



January 18, 2022

BY ELECTRONIC FILING

Mr. Christopher J. Kirkpatrick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

**Re: Self Certification of Changes to Limited Liability Company Agreement (Eris Clearing, LLC Submission #2022-01C)**

Dear Mr. Kirkpatrick:

Eris Clearing, LLC (“Eris Clearing” or “Company”) hereby submits for self-certification to the Commodity Futures Trading Commission (the “Commission”), under Commission regulation 40.6(a), amendments to its limited liability company agreement (“LLC Agreement”) to conform to governance changes following acquisition of the ErisX group of companies by Cboe Digital Holdings, LLC, which is anticipated to occur by June 30, 2022 (the “Acquisition”) (together the “Changes”). The Changes will become effective on the later of February 1, 2022, and the date of the closing of the Acquisition (if the Acquisition does not occur, the changes described herein will not take effect).

### **Explanation and Analysis**

Following the announcement in October 2021 of the Acquisition, and in anticipation of the closing, the following general changes are undertaken to the LLC Agreement:

1. The number of Board members is increased from three (3), to between three (3) and eight (8), with the requirement that at least two (2) Board members are market participants, and two (2) Board members are non-executives of the group;
2. The role of the Chairman of the Board is introduced;
3. The role of Board Observers is introduced;
4. The enumerated list of items requiring Member consent is amended to reflect governance preferences; and
5. Conforming changes are made throughout to reflect that the Company has a single limited liability company Member.



### **Description of Rule Changes**

Eris Clearing Rule 202 permits the Board of Eris Clearing to “adopt, amend, implement and repeal such Rules, as will in its judgment best promote and safeguard the interests of Eris Clearing.” No rulebook changes are required at this time.

### **Core Principle Compliance**

The Company’s staff has identified that the following derivatives clearing organization core principles (“Core Principles”) may be potentially impacted:

Governance (Core Principle O) - as drafted, the LLC Amendments meet the governance requirements by providing clear and documented responsibilities.

Composition of Governing Boards (Core Principle Q) - as drafted, the LLC Amendments meet the requirements of this core principle to provide for representation on the Board by market participants, and individuals that are not executives, officers, or employees of Eris Clearing or its affiliates.

### **Public Information**

A notice and copy of this submission has been concurrently posted on Eris Clearing’s website at <https://www.erisx.com/regulation/exchange-notices/> under “CFTC Submissions.”

### **Opposing Views**

No opposing views were expressed by the Board or market participants to this Self-Certification.

### **Certification**

Eris Clearing, LLC hereby certifies to the Commodity Futures Trading Commission, pursuant to the procedures set forth in Commission regulation §40.6, that this submission complies with the Commodity Exchange Act, as amended, and the regulations promulgated thereunder.

If you have any questions please feel free to contact the undersigned at the information below.

Sincerely,

/s/

Laurian Cristea

[laurian.cristea@erisx.com](mailto:laurian.cristea@erisx.com)

646.961.4487



## **EXHIBIT A**

Redline Changes to the Eris Clearing LLC Agreement

~~SECOND~~**THIRD** AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
ERIS CLEARING, LLC

This **THIRD** AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT of ERIS CLEARING, LLC (such agreement, as amended from time to time, shall be referred to herein as this “**Agreement**”), effective as of ~~April 8~~<sup>[●]</sup>, ~~2019~~<sup>2022</sup> (the “**Effective Date**”), is entered into by Eris Clearing Holdings, LLC, a Delaware limited liability company (“~~Holdings~~”), ~~as Member~~ ~~(as hereinafter defined)~~, and each of those other ~~Members~~<sup>members</sup> executing this Agreement from time to time in accordance with the terms hereof.

**EXPLANATORY STATEMENTS**

A. The Company was formed pursuant to a Certificate of Formation (the “**Certificate**”) filed with the Secretary of State of Delaware on October 16, 2017 and has been operating pursuant to the provisions of the Company’s Second Amended and Restated Limited Liability Company Agreement dated as of ~~November 1~~<sup>April 8</sup>, ~~2017~~<sup>2019</sup> (the “~~AR~~<sup>Second A&R</sup> **LLC Agreement**”).

B. ~~Holdings~~<sup>The Member</sup> has determined to amend and restate the ~~AR~~<sup>Second A&R</sup> LLC Agreement to, among other things, ~~to update the composition of the Risk Management Committee~~<sup>govern the management and operation of the Company and the relationship of the parties in accordance with the terms and subject to the conditions set forth in this Agreement.</sup>

**AGREEMENT**

For good and valuable consideration, the parties, intending legally to be bound, agree as follows:

**Section I**  
**Defined Terms**

In addition to any terms that are defined in the text of this Agreement, capitalized terms shall have the meanings ascribed to them in Exhibit B of this Agreement.

**Section II**  
**Formation and Name; Office; Purpose; Term**

The Company was formed upon the execution and filing of the Certificate with the Secretary on October 16, 2017. The name of the Company is “Eris Clearing, LLC.” The Company may do business under that name and under any other name or names upon which the ~~Members~~<sup>Member</sup> may determine. The purposes of the Company shall be to (i) operate a clearinghouse for the clearing of financial products, (ii) act as a custodian for funds, and (iii) engage in any other lawful act or activity for which limited liability companies may be organized under the Act as determined by the ~~Members~~<sup>Member</sup>. The term of the Company began upon the filing of the Certificate and shall continue in perpetual existence until dissolved pursuant to this

Agreement. The registered office of the Company in the State of Delaware shall be as set forth in the Certificate, or at such other place as the Member may designate from time to time. The principal office and place of business of the Company shall be located at ~~227 W. Monroe Street, Suite 2070, Chicago, IL 60606, or at~~ such other place as the ~~Members~~Member may designate from time to time.

The name and address of the Company's registered agent in the State of Delaware shall be as set forth in the Certificate, or at such other place as the Member may designate from time to time. The name, present mailing address and Percentage Interest of ~~each~~the Member are set forth on Exhibit A. The ~~Members~~Member shall have the right to admit additional ~~Members~~members from time to time as ~~they determine in their~~it determines in its sole discretion. If at any time the ~~Members deem~~Member deems it to be in the best interest of the Company to raise additional equity capital to properly carry out the Company's business and operations, the ~~Members~~Member shall have the right to (i) raise additional equity capital for infusion into the Company from ~~Members~~members or other Persons on terms that may be senior to, junior to, or on parity with, the terms of the Interests held by then existing ~~Members~~members, and (ii) admit the Persons investing such equity capital as additional ~~Members~~members. In addition, the Company may obtain funds through loans (which may be made by ~~a~~the Member) having such terms and conditions as the ~~Members~~Member, in ~~their~~its reasonable discretion, ~~deem~~deems to be in the best interest of the Company. The ~~Members~~Member shall amend Exhibit A from time to time to reflect changes in the identity of the ~~Members~~members and changes in information set forth on Exhibit A. This Agreement is the limited liability company agreement of the Company within the meaning of the Act.

### **Section III Capital**

It is acknowledged that ~~Holdings~~the Member (directly or indirectly through its ultimate parent company) has made all capital contributions to the capital of the Company required to be made by ~~Holdings~~the Member as of the date hereof. From time to time the ~~Members~~Member may, but shall not be obligated to, contribute additional capital or make loans to the Company, all at such times and upon such terms as the ~~Members~~Member shall approve, acting in ~~their~~its sole discretion. ~~No~~The Member ~~or Interest Holder~~ shall not be required to contribute any additional capital to the Company, and ~~no~~the Member ~~or Interest Holder~~ shall not have any personal liability for any obligations of the Company.

### **Section IV Profit, Loss and Distributions**

Cash Flow for each taxable year of the Company shall be distributed to the ~~Interest Holders~~Member, at such time as determined by the Board, ~~in proportion to the Interest Holders' respective Percentage Interest~~. All Profit or Loss shall be allocated to the ~~Interest Holders in proportion to their respective Percentage Interest~~Member. If the Company is dissolved, the assets of the Company shall be distributed as provided in **Section VII**.

## Section V Management of the Company

(a) Management by the ~~Members~~Member. Subject to **Section V(b)**, the Company shall be managed by and all decisions regarding the Company shall be made by the ~~Members.~~ ~~An act of a Majority in Interest of the Members shall be the act of the Members hereunder~~Member.

(b) Delegation of Authority to the Board of Directors. Notwithstanding **Section V(a)** above, except as otherwise set forth herein, ~~including, but not limited to, Section V(h), the Members hereby delegate~~the Member hereby delegates authority over the business and affairs of the Company to the Board of Directors of the Company (the “**Board**”). Except as otherwise specifically provided herein, the Board shall have full, exclusive and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company and to take all such actions as it deems necessary or appropriate to accomplish the purposes of the Company as set forth herein. Except as otherwise provided herein or expressly authorized by the Board, ~~no~~the Member of the Company shall not have, and no other Person, shall have the authority or power, directly or indirectly, to act as agent of the Company for any purpose, engage in any transaction, make any commitment, enter into any contract or incur any obligation (whether as principal, surety or agent) in the name of the Company or in any other way bind the Company or hold itself out as acting for or on behalf of the Company. Any attempted action in contravention of **Sections V(a)-(g)** shall be null, void *ab initio* and not binding upon the Company, unless ratified or authorized in writing by the Board.

(c) Number; Election; Tenure; Compensation; Reimbursement. Commencing on the date of this Agreement, the Board shall consist of ~~the following~~between three (3) ~~and eight (8)~~ directors (the “**Directors**”): ~~(i) the Chief Executive Officer of the Company or, in the absence of someone holding such office, such other officer as may be determined by a Majority in Interest of the Members; (ii) an equity holder of the ultimate parent company that is also a market participant member of the Company or Eris Exchange; and (iii) a market participant member of the Company or Eris Exchange, who may or may not be an equity holder of the ultimate parent company. Each Director shall be appointed by a Majority in Interest of the Members. One Director shall be designated by the Member to serve as the Chairman. The Directors shall be appointed by the Member, provided, however, that, at all times, the Directors shall include at least two (2) individuals who are market participants (as defined and determined by the Board) and two (2) individuals who are not executives, officers or employees of the Company or an affiliate of the Company (which requirement may be satisfied by the same individuals who are market participants).~~ Subject to applicable law, the number of Directors constituting the Board may be increased or decreased from time to time by ~~a Majority in Interest of the Members~~Member; provided that the Board shall consist of not fewer than three (3) Directors. Each Director shall have the duties (including fiduciary duties) that the directors of a Delaware corporation have to a corporation under Delaware General Corporation Law. No Director shall be entitled to be compensated for any services provided to the Company, except as authorized in writing by the Board. The Company shall reimburse each of the Directors for reasonable

business expenses incurred by any such Director on behalf of the Company, which expenses will be treated as expenses of the Company.

(d) Resignation. Each Director shall hold office until his or her successor is appointed and has qualified, or until his or her earlier resignation or removal. A Director may resign at any time by giving written notice to the Board. A resignation shall be effective upon receipt thereof by the Board unless the notice specifies a future date. The acceptance of a resignation shall not be necessary to make it effective. Any one or more of the Directors (i) shall automatically, without any further action by the Board or the ~~Members~~Member, be removed from such position due to such Director's death, and (ii) may be removed from such position, either with or without cause, ~~at any time by the consent of a Majority in Interest of the Members~~by the Member. Following the resignation of any Director, such Director and the Persons described in **Section VIII** shall remain entitled to indemnification from the Company to the extent available under such Section with respect to any matter arising prior to its or their resignation.

(e) Vacancy. Any vacancies occurring on the Board shall be filled by ~~a Majority in Interest of the Members~~the Member in accordance with Section V(c).

(f) Meetings of the Board.

(i) Time and Place. Meetings of the Board shall be held at the principal place of business of the Company or at any other place that ~~at least two-thirds (2/3) of the Directors determine~~the Board determines. At any meeting, any Director may participate by telephone or similar communication equipment, provided each Director who is participating in the meeting can hear each of the other Directors who are participating in the meeting. Directors present by telephone or similar communication equipment shall be deemed to be present "in person" for the purposes of the meeting. Meetings shall be held in accordance with a schedule established by the Board. ~~In addition, at any time two-thirds (2/3) of the Directors may call a meeting~~Meetings of the Board may be called by the Chairman or by any two (2) Directors upon at least one (1) Business Day's prior notice to the other Directors, provided such notice may be waived by all of the Directors for any individual meeting. Attendance of a Director at a meeting shall constitute a waiver of notice of the meeting, except where such Director attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened and notes such objection on the record. ~~If a Director is unable to attend a meeting of the Board, such Director shall have the right to designate another Person to attend such meeting of the Board in a non-participating, non-voting observer capacity.~~ Notwithstanding any other provision of this Agreement to the contrary, a notice pursuant to this Section may be given orally or otherwise as set forth in **Section X** of this Agreement.

- (ii) Quorum and Voting. Each Director shall have one (1) vote in all matters requiring a vote of the Board. A majority of the entire Board shall constitute a quorum at any meeting of the Board. ~~The act of~~ Except as otherwise required by law, the act of the Board Members possessing a majority of the Directors at any duly constituted votes in the aggregate present at the meeting, if a quorum is excluding from the votes present for such purposes any abstentions or recusals, shall be the act of the Board. If at any meeting of the Board there shall be less than a quorum present, the Director(s) present thereat may adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall have been obtained. Any meeting not resumed, or if resumed not completed, during the originally scheduled time for such meeting, shall be deemed concluded at the end of such scheduled time; provided that this provision may be waived by all of the Directors present at any such meeting. ~~Subject to Section V(h), all~~ All actions and decisions of the Board, once approved in accordance herewith, shall be binding on the Company and the ~~Members~~ Member.
- (iii) Written Consents in Lieu of a Meeting. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action(s) so taken, shall be signed by a majority of the Directors (one of whom shall be the Chairman).
- (g) Committees.
- (i) Designations and Powers. The Board may in its sole discretion, but subject to any requirements under applicable law, including, but not limited to, the CEA and CFTC regulations promulgated thereunder, (x) appoint one or more committees of the Board consisting of one or more of the Directors of the Company or other individuals and authorize and adopt a charter for such committee setting forth such committee's powers, authorities and responsibilities (a "**Charter**"), (y) designate one or more Directors or other individuals as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and (z) appoint a chairperson of any such committee. The number of Directors or other individuals serving on any committee may, subject to any requirements under applicable law, including, but not limited to, the CEA and CFTC regulations promulgated thereunder, be increased or decreased from time to time by the Board. Any such committee, to the extent provided in a resolution of the Board or in this Agreement, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company.
- (ii) Risk Management Committee. The Board shall appoint a Risk Management Committee (the "**RiskCo**") which shall consist of such number of individuals as established by resolution adopted by the Board,



provided that the RiskCo shall at all times include at least ~~two~~ (a) two (2) market participant members, and ~~one~~ (b) one (1) member of the Company's senior management team. The RiskCo shall have those powers, authorities, and responsibilities delegated to it by the Board in its Charter.

- (iii) Meetings of Committees. Meetings of any committee may be held at any time or place as shall be determined by resolution of the committee, the chairperson of the committee or any two (2) members of the committee. Notice of any meeting of a committee shall be given in the same manner as notice of any meeting of the Board as provided in **Section V(f)(i)**. A majority of the entire committee shall constitute a quorum at any meeting of a committee. The act of a majority of the members of a committee at any duly constituted meeting, if a quorum is present, shall be the act of the committee. Any action required or permitted to be taken at any meeting of a committee may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the requisite number of members of such committee. Any member of a committee may participate by telephone or similar communications equipment; provided each member who is participating in the meeting can hear each of the other members who are participating in the meeting. Persons present by telephone or similar communications equipment shall be deemed to be present "in person" for the purposes of the meeting. The foregoing shall be subject to the specific terms of each committee's Charter and in the event of an inconsistency between a Charter and this Agreement, the terms of such Charter shall govern.

(h) Board Observers. The Member shall have the right to appoint observers to the Board (each, an "Observer"). Such Observers shall serve for a term of one (1) year. Such Observers shall be entitled to (x) receive contemporaneously the same notice and other materials in respect of all meetings (or written consents) of the Board as are furnished to the Directors, (y) attend all meetings (and review all written consents) of the Board, and (z) participate in all discussions conducted at meetings (or with respect to actions to be taken by written consent) of the Board; provided, however, such Observers shall not constitute a Director and shall not be entitled to vote on any matters presented to the Board and may be removed for any or no reason by the Board upon notice thereof; provided further that such Observers may be required to leave, or not be allowed to attend, any meetings (or may not receive certain materials) if and to the extent a conflict of interest, confidentiality concern or privilege arises or may arise in connection with the issues being discussed (or described in such materials), regulatory issues may arise or be discussed with respect to which it would be inappropriate for the Observers to participate, or another reasonable basis exists for excluding the Observers, in each case as determined by the Chairman in his or her reasonable discretion.

(hi) Required Member Consent. Notwithstanding anything to the contrary contained herein, the Board shall not approve or undertake or authorize any other Person to approve or undertake, and shall not have the power or authority to approve or authorize any other Person to

approve or undertake any of the following actions with respect to the Company without the prior written consent of ~~a Majority in Interest of the Members~~Member:

- (i) ~~enter into or, approve an equity incentive plan, option plan, appreciation plan, phantom plan, profit participation or similar rights plan with respect to the Company~~or adopt an annual business plan or annual budget;
- (ii) appoint a new president, chief executive officer, chief financial officer, chief operating officer, any executive vice president or any other officer comprising senior management of the Company, or the termination (other than for cause) of or material change in the compensation (including equity compensation) of any then-existing president, chief executive officer, chief financial officer, chief operating officer, any executive vice president or any other officer comprising senior management of the Company;
- (iii) acquire or dispose of any business or any material assets;
- ~~(ii) make any loans or advances to any Person other than in the ordinary course of business;~~
- ~~(iii) incur any capital expenditure or expense, or enter into any commitment for any such capital expenditure or expense (whether in cash, by check, or otherwise) in excess of \$200,000;~~
- (iv) ~~permit any Member to voluntarily withdraw as a Member from the Company~~approve, recommend, consummate or participate in any Sale Transaction;
- (v) ~~sell, lease, encumber, transfer or otherwise dispose of any assets of the Company having a value in excess of \$200,000;~~cause any material change in the line(s) of business of the Company and its subsidiaries, taken as a whole, from the business conducted by the Company and its subsidiaries as of the date hereof;
- ~~(vi) create, incur, assume or suffer to exist any indebtedness in respect of money borrowed (regardless of the time period for repayment of such indebtedness), in excess of \$200,000;~~
- ~~(vii) redeem, repurchase or otherwise acquire any Interests or any other equity interests of the Company or any interests or instruments directly or indirectly convertible, excisable or exchangeable for Interests or other equity interests of the Company, or accept any additional capital contributions;~~

- ~~(viii) acquire any securities, debt, or other assets of any party, other than in connection with the operation of the business of the Company in the ordinary course of business;~~
- ~~(ix) change or expand the current business of the Company or enter into new or related lines of business;~~
- ~~(xvi) create, authorize, offer, issue, or sell to any Person an Interest or other equity interest of the Company or any interest~~any Interests or any interests or other instruments directly or indirectly convertible, exercisable, or exchangeable for ~~equity interests of the Company, or accept any additional capital contributions~~Interests;
- ~~(xivii) admit a new Members or substituted Members~~Member to the Company;
- ~~(xii) enter into (directly or indirectly) any transaction with any Member or affiliate of the Company or other affiliates, any of their respective affiliates, or any entity in which any Member or other affiliate of the Company or any of their respective affiliates may have an interest;~~
- ~~(xiii) become subject to any agreement or instrument which by its terms would (under any circumstances) restrict the Company's or any of its Member's right to carry on its business or perform any of its obligations under the Certificate or this Agreement;~~
- (viii) create or grant any security interest, encumbrance or guarantee on the assets of the Company or any of its subsidiaries;
- (ix) incur indebtedness for borrowed money;
- (x) approve, initiate or consummate a reorganization, liquidation or dissolution of the Company;
- (xi) initiate or settle any litigation or any other action, suit or similar proceeding;
- (xii) finalize or settle any administrative or judicial disputes with any taxing or other governmental authority;
- (xiii) select, cause appointment or replace the auditors of the Company or its Subsidiaries;
- ~~(xiv) approve or take any action in connection with a conversion of the Company into one or more different entities or forms, including, but not limited to, a conversion into a corporation;~~file any tax returns and statements with respect to the Company or any subsidiary or the assets of the Company or any subsidiary;

- (xv) ~~change or amend the Company's organizational documents (including the Certificate and this Agreement)~~any accounting policy or make any ~~other tax election or decision or change in the rights, preferences, or privileges of the Members, or any change in the capital structure~~tax classification of the Company, ~~except as otherwise provided in this Agreement;~~
- (xvi) ~~enter into an agreement regarding, or consummate, a Sale Transaction;~~amend the Company's organizational documents or documents related to the Interests; or
- (xvii) ~~merge or consolidate the Company with any Person pursuant to a transaction that does not constitute a Sale Transaction;~~redeem, repurchase or otherwise acquire any Interests or other instruments directly or indirectly convertible, exercisable or exchangeable for Interests.
- (xviii) ~~take or effect any action that would render the Company bankrupt or insolvent or cause the termination, dissolution, liquidation or winding up of the Company; or~~
- (xix) ~~take or effect any action that specifically requires the consent or approval of the Members pursuant to the terms of this Agreement.~~

(j) **Officers.** Any Officer authorized and appointed to act by the Board shall have full power and authority to act for and bind the Company for the purposes so authorized or appointed and third parties may rely upon such authorization or appointment. The Officers of the Company may include a president, chief executive officer and/or such other Officers as the Board may establish from time to time. Each Officer shall hold office until his or her successor is elected or appointed or until his or her earlier displacement from office by resignation, removal or otherwise; provided that if the term of office of any Officer elected or appointed pursuant to this **Section V(i)** shall have been fixed by the Board, he or she shall cease to hold such office no later than the date of expiration of such term, regardless of whether any other person shall have been elected or appointed to succeed him or her. Any Officer may resign by written notice to the Company and may be removed with or without cause by the Board whenever in its judgment the best interests of the Company will be served thereby.

(k) **Disciplinary Panels.** The Board may, in its sole discretion, but subject to any requirements under applicable law, including, but not limited to, the CEA and CFTC regulations promulgated thereunder, establish one or more disciplinary panels, including, but not limited to, a disciplinary panel for appeals (each a "**Disciplinary Panel**"), each of which generally shall be responsible for conducting hearings, rendering decisions, and imposing sanctions with respect to disciplinary matters as determined by the Board. Except as the Board may otherwise determine from time-to-time, each Disciplinary Panel shall be comprised of three individuals, at least one of whom would qualify as a "public director", as such term is defined by applicable CFTC regulation, and such person will chair such Disciplinary Panel. The number of individuals serving on any Disciplinary Panel (each a "**Disciplinary Panel Member**") may, subject to any requirements under applicable law, be increased or decreased from time to time by the Board.

The Disciplinary Panel Members shall be appointed by the Board and may be removed from such position, either with or without cause, at any time by the Board.

## **Section VI** **Transfer and Resignation**

~~(a) Except as otherwise expressly permitted by this Agreement, no Member shall have the right, without the prior written consent of a Majority in Interest of the Members, to Transfer all or any part of such Member's Membership Rights; provided, however, that if the Transfer is a transfer by operation of law by reason of the death of an individual Person, the dissolution of a non-individual Person or otherwise, and if the result of such Transfer would be the Resignation of the last remaining Member of the Company, then the transferee(s) will be automatically admitted as Member(s) in the Company (it being agreed that in the case of death of an individual Person, the estate of such Person shall automatically be admitted as a Member, subject to the remainder of this Section VI); provided further that any of such transferee(s) may elect, at any time on or before ninety (90) days after such Transfer to such transferee, to Resign as a Member of the Company, such Resignation to be effective retroactive to the date of such Transfer. Except as provided in the preceding sentence, no Member shall have the right to Resign without the prior written consent of a Majority in Interest of the Members. The Company shall not be obligated to purchase the Interests of any Person who has Resigned for its fair value or otherwise.~~

(b) Notwithstanding any provision contained in this Agreement to the contrary, ~~Holdings~~the Member shall have the right, ~~without the consent of the Members,~~ to Transfer all or any part of ~~Holdings~~the Member's Membership Rights, and such transferees shall automatically be deemed to be admitted as a ~~Member~~member of the Company. For purposes of this Agreement, a Transfer of Interests and other Membership Rights shall include any Transfer of any direct or indirect ownership interests in ~~the~~the Member and any change in the power of a Person to direct the business and affairs of the Member by virtue of ownership of voting securities, contract or otherwise. The Interests and other Membership Rights are securities governed by Article 8 of the Uniform Commercial Code as in effect in the State of Delaware. Interests and Membership Rights shall not be certificated. The transferee of a Transfer for collateral purposes shall not be admitted as a ~~Member~~member of the Company until such time, if any, as the transferee has realized upon the Membership Rights pledged to it or has acquired such Membership Rights in lieu of such realization and such transferee expressly agrees in writing to be bound to the terms and conditions of this Agreement.

## **Section VII** **Dissolution**

The Company shall be dissolved only if ~~a Majority in Interest of the Members determine~~the Member determines to dissolve the Company or if the Company has no ~~Members and no Interest Holder agrees in writing, within thirty (30) days after the occurrence of the event pursuant to which the last Person ceased to be a Member, to become a Member and be bound by the terms and conditions of this Agreement~~members. If the Company is dissolved, the affairs of the Company shall be wound up. On winding up of the Company, the assets of the Company shall be distributed, first, to ~~non-Interest Holder~~ creditors of the Company in satisfaction of the

liabilities of the Company, ~~second, to creditors of the Company who are also Interest Holders in satisfaction of the liabilities of the Company but not including those liabilities to the Interest Holders in their capacity as Interest Holders, and then to the Interest Holders in proportion to their respective Percentage Interest,~~ and then to the Member.

## **Section VIII**

### **Liability and Indemnification**

(a) Except as otherwise required by non-waivable provisions of applicable law or as expressly set forth in this Agreement, ~~no Interest Holder~~the Member shall not have any personal liability whatsoever in ~~such Interest Holder's~~the Member's capacity as ~~an Interest Holder~~a member in excess of its capital contribution, whether to the Company, ~~to any of the other Interest Holders,~~ to the creditors of the Company or to any other third party, for the debts, liabilities, commitments or any other obligations of the Company or for any losses of the Company, other than arising out of a breach of this Agreement by ~~such Interest Holder,~~the Member, any actions by such ~~Interest Holder~~the Member prohibited by this Agreement or as provided in any other written agreement between the Company and ~~such Interest Holder~~the Member.

(b) None of the ~~Members~~Member, the Directors, Disciplinary Panel Members or Officers shall be personally liable for the return of any portion of the capital contributions (or any return thereon) of the ~~Interest Holders~~Member and the return, if any, of such capital contributions (or any return thereon) shall be made solely from assets of the Company. None of the ~~Members~~Member or the Directors shall be required to pay to the Company ~~or any Interest Holder~~ any deficit in ~~any Interest Holder's~~the Member's capital account upon dissolution of the Company or otherwise. None of the ~~Members~~Member, the Directors or the Officers shall be liable, responsible or accountable, for damages or otherwise, to ~~any Interest Holder~~the Member or to the Company for any act performed by such ~~Members~~Member, Directors or Officers within the scope of the authority conferred on such ~~Members,~~Member, the Directors and the Officers by this Agreement, except for gross negligence, fraud, bad faith or a material breach of this Agreement.

(c) The Company shall, to the fullest extent permitted by the Act, indemnify and hold harmless the ~~Interest Holders, Members,~~Member, Disciplinary Panel Members, Officers, Directors ~~and,~~ their respective partners, stockholders, members, officers, trustees, advisory board members, directors, employees, attorneys and agents and other affiliates and, as determined by the Board in its sole discretion, certain non-Officer employees of the Company (collectively, the “**Indemnified Parties**”) from and against any loss, expense, damage or injury suffered or sustained by them by reason of any acts, omissions or alleged acts or omissions arising out of their activities on behalf of the Company or in furtherance of the interests of the Company or by reason of the fact that such Person is or was ~~an Interest Holder,~~a Member, Disciplinary Panel Member, Director, Officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, trustee, member, disciplinary panel member, manager, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise, including, but not limited to, any judgment, award, settlement, reasonable attorneys’ fees and other costs or expenses incurred in connection with the investigation and defense of any actual or threatened action, proceeding or claim, unless the acts,

omissions or alleged acts or omissions upon which such actual or threatened action, proceeding or claim is based arose out of such Indemnified Party's gross negligence or were performed or omitted fraudulently or in bad faith by such Indemnified Party or constituted a material breach of this Agreement. If any claim for indemnification is based on a claim by a third party (a "**Third Party Claim**"), the Indemnified Party in question shall give prompt written notice thereof to the Company and shall permit the Company to defend and/or settle such Third Party Claim, so long as it does so diligently and in good faith; provided, however, that no compromise or settlement of any claim may be effected by the Company without the Indemnified Party's consent (which will not be unreasonably withheld, conditioned or delayed) unless the sole relief provided is monetary damages that are paid in full by the Company. Any such indemnification shall only be from the assets or insurance of the Company and ~~no Interest Holder~~the Member shall not be required to contribute capital to the Company to satisfy any such indemnification. Any such indemnification shall be paid by the Company in advance of the final disposition of any such action, proceeding or claim upon receipt of an undertaking by or on behalf of the Indemnified Party seeking advancement to repay the amount advanced should it ultimately be determined that the Indemnified Party was not entitled to be indemnified hereunder or under the Act.

### **Section IX** **Books, Accounting, Tax Matters Partner, Partnership Representative**

All funds of the Company shall be deposited in such bank or other investment accounts as the Board shall approve. All such accounts shall be in the Company's name. The annual accounting period of the Company shall be the calendar year. ~~Holdings~~The Member intends that for as long as the Company has a single Member the Company will be treated as a disregarded entity for all applicable tax purposes. The Member shall be the tax matters partner unless ~~a Majority in Interest of the Members~~the Member selects a different tax matters partner, to the extent that a tax matters partner is required or permitted by applicable law. For all taxable years beginning on or after January 1, 2018, and in the event the Company is treated as a partnership for federal income tax purposes, ~~Holdings~~the Member shall be designated as the "partnership representative", as defined in Code Section 6223 (as in effect following the effective date of its amendment by Section 1101 of H.R. 1314) and the Company and the ~~Members~~Member shall complete any necessary actions (including executing any required certificates or other documents) to effect such designation.

### **Section X** **General Provisions**

(a) Any notice, demand, consent, election, offer, approval, request, or other communication (collectively, a "**notice**") required or permitted under this Agreement must be in writing and either delivered personally, sent by certified or registered mail, postage prepaid, return receipt requested, or sent by recognized overnight delivery service. A notice must be addressed to ~~an Interest Holder or~~the Member at the ~~Interest Holder's or~~ Member's last known address on the records of the Company. A notice to the Company must be addressed to the Company's principal office. Notices shall be deemed given upon receipt or refusal to accept delivery. Any party may designate, by notice to all of the others, substitute addresses or

addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees.

(b) This Agreement constitutes the complete and exclusive statement of the agreement ~~among~~by the ~~Members~~Member and supersedes all prior written and oral statements (including the ~~AR~~Second A&R LLC Agreement), including any prior representation, statement, condition or warranty.

(c) This Agreement may not be amended without the written consent of ~~a Majority in Interest of~~ the ~~Members~~Member.

(d) This Agreement shall be governed by the internal law, not the law of conflicts, of the State of Delaware. The headings herein are inserted as a matter of convenience only, and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

(e) This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

(f) Nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the Person may in the context require.

(g) Each provision of this Agreement shall be considered separable and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

**[Remainder of Page Intentionally Left Blank.  
Signature Page Follows.]**



IN WITNESS WHEREOF, the undersigned has executed this ~~Second~~Third Amended and Restated Limited Liability Company Agreement of Eris Clearing, LLC as of the date first set forth above.

**MEMBER**

**ERIS CLEARING HOLDINGS, LLC,**  
a Delaware limited liability company

By: Eris Exchange, LLC, its manager

~~By: Eris Digital Holdings, LLC, its manager~~

By: \_\_\_\_\_

Name: ~~Laurian Cristea~~

Title: ~~Authorized Signatory~~

**EXHIBIT A**  
(effective as of [●], 2022)

**NAME, ADDRESS AND PERCENTAGE INTEREST**

<u>Address</u>	<u>Percentage Interest</u>
Eris Clearing Holdings, LLC <u>111 S. Wacker Drive, Suite</u> <u>4730, Chicago, IL 60606</u> <del>227</del> <del>West Monroe Street</del> <del>Suite 2070</del> <del>Chicago, Illinois 60606</del>	100%

## EXHIBIT B

### Definitions

For purposes of this Agreement, the following terms shall have the meanings set forth below (such meanings to be equally applicable to both the singular and plural forms of the terms so defined).

“**Act**” means the Delaware Limited Liability Company Act, as amended from time to time.

“**Board**” shall have the meaning set forth in **Section V** of this Agreement.

“**Business Day**” means any day other than Saturday, Sunday, and a day on which either the Eris Exchange or commercial banks are authorized or required to close in either of Chicago, Illinois or New York City, New York.

“**Cash Flow**” means the revenues and other cash receipts of the Company minus the expenditures of the Company. Cash Flow will not include reserves established by the Board from time to time except to the extent released from the reserves in question for distribution.

“**CEA**” means the U.S. Commodity Exchange Act, as amended.

“**CFTC**” means the U.S. Commodity Futures Trading Commission.

“**Code**” means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

“**Company**” means the limited liability company formed in accordance with the Certificate.

“**Disciplinary Panel**” shall have the meaning set forth in **Section V** of this Agreement.

“**Disciplinary Panel Member**” shall have the meaning set forth in **Section V** of this Agreement.

“**Interest**” means a membership interest in the Company entitling the holder thereof to receive a share of the Profits and Losses of, and the right to receive distributions from, the Company in accordance with the terms of this Agreement.

~~“**Interest Holder**” means any Person who holds an Interest, whether as a Member or as an unadmitted assignee of a Member.~~

~~“**Majority in Interest of the Members**” means the Member or Members with a Percentage Interest exceeding fifty percent (50%).~~

~~“**Member**” means each Person signing this Agreement and any Person who subsequently is admitted as a member of the Company.~~

“**Membership Rights**” means all of the rights of a ~~Member~~member of the Company, including a ~~Member’s~~member’s: (i) Interests; (ii) right to inspect the Company’s books and records; and (iii) right to vote on matters coming before the ~~Members~~members, if any.

“**Officer**” means any individual from time to time authorized or appointed by the Board to act as an officer or representative of the Company on a general basis or for a specific purpose, which individual shall act for and bind the Company as authorized by the Board.

“**Percentage Interest**” means, ~~for any Interest Holder,~~ the percentage interest of ~~such Interest Holder in the Company~~Member as set forth on Exhibit A.

“**Person**” means and includes an individual, corporation, partnership, association, limited liability company, trust, estate or other entity.

“**Profit**” and “**Loss**” mean, for each taxable year of the Company (or other period for which Profit or Loss must be computed), the Company’s taxable income or loss determined in accordance with the Code.

~~“**Resignation**” (including its correlative meanings, “Resign” or “Resigned”) means a Member’s resignation from the Company by any means.~~

“**Sale Transaction**” shall mean any transaction ~~pursuant to which the Company sells its business by~~or series of transactions involving (i) a sale or conveyance of all or substantially all of the Company’s assets to any Person, (ii) a sale or conveyance of ~~all or substantially all~~at least 50% of the Interests or other equity ~~interests~~interest in the Company to any Person, or (iii) a merger or consolidation of the Company with any Person pursuant to which the ~~Members~~Member (and their affiliates) immediately prior to such merger or consolidation shall own, immediately after giving effect thereto, less than a majority of the equity interest of the surviving entity (or its parent) or the purchasing entity (or its parent), as the case may be.

~~“**Secretary**” means the Secretary of State of the State of Delaware.~~

“**Transfer**” means, when used as a noun, any direct or indirect sale, hypothecation, pledge, assignment, attachment, or other transfer, and, when used as a verb, means to, directly or indirectly, sell, hypothecate, pledge, assign, or otherwise transfer.