case of a merger or consolidation described in clause (i) of the term "Merger/Sale Transaction," the Person surviving such merger or resulting from such consolidation, as the case may be, or (ii) in the case of a transaction (or related series of transactions) described in clause (ii) of the term "Merger/Sale Transaction," the "successor" to the former "eSpeed" with respect to the "transferred assets" in relation to such Merger/Sale Transaction.

"eSpeed ESX" shall mean eSpeed ESX Holdings, L.P., a Delaware limited partnership.

"eSpeed Partner" shall mean any Limited Partner that is eSpeed or an Affiliate thereof, including eSpeed ESX.

"ESX Futures Platform" shall mean an electronic marketplace for the trading of futures contracts and (subject to Section 5.04) other products owned by, or operated by or on behalf of, the Partnership.

"Fair Market Value" shall mean, as to any Partnership Interest or other property, the price at which a willing seller would sell, and a willing buyer would buy, such Partnership Interest or other property having full knowledge of the relevant facts, in an arm's-length transaction without either party having time constraints, and without either party being under any compulsion to buy or sell.

"GAAP" shall mean United States generally accepted accounting principles as in effect (i) except as otherwise specified in clause (ii), from time to time, or (ii) in the context of the definitions of the terms "Consolidated Assets" and "Merger/Sale Transaction", as of the date hereof.

"Governmental Authority" shall mean any governmental or quasi-governmental authority, including (i) the United States or any other country, any state, province, territory or possession of the United States or any other country, and any local or other governmental body, or other political subdivision, in or of any of the foregoing, (ii) the European Union and (iii) any agency, board, bureau, court, commission, department, instrumentality or administration of any of the foregoing described in clauses (i) or (ii).

"GP/Partnership Official" shall mean (i) a Governing Board Member, (ii) a GP Officer, (iii) an LP Officer or (iv) an individual serving at the request of the Partnership as a director, officer, general partner, manager, trustee, employee, agent or other member of management or fiduciary (or person performing functions, or having a status, similar to any of the foregoing) of any Entity (including any employee benefit plan) other than the Partnership.

"Guarantee" shall mean, with respect to any particular indebtedness or other obligation, (i) any direct or indirect guarantee thereof by a Person other than the obligor with respect to such indebtedness or other obligation or any transaction or arrangement intended to have the effect of directly or indirectly guaranteeing such indebtedness or other obligation, including any agreement by a Person other than the obligor with respect to such indebtedness or other obligation (x) to pay or purchase such indebtedness or other obligation or to advance or supply funds for the payment or purchase of such indebtedness or other obligation, (y) to purchase, sell or lease (as lessee or lessor) property of, to purchase or sell services from or to, to supply funds to or in any other manner invest in, the obligor with respect to such indebtedness or other obligation (including any agreement to pay for property or services of the obligor irrespective of whether such property is received or such services are rendered), primarily for the purpose of enabling the obligor to make payment of such indebtedness or other obligation or to assure the holder or other obligee of such indebtedness or other obligation against loss, or (z) otherwise to assure the obligee of such indebtedness or other obligation against loss with respect thereto, or (ii) any grant (or agreement in favor of the obligee of such indebtedness or other obligation to grant such obligee, under any circumstances) by a Person other than the obligor with respect to such indebtedness or other obligation of a Security Lien in or on any property or other interest of such Person,

whether or not such other Person has not assumed or become liable for the payment of such indebtedness or other obligation.

"Indemnitee" shall mean a present or former GP/Partnership Official.

"Indemnified Losses" shall mean all reasonable expenses (including all reasonable attorneys' fees and all reasonable costs of investigation), all judgments, fines or penalties, and all amounts paid in settlement.

"Initial Limited Partner" shall mean (i) each Person whose name appears on Exhibit B hereto on the Execution Date and (ii) each Subsequent Initial Partner.

"Inter-Dealer Broker" shall mean any Person listed on Exhibit C hereto or any Affiliate thereof.

"Limited Partner" shall mean each Initial Limited Partner and each other Person admitted to the Partnership as a limited partner as provided in the Agreement, but does not include any Person who has ceased to be a limited partner of the Partnership.

"LP Unit" shall mean a common unit of participation in the profits and losses of the Partnership and distributions of Partnership Property.

"Merger/Sale Transaction" shall mean, with respect to any specified Person, (i) such specified Person merging or consolidating with or into another Person, or (ii) a transaction or related series of transactions (other than a merger or consolidation described in clause (i)) as a result of which all or substantially all of the Consolidated Assets of such specified Person (determined immediately prior to such transaction or related series of transactions) cease to be owned by such specified Person and its consolidated subsidiaries (determined in accordance with GAAP immediately after consummation of such transaction or related series of transactions) (such Consolidated Assets that so cease to be owned by such specified Person and its consolidated subsidiaries (determined in accordance with GAAP immediately after consummation of such transaction or related series of transactions) as a result of such transaction or related series of transactions may be referred to herein as the "transferred assets" in relation to such Merger/Sale Transaction).

[REDACTED]



[REDACTED]

[REDACTED]

"Non-Futures Products" shall mean products other than futures and options on futures listed as of the date of this Agreement on a CFTC-registered futures exchange.

[REDACTED]

[REDACTED]

"Partner" means the General Partner and each Limited Partner.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

"Partnership Property" shall mean all property, whether real or personal, tangible or intangible, owned by the Partnership.

"Percentage Share" of a Partner shall mean the total number of LP Units owned by such Partner divided by the total number of outstanding LP Units, expressed as a percentage.

"Person" has the meaning given that term in Section 17-101(14) of the Act (and in any event includes any Entity).

"Related Party Agreement" shall mean any agreement between the Partnership or any of its Affiliates, on the one hand, and any Partner or any Affiliate of a Partner, on the other hand.

"Rules of Usage" shall mean, with respect to a document that states in substance that it is governed thereby, that, except as expressly provided therein:

References to Certain Persons. References to Persons having a particular relationship to a specified Person (such as, for example, references to "Affiliates," or "Agents" of a specified Person) refer to only other Persons which from time to time have such particular relationship to such specified Person, and do not include, at any particular time, other Persons that may have had, but at such time have ceased to have, such particular relationship to such specified Person, except to the extent that any such reference specifically provides otherwise.

Use of "Or." The term "or" is used in the inclusive sense of "and/or".

References to Laws. A reference in such document to any statute, rule or regulation means such statute, rule or regulation as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including (in the case of any law) rules and regulations promulgated thereunder, and reference to any section or other provision of any statute, rule or regulation means that provision of such statute, rule or regulation from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision.

References to Documents. References to any document, instrument or agreement (i) shall be deemed to include all appendices, exhibits, schedules and other attachments thereto and all documents, instruments or agreements issued or executed in replacement thereof, and (ii) shall mean such document, instrument or agreement, or replacement thereto, as amended, modified and supplemented from time to time in accordance with its terms and as the same is in effect at any given time.

Use of "Herein" and References to Sections and the Like. Unless otherwise specified, (i) the words "hereof," "herein" and "hereunder" and words of similar import when used in such document shall refer to such document as a whole and not to any particular provision of such document and (ii) any reference in such document to an article, section or subsection or other provision shall refer to a provision in such document unless otherwise specified.

Use of "Including." The words "include" and "including" and words of similar import when used in such document are not limiting and shall be construed to be followed by the words "without limitation," whether or not they are in fact followed by such words.

Use of "During." The word "during" when used in such document with respect to a period of time shall be construed to mean commencing at the beginning of such period and continuing until the end of such period.

References to Time. All time explicitly or implicitly referenced in such document shall be deemed to be local time in New York City, New York.

Owners of LP Units. The Partnership may for all purposes of the Agreement treat the holders of the LP Units according to the books and records of the Partnership as the sole beneficial owners thereof.

"Sale" shall mean any direct or indirect sale or other disposition (whether by asset sale, sale of equity, merger, consolidation or otherwise) of (i) the Partnership or any of its Subsidiaries or (ii) all or any substantial portion of any business, or all or any substantial portion of the assets, of the General Partner or the Partnership or any of its Subsidiaries.

[REDACTED]

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Security Lien" shall mean any pledge, lien, mortgage or security interest (of any nature whatsoever) securing the payment or performance of any liability or other obligation.

"Subject Participant LP Unit" shall mean a Participant LP Unit (i) of any class of Participant LP Units issued pursuant to Section 3.02(b), determined disregarding the effects of any action at any time pursuant to Section 3.07, or (ii) held by a Market Participant (including any Market Participant becoming a Member after the Execution Date).

[REDACTED]

"Subsidiary" shall mean, with respect to any specified Person, any other Person who or which, directly or indirectly, is Controlled by such specified Person.

"Supplemental Provisions" shall mean, with respect to a document that states that it is governed thereby, that, except as expressly provided therein:

Supplemental Provision No. 1--Method of Payment. All amounts required to be paid by any party to such document to any other party thereunder shall, unless otherwise specified in such document, be paid in U.S. dollars by wire transfer of immediately available funds to such account as such first party may specify by notice to the paying party, or by other acceptable method of payment of immediately available funds.

Supplemental Provision No. 2--Date of Payment. If any payment under such document is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day.

Supplemental Provision No. 3--Compliance with Law. Except as otherwise specifically provided in such document, each party thereto shall, at its own cost and expense, obey and comply with all applicable laws, as they may pertain to each party's performance of its obligations under such document.

Supplemental Provision No. 4--Waiver of Inconsistent Provisions of Law. To the fullest extent permitted by applicable law, each party to such document waives any provision of law (including the common law) which renders any provision of such document invalid, illegal or unenforceable in any respect.

Supplemental Provision No. 5--Severability. Any provision of such document which is prohibited or unenforceable to any extent or in any particular context shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable only in or as it relates to a particular jurisdiction, such provision shall be ineffective only in or as it relates to (as the case may be) such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in or as it relates to (as the case may be) such jurisdiction shall not otherwise invalidate or render unenforceable such provision (in such or any other jurisdiction); (ii) if (without limitation of, and after giving effect to, clause (i)) such provision is prohibited or unenforceable only in a particular context (including only as to a particular Person or Persons or under any particular circumstance or circumstances), such provision shall be ineffective, but only in such particular context; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any other provision of such document. Without limitation of the preceding sentence, it is further the desire, and intent and agreement, of the parties to such document that if any court having jurisdiction determines that any provision of such document is prohibited or unenforceable to any extent or in any particular context but in some modified form would be enforceable, the relevant court shall have the power to, and shall, (x) modify such provision (including, to the extent

applicable, by limiting the scope (geographical, temporal or otherwise) of such provision or the Persons against whom, or the circumstances under which, such provision shall be effective) for purposes of such proceeding in accordance with clauses (i), (ii) and (iii) of the preceding sentence and otherwise to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding, and (y) enforce such provision, as so modified pursuant to clause (x), in such proceeding. Nothing in this Supplemental Provision is intended to, or shall, limit (1) Supplemental Provision No. 4, (2) the ability of any party to such document to appeal any court ruling or the effect of any favorable ruling on appeal or (3) the intended effect of the provision of such document specifying the substantive law that the parties intend shall govern such document.

"Supplemental Provision No. 9--Facsimile Signatures. Such document and any amendments thereto, to the extent signed and delivered by means of a facsimile machine, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of a party to such document, any other party to such document so executing and delivering such document or any amendment thereto by means of a facsimile machine shall deliver the original of such facsimile signature, or re-execute original forms of such document and deliver them, to the requesting party. No party to such document shall raise the use of a facsimile machine to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of a facsimile machine as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

"Supplemental Provision No. 10—Construction. With regard to each and every term and condition of such document, the parties thereto understand and agree that the same have or has been mutually negotiated, prepared and drafted, and if at any time the parties thereto desire or are required to interpret or construe any such term or condition or any agreement or instrument subject hereto, no consideration shall be given to the issue of which party thereto actually prepared, drafted or requested any term or condition of thereof.

[REDACTED]

"Ultimate Parent Entity" shall mean, with respect to any specified Person, the ultimate parent entity (or ultimate parent entities) of such Person as determined in

accordance with the Hart-Scott-Rodino Act (as in effect on the date of the Agreement).

"Unrestricted Subsidiary" shall mean a Subsidiary of the Partnership (other than a Subsidiary 90% or more of the equity in which is directly or indirectly owned by the Partnership, the Company and/or any of their respective Subsidiaries) (i) that first became such a Subsidiary as a result of a good faith, bona fide, transaction the primary purpose of which was other than to circumvent the requirements of Section 13.02(a)(iii) (disregarding the proviso thereto), and (ii) in respect of which provisions comparable in all material respects to those set forth in Schedule I hereto (disregarding the "Exempt Issuances" and "Reserved Equity Issuance" exceptions set forth therein) apply in respect of any sale or issuance of equity in such Subsidiary (after the date on which such Subsidiary first becomes a Subsidiary), provided that a Subsidiary in any event shall cease to be considered to be an "Unrestricted Subsidiary" if, at any time, it engages in transactions or conduct the primary purpose of which is to circumvent the requirements of Section 13.02(a)(iii) (disregarding the proviso thereto).

2. The following terms are defined in the sections of the Agreement indicated below:

<u>Defined Term</u>	<u>Section</u>
Administrative Services Agreement .....	Recitals
advancement .....	12.04(c) (ii)
Agreement .....	Preamble
Ancillary Documents .....	Recitals
[REDACTED] .....	[REDACTED]
Company .....	Preamble
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
eSpeed TSFA .....	Recitals
ESX Entities .....	Preamble
ESX Entity .....	Preamble
ESX Futures Holdings .....	Preamble
ESX Futures LLC Agreement .....	Recitals
Execution Date .....	Preamble
Extraordinary Actions .....	5.03(a)
Futures TSFA .....	Recitals
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
GP/Partnership Official .....	12.04(f)
indemnification .....	12.04(a)
indemnified .....	12.04(a)
indemnify .....	12.04(a)
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
LP Officers .....	5.02(a)
NFA .....	5.02(f)
Original Agreement .....	Recitals
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
[REDACTED] .....	[REDACTED]
Partnership .....	Preamble



<u>Defined Term</u>	<u>Section</u>
Potentially Indemnified Claim .....	12.04(a)
Receiving Partner .....	6.02(a)
Request .....	12.04(c)(ii)
Rules .....	5.01(a)
<span style="background-color: black; color: black;">[REDACTED]</span> .....	<span style="background-color: black; color: black;">[REDACTED]</span>
Technology Services Agreement .....	Recitals
Undertaking .....	12.04(b)

**EXHIBIT B**

**Initial Limited Partners**

<u>Name of Initial Limited Partner</u>	<u>Cash Capital Contribution</u>	<u>Capital Account Balance Per Section 3.02</u>	<u>Class, and Number, of LP Units Per Section 3.02</u>
<b><u>eSpeed Partner:</u></b>			
eSpeed ESX Holdings, L.P. ("eSpeed ESX")	N.A.	\$ [REDACTED]	[REDACTED] E LP Units
<b><u>Other Initial Limited Partners:</u></b> <sup>1</sup>			
Banc of America Strategic Investments Corporation	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] Units
Barclays Electronic Commerce Holdings Inc.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] Units
Citadel Tactical Investments LLC	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] Units
Citigroup Financial Products Inc.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] Units
Credit Suisse NEXT II Investors, L.P.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] Units
DBAH Capital LLC	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] Units
Getco LLC	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] Units
LabMorgan Corporation	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] Units
Merrill Lynch L.P. Holdings Inc.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] Units
PEAK6 Investments, L.P.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] Units
Random Properties Acquisition Corp. I	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] Units

<sup>1</sup>. If Affiliate groups are to be admitted, they will be designated as a single Initial Limited Partner.

**Confidential Treatment Requested by  
ELX Futures, L.P.**

<u>General Partner</u>	<u>Capital Account Balance Per Section 3.02</u>	<u>Class, and Number, of LP Units Per Section 3.02</u>
ESX Futures Holdings, LLC	\$ [REDACTED]	[REDACTED]

**Exhibit C**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Exhibit D**

**Possible Subsequent Initial Partners**

Bear, Stearns & Co., Inc.

Lehman Brothers Inc.

Morgan Stanley & Co. Incorporated

**Confidential Treatment Requested by  
ELX Futures, L.P.**

Schedule I

Preemptive Rights

SCHEDULE I

TO AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF  
ESX FUTURES HOLDINGS, LLC  
and  
AMENDED AND RESTATED LIMITED LIABILITY PARTNERSHIP AGREEMENT OF  
ESX FUTURES, L.P.

PRE-EMPTIVE RIGHTS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

Schedule II  
Transfer Provisions

**Confidential Treatment Requested by  
ELX Futures, L.P.**

**SCHEDULE II**

**TO AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT  
OF ESX FUTURES HOLDINGS, LLC**

**and**

**AMENDED AND RESTATED LIMITED LIABILITY PARTNERSHIP AGREEMENT  
OF ESX FUTURES, L.P.**

**TRANSFERS OF UNITS**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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