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WRITER'S DIRECT NUMBER
202-736-8235

June 4, 1999

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

AOR 1999-16

Re: Request for Advisory Opinion

Dear Sir:

We are counsel to the Commercial Finance Association ("CFA"), a not-for-profit tax exempt organization. CFA has established the Commercial Finance Association Political Action Committee, and it seeks the advice of the Commission regarding whether individuals who are members of CFA Chapters may be solicited by the CFA PAC.

CFA is the trade group for the asset-based financial services industry. The Association consists of more than 300 members, including nearly all of the money center banks, small independent finance companies and large commercial lenders that are publicly held or owned by industrial companies and foreign banks. CFA members provide asset-based commercial financing and factoring products and services to small and medium-sized businesses on a national, international, regional and local scale.

In 1986, CFA established its first regional Chapter to offer employees of members companies business forums, networking opportunities and educational programs. Since that time, the number of CFA Chapters has grown to 15 throughout the United States with nearly 3,000 members. Participation in the Chapters is open to CFA member company employees only. Each Chapter member pays membership dues directly to the Chapter as provided in the Chapter's By-Laws. All CFA Chapters, except the California Chapter, are unincorporated. The enclosed CFA Chapter Affiliation Agreement, Chapter By-Laws and CFA By-Laws provide additional information on the relationship between the CFA and

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its regional Chapters. Section 2.6 of CFA's By-Laws is the only provision which authorizes the establishment of Chapters.

No CFA Chapter has established a political action committee, and CFA has never solicited Chapter members for contributions to the CFA PAC. However, CFA Chapter members (the individuals that CFA's PAC wishes to solicit) are active in CFA affairs. Many Chapter members serve as their company's representative to CFA's main governing body, the Board of Directors. Others serve on the Association's other governing bodies, the Executive Committee and Management Committee, while many others serve on CFA's various standing and focus committees.

It appears to us that CFA and its Chapters are a federation of trade associations under 11 C.F.R. § 114.8(g). This regulation provides that a federation of trade associations is "an organization representing trade associations involved in the same or allied line[s] of commerce." The regulation also states that the CFA Chapters are part of a federation with CFA based on the factors set forth at 11 C.F.R. § 100.5(g)(4). Finally, the regulation provides that a federation may "solicit the members of the federation's regional, State or local affiliates or members," provided that all of the political committees established by the federation and its affiliates are considered one political committee for purposes of the contribution limitations. Id.

In A.O. 1979-62, CCH Fed. Elec. Camp. Fin. Guide, ¶ 5461 (1980), and in A.O. 1985-37, CCH Fed. Elec. Camp. Fin. Guide, ¶ 5838 (1986) the FEC approved the principle that a PAC of a federation of trade associations may solicit members of other organizations in the federation; however, it disapproved the application of the principle in these cases. In A.O. 1979-62, the requester admitted that other organizations that it wished to solicit were "independent groups" that were not part of a federation. In A.O. 1985-37, the FEC analyzed the relationship between the Michigan Chamber of Commerce and the Grand Rapids Chamber of Commerce and concluded that the two organizations were not part of a federation. The Commission noted that the two organizations did not share an organizational relationship. It further noted that the two organizations had members in different lines of business.

CFA's relationship with its Chapters and the requirements for Chapter membership meet the standards of section 114.8(g). Section 114.8(g) applies the factors of affiliation found at § 100.5(g)(4). Four of these factors apply specifically

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to the relationship between CFA and its Chapters: Under subsection (B), CFA has the authority through its by-laws and its Affiliation Agreement to participate in the governance of its Chapters. Under subsection (D), CFA has a common and overlapping membership with its Chapters because the individuals who are members of the Chapters are employees of the companies who are members of CFA. In many cases, Chapter members are on the Board of Directors and other committees of CFA. The same factors demonstrate that under subsection (E) CFA and its Chapters have common or overlapping officers or employees. Under subsection (I), CFA had an active and significant role in the formation of all of the Chapters.

Moreover, the relationship between CFA and its Chapters contrasts sharply with the FEC's reasons for declining to find federation status in the advisory opinions described above. CFA's by-laws specifically authorize the establishment of Chapters, and CFA has entered into a Chapter Affiliation Agreement with each Chapter binding the Chapter to specific obligations including the establishment of by-laws meeting CFA standards. CFA membership is limited to organizations in a single line of business -- asset based financial services -- and all Chapter members must be employees of organizations in this line of business. Thus, CFA and its Chapters meet the requirements of federation status in section 114.8(g), and CFA's PAC should be permitted to solicit the members who are individuals in CFA Chapters.

If you have any questions regarding this Advisory Opinion Request, please do not hesitate to contact the undersigned.

Sincerely,



Michael A. Nemeroff



**Bylaws for Chapters Affiliated with
Commercial Finance Association**

Article I - Name, Area and Purpose

The name of this organization shall be THE _____
CHAPTER of COMMERCIAL FINANCE ASSOCIATION, hereinafter called
"Chapter". The Chapter shall be an unincorporated association which, subject
to the authority of Commercial Finance Association, shall represent the
interests of Commercial Finance Association in the City of _____.

Article II - Membership

Section 2.1 Qualifications

Any officer, director or employee of an organization which
is a member in good standing of Commercial Finance Association shall be
eligible for membership in the Chapter.

A member who shall have paid all dues and other indebtedness,
if any, to the Chapter not later than 60 days after the billing date, and who shall
otherwise be in compliance with these bylaws and any standard of conduct
adopted by the Chapter, shall be in good standing.

Only members in good standing shall be entitled to all rights
and privileges of membership and shall be entitled to receive the services
and benefits provided by the Chapter and to participate in its activities.

Section 2.2 - Procedures for Admission

Each application for membership shall be in writing on a form provided by the Chapter. Applications shall be considered for approval at the following meeting of the board of directors. In the event that an applicant is rejected for membership, the applicant will be advised as to the reasons for such rejection, and shall be entitled to appear during the next regular or special meeting and present his/her appeal of the rejection of membership.

Section 2.3 - Resignation

Any member may resign at any time by submitting a written resignation and paying whatever indebtedness may be owed to the Chapter.

Article III - Officers

Section 3.1 - General

The officers of the Chapter shall be a President, Vice President and Secretary/Treasurer. Each officer elected shall take office commencing the July 1 immediately following the election, for a term of one year or until his successor is elected. The officers of the Chapter shall not be eligible for reelection to the same office for more than two consecutive years and thereafter may again be eligible for election for terms commencing two years later.

Section 3.2 - Duties of Officers

The president shall be the executive officer of the Chapter, and shall preside over all meetings. He shall appoint and be an ex-officio member of all committees, and shall perform such other duties as usually pertain to the office of President. The President shall be invited to attend all meetings of the board of directors of the Commercial Finance Association and shall report to the board the activities of the Chapter.

The Vice President, in the absence of the President, shall preside at all meetings and shall perform such other duties as may be assigned to him by the president or the board of directors.

The Secretary/Treasurer shall be responsible for creating and maintaining appropriate and accurate accounts and records of all association activities and finances and shall make a report at the annual meeting of the Chapter and at other times as the President or board of directors may require. The Secretary/Treasurer shall also be responsible for the collection of all dues and other funds. He/she shall be responsible for all disbursements and the keeping of complete books of account.

Article IV - Board of Directors

There shall be a board of directors consisting of the President, Vice President, Secretary/Treasurer and the immediate past President.

The board of directors shall determine the policies and activities of the Chapter, approve the budget, approve all expenditures and authorize all disbursements, take counsel with committees, and have general management of the Chapter and its affairs.

The board of directors shall meet a minimum of twice annually or at the call of the President.

Article V - Nominations and Elections

The election of officers and directors shall be held at the annual meeting of the Chapter. At least two months prior to the date of the annual meeting, the President shall appoint a committee on nominations and elections. The duties of this committee shall be to seek, receive and prepare nominations and to have a general charge of the election.

The committee on nominations and elections shall cause a listing to be prepared containing the names of all nominees which will be distributed prior to the annual meeting.

Voting shall be by secret ballot. There shall be no voting by proxy.

The nominee for each office receiving a majority of all votes cast shall be declared elected.

In the case of a vacancy in the office of President, the Vice President shall succeed to the office. In the case of a vacancy in the office of Vice President, the Secretary/Treasurer shall succeed to the office. Any other vacancy shall be filled by the members at a regular or special meeting.

Any elected officer or director may, after due and proper hearing before the membership, be removed from office, because of his/her inability to serve, malfeasance, or unwillingness to serve, or conduct unbecoming for a member.

Article VI - Meeting

Regular meetings of the membership shall be held at least four times each year, including the annual meeting, on dates and locations approved by the board of directors.

The annual meeting shall be held in the spring for the election of officers and the transaction of any other proper business.

Special meetings may be called by the President or by a majority of the general membership.

Written notice of all meetings shall be given by the Secretary/Treasurer at least ten days in advance. The Secretary/Treasurer shall keep a record of the attendance of each member at the Chapter meetings.

Article VII - Committees

There shall be the following standing committees:

- A) Program
- B) Education
- C) Finance
- D) Legislation
- E) Membership
- F) Nominating

Each standing committee shall consist of not less than three members to be appointed by the President, and to serve for the fiscal year.

The standing committees shall have the following duties:

A) The program committee shall develop a program for each meeting of members including the selection of speakers.

B) The committee on education shall develop and promote a program of education for the members to include seminars and lectures, and the chairman shall be the liaison with the appropriate regional educational committee of the Commercial Finance Association.

C) The committee on finance shall assist the President and Secretary/Treasurer in preparing a budget for submission to the board of directors.

D) The committee on legislation shall examine and keep current with proposed regional legislation and matters of governmental administration affecting the asset-based financial services industry. The committee shall consider and make recommendations in connection with such activities in the local geographic area. The chairman of the committee shall be the liaison with the government relations director of the Commercial Finance Association.

E) The membership committee shall solicit eligible members and shall make recommendations to the Chapter in connection with individual applications.

F) The nominating committee shall propose a slate of officers to be elected at the annual meeting.

Article VIII - Dues

The annual dues and any assessments and charges shall be set from time to time by the board of directors and approved by the membership. The amount of dues each year should be sufficient to take care of all expenses of operation and purchases of the Chapter.

Article IX - National Affiliation

In recognition of the values of national fellowship and cooperation available to the Chapter and its members through its privileges and rights of participation in the activities of the Commercial Finance Association, it is hereby declared a major policy of this chapter to exercise fully those privileges and rights, and to discharge promptly all lawful obligations imposed upon it by Commercial Finance Association.

Chapter shall be represented by its President or duly appointed alternate at the annual convention and board of directors meetings of the Commercial Finance Association.

Article X

Any amendments to these bylaws, if in conformity with the policy of the Commercial Finance Association, may be adopted by a majority vote of the membership at any regular or special meeting, called for that purpose, provided that written notice of the meeting and of the proposed amendments shall have been given to the members at least 30 days prior to the meeting and shall be effective only when submitted to and approved by the Commercial Finance Association.

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CHAPTER AFFILIATION AGREEMENT

THIS AFFILIATION AGREEMENT is made this _____ day of _____, 19____, between Commercial Finance Association, a Delaware corporation (hereinafter referred to as "National") and _____ Chapter of Commercial Finance Association, a non-profit unincorporated association (hereinafter referred to as "Chapter");

WHEREAS, National has authorized Chapter to represent National in the state of _____ In the manner, and subject to the limitations and restrictions hereinafter described; and

WHEREAS, Chapter shall be known as _____ Chapter of Commercial Finance Association; and

WHEREAS, National and Chapter wish to set forth herein certain of their understanding and agreements pertaining to the granting of said authority and the mutual rights and responsibilities created thereunder;

NOW, THEREFORE, in consideration of the foregoing and of other mutual promises and agreements hereinafter set forth, National and Chapter hereby agree as follows:

1. Grant of Authority

Subject to the provisions of this Affiliation Agreement, and in particular Sections 5, 6 and 7 hereof, Chapter shall represent National in the City of _____ and shall be known as _____ Chapter of Commercial Finance Association.

2. Affiliation Standards

Chapter acknowledges the objectives of National as set forth in the Charter and in the Bylaws of National, and agrees to support and implement such objectives and to enhance the reputation and goodwill of National.

3. Membership Classification and Programs

A. The membership of Chapter shall be composed solely of individuals. The classification of membership and qualifications therefore shall include, but need not be limited to, the classification and qualifications provided for in the Chapter Bylaws.

B. Chapter shall take all appropriate action to sustain membership growth. Chapter shall develop procedures to ensure that the interests of its members are fully and properly represented with respect to those matters which are of particular interest to the members of the Chapter. Chapter agrees to support the policy of National to encourage cooperation between Chapter and National, and between Chapter and Chapter/Regional Associations of National in order to develop and provide membership services, legislative efforts and programs without conflict. National shall provide Chapter with assistance in developing procedures for membership services, if requested to do so by Chapter. Chapter and National shall cooperate with each other in offering membership services.

4. Organization and Operating Responsibilities of Chapter

A. Chapter shall conduct its business and affairs in accordance with generally accepted principles of non-profit business organizations, with its primary objective being to serve its members. Chapter shall be solely responsible for (i) deciding the legal form (e.g. unincorporated association or not-for-profit corporation) in which it will conduct its activities, (ii) satisfying all applicable requirements of federal and state taxing authorities and (iii) otherwise complying with all applicable state and federal laws (including, without limitation, corporation association and anti-trust laws). Chapter shall be governed by a Board of Directors elected by its members.

B. Chapter shall adopt bylaws to provide for the administration and regulation of its internal affairs substantially in the form of model bylaws provided by National. Chapter may adopt additional bylaws which it deems to be appropriate if such additional bylaws are consistent with the model bylaws, the National Bylaws, this Affiliation Agreement, and shall be effective only when submitted to and approved by National.

C. A member of the Management Committee of National designated by National shall be the

liaison with Chapter.

5. Fiscal Operations

Chapter shall establish and practice sound fiscal policy and shall at all times maintain financial self-sufficiency. The Secretary/Treasurer shall be responsible for the accounting procedures of Chapter and shall maintain proper receipts and expenditure records.

6. Liability

National and Chapter expressly acknowledge and agree that National and Chapter are and intend to remain, separate entities and as such have no authority or right to incur, and shall not incur any liability obligation or expense on behalf of each other. Chapter shall not be an agent of National; officers of Chapter shall have no authority to represent National and officers of National shall have no authority to represent Chapter without the prior approval of Chapter or National, as applicable.

7. Revocations or Modification of Authority

A. The authority granted to Chapter and all of the rights and obligations created hereunder shall remain in full force and effect unless modified or altered by the Executive Committee of National as provided below, or revoked for cause by Board of Directors of National on the recommendation of its Executive Committee.

B. National reserves the right to modify or change from time to time the geographic area assigned to Chapter, by adding to or deleting from such region, any state, county, city, or other area, whether for purposes of transfer of such area to a different region or for its own separate affiliation with National.

8. Collection of Dues

Chapter hereby agrees to collect annual dues and assessments from its members to pay for all of its operating costs and purchases.

IN WITNESS WHEREOF, the parties hereto have caused this Affiliation Agreement to be executed by their duly authorized officers, effective as of the day and year first written above.

COMMERCIAL FINANCE ASSOCIATION

By: _____

_____ **Chapter, Commercial Finance Association**

By: _____

Revised 5/96

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By-Laws

**Commercial
Finance
Association**



Commercial Finance Association

**Commercial Finance Association
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**BY-LAWS of
Commercial Finance Association**

**ARTICLE I
NAME AND OFFICES**

Section 1.1 Name. The name of the Corporation is Commercial Finance Association, a Delaware non-stock, non-profit corporation (the "Corporation").

Section 1.2 Offices. The registered office of the Corporation in the State of Delaware shall be located at 229 South State Street in the City of Dover, County of Kent, and the name of its resident agent in charge thereof shall be The Prentice-Hall Corporation System, Inc. The business office of the Corporation in the State of New York is in the Borough of Manhattan, County of New York. The Corporation may change such office and may also have offices at such other places as the Board of Directors or Executive Committee may from time to time designate.

**ARTICLE II
MEMBERSHIP**

Section 2.1 Qualifications. Proprietorships, partnerships, limited liability companies, and corporations engaged in asset-based financial services (secured commercial financing or factoring), that agree to be bound by these By-laws and that meet such other membership requirements and standards of conduct as may from time to time be adopted by the Board of Directors, shall be eligible to apply for membership in the Corporation.

Section 2.2 Classes of Membership. A Member shall be admitted as either a Regular or Limited Member:

(a) **Regular Member:** A proprietorship, partnership, limited liability company or corporation engaged in the business of secured commercial lending or providing factoring services.

(b) **Limited Member:** A proprietorship, partnership, limited liability company or corporation engaged in the business of secured commercial lending or providing factoring services which is affiliated with a Regular Member (i) by reason of being (directly or indirectly) a subsidiary or parent of such Regular Member or a subsidiary of the same parent corporation of which such Regular Member is a subsidiary or (ii) in the case of a proprietorship or a partnership, through a comparable relationship. As used herein, the terms "subsidiary" and "parent" mean that the "parent" so controls the "subsidiary" through stock ownership or otherwise, that it can cause the election of a majority of the "subsidiary's" directors, and indirect affiliation shall refer to affiliation through another corporation included in a multi-tiered corporate organization. The determination by the Executive Committee as to whether an applicant is eligible to be a Limited Member shall be final. An applicant which is eligible to be admitted as a Limited Member may, at its option, apply for admission as a Regular Member.

Section 2.2A International Association Member. Notwithstanding any provision in these By-laws to the contrary, the Executive Committee shall have the authority to appoint as a Regular Member of the Corporation one trade association whose members are engaged in asset-based financial services (secured commercial financing, factoring or invoice discounting), and which (i) is incorporated or headquartered in the United Kingdom and (ii) has as a member in good standing of such trade association at least one Regular Member of the Corporation. The International Association Member shall have all the privileges of a Regular Member *except* (i) the Director designated by the International Association Member to serve on the Board of Directors of the Corporation must be employed by a Regular Member (other than the International Association Member) in good standing of the Corporation and (ii) such Director shall serve as a member of the Executive Committee without standing for election thereto (provided, however that no person who shall have served for five consecutive years as such Executive Committee member shall be eligible to serve on the Executive Committee until one year shall have elapsed). The Executive Committee shall have final authority over all matters arising in connection with the International Association Member including, without limitation, dues level and special limitations on privileges of membership not otherwise expressly set forth in this Section 2.2A. Any inconsistency between other provisions of these By-laws and this Section 2.2A shall be resolved in a manner which gives full effect to the intent and purpose of this Section 2.2A.

Section 2.3 Good Standing; Privileges of Membership.

(a) **Good Standing.** A Member which shall have paid all dues and other indebtedness, if any, to the Corporation not later than 60 days after the billing date and which shall otherwise be in compliance with these By-laws and any standards of conduct adopted by the Board of Directors shall be considered to be in good standing with the Corporation.

(b) **Privileges of Membership.** Except as otherwise provided below, Members in good standing shall be entitled to all rights and privileges of membership and shall be entitled to receive the services and benefits provided by the Corporation and to participate in its activities. Directors designated as Limited Members pursuant to Section 3.1 and 3.2 shall be entitled to attend meetings of the Board and, if appointed, to serve as voting members on one or more committees (other than the Executive Committee or committees on which a director from an affiliated Regular Member sits). At meetings of the Board of Directors, such Directors shall have no voting rights with respect to any issue whatsoever, shall not be included or counted for the purpose of determining a quorum for the transaction of business at any meeting, and shall not be eligible for election to office. Members not in good standing shall not be entitled to attend or vote at the Annual Meeting or have any other rights or privileges of membership.

Section 2.4 Procedures for Admission. Each application for membership and each designation of a representative to serve as Director shall be in writing on a form provided by the Secretary and shall set forth in reasonable detail the information therein required to be provided. Such application shall contain an acknowledgment that the applicant and its representative have received and agree to be bound by these By-laws and any standards of conduct adopted by the

Board of Directors, each as in effect from time to time. Applications shall be considered for approval either (i) at the next meeting of the Board of Directors or Executive Committee, whichever shall next meet, or (ii) by action of the Executive Committee pursuant to Section 4.6 (b), following recommendation for membership by the Membership Committee. In the event that an applicant or its representative is rejected for membership, the Secretary shall within 14 days advise such applicant or representative of such vote and the reasons for such rejection. Thereupon, the applicant and its representative shall be entitled to appear with counsel, if desired before the Executive Committee at its next regular or special meeting and present its appeal of the decision.

Section 2.5 Resignation and Expulsion.

(a) **Resignation.** Any Member or the Director serving as its representative may resign at any time by submitting a written resignation to the Executive Director and paying whatever indebtedness may be owing to the Corporation.

(b) **Expulsion.** Upon the recommendation of the Executive Committee or petition signed by not less than 10 percent of the Regular Members in good standing, any Member or the Director serving as its representative, or both, may be expelled, suspended or otherwise disciplined by a vote of two-thirds of the Executive Committee (i) for misconduct in the Member's or Director's relations to the Corporation (including, but not limited to, delinquency in the payment of dues or other indebtedness to the Corporation for more than 90 days after the billing date), (ii) for conduct violative of any standards of conduct adopted by the Executive Committee or the Board of Directors or (iii) for conduct discreditable to the industry, and (iv) may be expelled if such Member shall cease to be engaged in providing secured commercial lending or factoring services. The Executive Committee may refer any such charges to one or more members of the Executive Committee for investigation, hearing, report and recommendation, and may act upon such report and recommendation in such manner as it deems in the best interests of the Corporation. At least 10 days before the Executive Committee takes a vote on such disciplinary action, such Member or Director shall be notified in writing by the Secretary, by notice mailed to the last known address of the Member, that such action is being considered by the Executive Committee. Such notice shall contain a detailed description of the charges and shall state the time and place to be heard thereon, with counsel, if desired by the Member or its representative Director.

(c) **Obligations.** Any Member who shall be expelled, or be suspended or otherwise disciplined, shall remain liable for all obligations to the Corporation existing at the time of expulsion, suspension or other disciplinary action, as the case may be. No such Member shall be entitled to any refund of dues or assessments.

(d) **Readmission.** The grounds for expulsion of a Member may be considered in any proceeding for readmission to membership.

Section 2.6 Chapters. The Executive Committee may, from time to time, establish Chapters of the Corporation in various geographic areas, upon such terms as it may determine in the best interest of the Corporation. The terms governing such chapters and their relationship with the Corporation may vary in some or all instances.

ARTICLE III BOARD OF DIRECTORS

Section 3.1 Representation of Members. The Members shall act through the Board of Directors on all matters requiring a vote of Members. Each Regular Member and Limited Member is entitled to designate one person as its representative to serve on the Board of Directors. A Director elected to an office (or a committee) shall continue to be a Director, and the Member for whom such person serves as representative shall not be entitled to another representative. At each Annual Meeting, the Board shall vote to confirm the representatives as members of the Board of Directors.

Section 3.2 Procedure for Appointment; Term of Office.

(a) **Procedures for Appointment.** Each Member desiring to be represented on the Board or to change its representative shall designate a representative in a written application delivered to the Secretary pursuant to Section 2.4.

(b) **Term of Office.** The term of each Director shall commence upon approval pursuant to Section 2.4 and shall terminate upon the like approval of the Director's successor or upon resignation or expulsion pursuant to Section 2.5.

Section 3.3 Regular Meetings.

(a) **Regular Meetings.** There shall be two regular meetings of the Board held during each calendar year, one of which shall be the Annual Meeting and the other of which shall be the Mid-Year Meeting.

(b) **Time and Place.** The Board or the Executive Committee shall designate the hour, date and place of any regular meeting.

(c) **Authority to Transact Business at Annual Meeting.** The following business shall be transacted at the Annual Meeting by the Board of Directors: (i) confirm Member representatives as members of the Board of Directors; (ii) elect officers; (iii) elect members of the Executive Committee; (iv) appoint auditors; and (v) transact any other business proper for action by the Board.

(d) **Authority to Transact Business at Mid-Year Meeting.** The following business shall be transacted at the Mid-Year Meeting by the Board of Directors: (i) approve members of the Nominating Committee; and (ii) transact any other business proper for action by the Board.

Section 3.4 Special Meetings.

(a) **Called By.** Special meetings may be called by the Executive Committee or by petition signed by not less than 10 percent of the Directors representing Regular Members in good standing stating the reasons for the meeting and, in each case, delivered to the Secretary of the Corporation.

(b) **Time and Place.** The hour, date and place of a special meeting shall be designated by the Executive Committee for any special meeting called by it and by the Secretary for all other special meetings. The date of a special meeting shall be not later than 45 days or less than 15 days from the date of delivery to the Secretary of the call of the meeting.

(c) **Agenda.** No business matters other than those specified in the notice sent to Directors with respect thereto shall be transacted at a special meeting.

Section 3.5 Quorum; Manner of Acting.

(a) **Quorum.** Directors representing twenty-five percent of the Regular Members in good standing shall constitute a quorum for the transaction of business. If a quorum is not present, a majority of the Directors present at the meeting and representing Regular Members in good standing may adjourn the meeting from time to time without further notice.

(b) Except as otherwise provided herein or required by Delaware law, the act of a majority of the Directors present at a meeting at which there is a quorum shall be the act of the Board.

(c) **Manner of Acting.** Any action which may be taken at a meeting of the Board may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken shall be signed by Directors representing Regular Members in good standing having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all such Directors were present and voted. Prompt notice of the taking of such action without a meeting shall be given to all Members.

Section 3.6 Notice of Meetings. The Secretary shall cause written notice of the hour, date and place of each meeting of Directors, and a brief description of the business to be transacted, to be given by regular mail to all Members at their last known address not less than 10 and not more than 30 days prior thereto.

Section 3.7 List of Regular Members. A complete list of the Regular Members in good standing and their representatives serving as Directors, arranged in alphabetical order with the residence of each, shall be prepared by the Secretary and shall at all times during the usual hours for business be open to the examination of any Regular Member in good standing.

Section 3.8 Voting. Except as provided in Section 3.9, each Director representing a Regular Member in good standing shall be entitled to one vote upon each question requiring a vote or consent.

Section 3.9 Procedures for Elections.

(a) Annual Election. At the Annual Meeting, officers and elected members of the Executive Committee shall be elected pursuant to the following procedures: (i) a list of candidates nominated by the Nominating Committee pursuant to Section 5.4(a) shall be delivered to the Secretary not less than 100 days prior to the Annual Meeting; (ii) the Secretary shall mail such list to all Regular Members in good standing not less than 90 days prior to the Annual Meeting; (iii) additional nominees may be added by petition signed by at least 10 Directors representing Regular Members in good standing and received by the Secretary not less than 40 days prior to the Annual Meeting; (iv) the Secretary shall mail a list of nominations received pursuant to and in accordance with clauses (i) and (iii) to all Regular Members in good standing not less than 30 days prior to the Annual Meeting. No nominations shall be accepted from the floor except to provide a substitute nominee, if any, for any person nominated either by the Nominating Committee or by a petition in compliance with these By-laws, in the event such person dies or otherwise is unwilling or ineligible to serve. Voting shall be by written ballot. Unopposed nominees shall automatically be deemed to be elected to their respective positions. All opposed nominees shall be voted on with each Director representing a Regular Member in good standing being entitled to cast such number of votes for nominees to the same office as there are openings for such office; provided, however, that no Director shall be entitled to cumulate votes so as to cast more than one vote for any candidate for a position. A majority of votes cast on any ballot shall be required to elect a nominee. Successive run-off ballots, deleting therefrom the name of the candidate with the fewest votes, shall be taken to the extent necessary to fill all open positions.

(b) Appointment To Nominating Committee. At the Mid-Year Meeting, the President shall place into nomination for approval the slate of appointments to the Nominating Committee selected pursuant to Section 5.4(a)(1). Such slate shall be included in the notice of the meeting. If the slate is disapproved by a majority of the votes cast, the President shall thereupon submit for approval one or more other slates of appointments until a slate is approved.

(c) Election Supervision. The General Counsel shall supervise all elections; may appoint such persons (not standing for election) to perform such tasks as the General Counsel may deem appropriate; shall establish procedures not inconsistent with these By-laws; and shall determine and report to the Chairman of the Board the results of each election, which determination shall be final.

Section 3.10 Rules of Order. The rules of procedure for all meetings shall be those contained in Robert's Rules of Order, as revised from time to time, unless such rules are contrary to or inconsistent with these By-laws, the Certificate of Incorporation or Delaware law.

ARTICLE IV EXECUTIVE COMMITTEE

Section 4.1 Duties and Authority. Except as otherwise expressly provided by these By-laws, (i) the business and affairs of the Corporation shall be managed and controlled by its Executive Committee (the "Committee") and (ii) the Committee shall have and exercise the authority conferred by Delaware law on the governing body of a Delaware non-stock, non-profit corporation.

Section 4.2 Size and Constitution.

(a) **Size.** The Committee shall be comprised of the officers (except that the Executive Director, the Secretary and the General Counsel shall be non-voting), the immediate Past Chairman of the Board of the Corporation, and 23 other persons. The President shall serve as chairperson of the Executive Committee.

(b) **Constitution.** Only Directors representing Regular Members in good standing shall be eligible for election to and to serve on the Committee; provided, however, that no person who shall have served five consecutive years as an elected member of the Committee shall be eligible for election to the Committee until at least one year shall have elapsed.

Section 4.3 Term. Voting Committee members elected pursuant to Section 3.9 shall serve, commencing the January 1 immediately following their election, for a term of one year or until their respective successors shall be elected and shall qualify.

Section 4.4 Vacancies. Any vacancy occurring in the Committee may be filled by the Committee through the appointment of a Director of a Regular Member to serve on the Committee for the unexpired term relating to the vacancy.

Section 4.5 Meetings; Notice. The Committee shall meet at least two times each calendar year at the call of the Chairman of the Board, the President or at least five members of the Committee, in any case on not less than ten days' notice from the Secretary. No notice shall be required for meetings set at the last previous meeting at which a quorum was present.

Section 4.6 Quorum; Manner of Acting.

(a) **Quorum.** A majority of the voting members of the Committee shall constitute a quorum for the transaction of business. If a quorum is not present, a majority of the voting members present may adjourn the meeting from time to time without further notice.

(b) **Manner of Acting.** Except as otherwise provided herein or required by Delaware law, the act of a majority of the voting members of the Committee present at a meeting at which there is a quorum shall be the act of the Committee. The Committee shall be permitted to act by conference telephone or personal attendance at a duly convened meeting, and in lieu of such manner of acting, the Committee may act by unanimous written consent or such other manner as is permissible under Delaware law, for a board of directors which is the governing body.

Section 4.7 Removal. The Committee may in its discretion, by an affirmative vote of two-thirds of all its voting members, remove any of its elected members for cause.

ARTICLE V COMMITTEES

Section 5.1 Designation of Committees. The Executive Committee shall have power to create committees of the Corporation, in addition to the standing committees designated by these By-laws; to define, limit or enlarge their functions; and to abolish any such committee other than those designated by these By-laws, except as otherwise provided in these By-laws. Each such other committee shall include not fewer than three Directors and other qualified persons appointed by the President and removable by the President at any time in the President's sole discretion, with or without cause. The President may appoint to any such committee, other than a standing committee, any employee of any Regular Member or Limited Member who is approved for committee membership by the designated representative on the Board of Directors of the Corporation of such Regular Member or Limited Member. Any such employee member of a committee who is not a Director shall be eligible to vote at meetings of the committee and may serve as chairperson of the committee or in any other capacity.

Section 5.2 Limitation on Committee Service by Directors. Directors shall be eligible to serve concurrently on no more than three committees (including focus committees) of the Corporation; provided, however, that for purposes hereof, service on the Executive, Management and Nominating Committees, and any *ad hoc* committee created by the Executive Committee for a term of not more than one year, shall be disregarded.

Section 5.3 Designation of Committee Chairpersons. Unless otherwise designated in these By-laws, the President shall appoint, and may remove with or without cause at any time in the President's sole discretion, the chairpersons for all committees of the Corporation. The President shall, in selecting chairpersons, give due consideration to the policy of the Corporation, without being bound thereby, of having chairpersons serve for two consecutive calendar years. In no event shall any chairperson serve for more than three consecutive calendar years.

Section 5.4 Standing Committees. The following standing committees are hereby created.

(a) Nominating Committee.

(1) **Composition.** The Nominating Committee shall be comprised of the Chairman of the Board (who shall serve as the chairperson of the Nominating Committee) and eight other Directors, none of whom shall be an officer of the Corporation, appointed by the President and approved by the Board pursuant to Section 3.9 (b). The immediate Past Chairman of the Board of the Corporation shall also serve as a non-voting, *ex-officio* member of the Nominating Committee.

(2) **Procedure for Selection of Nominees.** In selecting candidates for election to office and to the Executive Committee, the Nominating Committee may consult the views of the then serving members of the Executive Committee but shall not be bound thereby. The Nominating Committee shall designate one Vice Presidential nominee as the "First Vice

President" and one as the "Vice President-Finance," and shall, in selecting candidates to stand for election as First Vice President, President and Chairman, give due consideration to the policy of the Corporation, without being bound thereby, of having the Vice President-Finance succeed to First Vice President, the First Vice President succeed to President, and the President succeed to Chairman of the Board. Candidates shall, to the extent reasonably possible, be representative of the Members of the Corporation insofar as geographical area and line of business are concerned. If a member of the Nominating Committee has been proposed, or is expected to be proposed, as a candidate for an office, such member shall not participate in the deliberations or vote with respect to such office.

(3) **Nomination of Officers and Executive Committee.** At the Annual Meeting, the Nominating Committee shall place in nomination a slate of candidates for election as officers and members of the Executive Committee; provided, however, that no person shall be nominated who shall not have previously consented thereto.

(b) **Finance Committee.** The Finance Committee shall be comprised of not less than five Directors appointed by the President and shall be responsible for preparing the budget for the Corporation each year and shall thereupon recommend changes in dues to the Board of Directors at the Annual Meeting.

(c) **Audit Committee.** The Audit Committee shall be comprised of not less than three Directors appointed by the President and approved by the Executive Committee and shall be responsible for reviewing the Corporation's annual audit report and accounting procedures and practices and performing such other duties as shall be defined by the Executive Committee.

(d) **Management Committee.**

(1) **Composition.** The Management Committee shall be comprised of all officers of the Corporation and the immediate Past Chairman of the Board of the Corporation, but the Executive Director, the Secretary and the General Counsel shall not have the right to vote. The Chairman of the Board shall serve as its chairperson.

(2) **Authority.** Between meetings of the Executive Committee, the Management Committee shall have and may exercise the authority of the Executive Committee in the management of the business and affairs of the Corporation, subject to such limitations as may be imposed by law, by the Board or by the Executive Committee, and such actions shall have such authority and effect as if taken by the Executive Committee. Wherever the Executive Committee is authorized or directed herein (by specific reference or not) to take action, such action may be taken by the Management Committee with the same authority and effect as if taken by the Executive Committee; provided, however, that the Management Committee shall not have the power or authority to amend the charter or these By-laws, to expel a Member or to remove a Director or officer and shall not exercise any power expressly denied to an executive committee under Delaware law.

(e) Membership Committee. The Membership Committee shall be comprised of not less than five Directors appointed by the President and shall be responsible for recommending applicants for membership in the Corporation and verifying that all requirements for membership have been satisfied.

Section 5.5 Quorum; Manner of Acting.

(a) Quorum. A majority of the voting members of a committee shall constitute a quorum for the transaction of business. If a quorum is not present, a majority of the voting members present may adjourn the meeting from time to time without further notice.

(b) Manner of Acting. Except as otherwise provided herein or required by Delaware law, the act of a majority of the voting members of the committee present at a meeting at which there is a quorum shall be the act of the committee. A committee shall be permitted to act in lieu of a meeting by unanimous written consent, conference telephone call or such other manner as is permissible under Delaware law.

**ARTICLE VI
FOCUS COMMITTEES**

Section 6.1 Designation of Focus Committees. In addition to the creation of regular committees of the Corporation, the Executive Committee shall have power and discretion to create focus committees which shall be conducted in the same manner as regular committees of the Corporation (but subject to the governance limitations herein), in addition to the standing focus committees designated by these By-laws; to define, limit or enlarge their functions; and to abolish any such focus committee other than those designated by these By-laws, except as otherwise provided in these By-laws. Membership in focus committees shall be voluntary, not appointed (except as to the chairpersons), but shall be limited to any employee of any Regular Member or Limited Member. All members of a focus committee shall be eligible to vote at meetings of the focus committee and may serve as chairperson of the focus committee or in any other capacity.

Section 6.2 Designation of Focus Committee Chairpersons. The President shall appoint, and may remove with or without cause at any time in the President's sole discretion, the chairpersons for all focus committees of the Corporation. The President shall, in selecting chairpersons, give due consideration to the policy of the Corporation, without being bound thereby, of having chairpersons serve for two consecutive calendar years. In no event shall any chairperson serve for more than three consecutive calendar years.

Section 6.3 Maintenance of Membership Rolls and Other Information. The chairperson of each focus committee shall be responsible for maintaining an accurate record of the membership roll and activities of the focus committee and shall provide such information regularly to the Executive Director of the Corporation.

Section 6.4 Standing Focus Committees. The following standing focus committees are hereby created: (i) Factoring/Traditional; (ii) Factoring/Specialty; (iii) Floor Plan Financing; and (iv) Small/Independent Finance Companies.

Section 6.5 Quorum; Manner of Acting. A majority of the members of a focus committee present at a meeting of such committee shall constitute a quorum for the transaction of business. Focus committees may not conduct official business of the Corporation and, accordingly, no provisions are made in these By-laws for acts in lieu of a meeting, conference telephone call or other actions as are permissible under Delaware law.

ARTICLE VII PAST CHAIRMEN'S COUNCIL

Section 7.1 Constitution. The Past Chairmen's Council shall consist from time to time of all living persons who have served as Chairman of the Board of Directors of the Corporation, regardless of whether such persons are still connected in any way with a Member of the Corporation.

Section 7.2 Participation and Benefits. Each member of the Past Chairmen's Council may attend all meetings of Members and the Board of Directors, may participate in the deliberations thereof, but without vote, and shall receive, gratis, a ticket to each Annual Convention and all general mailings to the Members of the Corporation, including THE SECURED LENDER.

Section 7.3 Representative Functions. The Corporation may from time to time invite members of the Past Chairmen's Council to engage in specified public or other activities and to render such other services and advices as are considered to be advantageous to the Corporation and its Members in light of the experience and prestige possessed by the members of the Past Chairmen's Council.

ARTICLE VIII OFFICERS

Section 8.1 General. The officers of the Corporation shall be a Chairman of the Board, President, five Vice Presidents (including a First Vice President and a Vice President-Finance), Secretary, Executive Director, a General Counsel, and such other officers as the Executive Committee may from time to time determine. The terms, duties and powers of such other officers shall be determined by the Executive Committee. The functions of the Secretary may be performed by the Executive Director. All of the officers (other than the Executive Director, the Secretary and the General Counsel) shall be Directors of the Corporation.

Section 8.2 Election; Term of Office.

(a) **Election.** The officers of the Corporation shall be elected annually at the Annual Meeting by the Board of Directors.

(b) Term of Office. Each officer elected pursuant to Section 3.9 shall hold office, commencing January 1 immediately following the officer's election, for a term of one year or until the officer's successor is elected and qualified, or the officer's death, resignation or removal. The Chairman of the Board, President and First Vice President shall not be eligible for re-election to the same office if they will have served in such office for one year at the date any new term would commence. No Vice President shall be eligible for re-election to the office of Vice President, if such Vice President will have served as a Vice President for five consecutive years at the date any new term would commence. If at any time two or more Regular Members are affiliated with each other as "subsidiary" or "parent" corporations or organizations as defined in Section 2.2 above, then only the Director of one such affiliated Member shall be eligible for election or to serve as an officer of the Corporation.

Section 8.3 Removal and Resignation. Any officer may be removed with or without cause by the Board of Directors upon recommendation of the Executive Committee or with cause by the Executive Committee. Any officer may resign at any time by giving written notice to the Board of Directors, to the President or to the Secretary. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.4 Vacancies. A vacancy in any office because of death, resignation, removal or any other cause may be filled for the unexpired portion of the term by the Executive Committee.

Section 8.5 Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Members, the Board of Directors, the Management Committee and the Nominating Committee. The Chairman shall perform such other duties and have such other powers as may from time to time be assigned by the Board of Directors, the Executive Committee or the Management Committee.

Section 8.6 President. The President shall preside at all meetings of the Executive Committee and shall, in the absence of the Chairman of the Board, preside at all meetings of the Members, the Board of Directors, the Management Committee and the Nominating Committee. The President shall be a member, without vote (except that the President shall have voting powers on the Board of Directors, Executive Committee and Management Committee), of all committees (other than the Nominating Committee) and shall exercise such other powers as may from time to time be assigned by the Board of Directors, the Executive Committee, the Management Committee or the Chairman of the Board. The President shall appoint the members of all committees and the chairpersons of all committees and focus committees, except as may otherwise be prescribed by these By-laws.

Section 8.7 Executive Director. The Executive Director shall be the principal administrative officer of the Corporation. The Executive Director shall be a salaried employee of the Corporation in charge of the daily administrative matters and operations of the Corporation and shall perform such duties and have such powers as may from time to time be assigned by the Board of Directors, the Executive Committee, the Management Committee, the Chairman of the Board or the

President. The Executive Director shall employ and may terminate the employment of members of the staff necessary to carry on the work of the Corporation. The Executive Director shall define the duties of the staff, supervise their performance, establish their titles and delegate those responsibilities of management as shall, in the Executive Director's judgment, be in the best interest of the Corporation. Any participation on a committee shall be without vote.

Section 8.8 Vice Presidents. The First Vice President, the Vice President-Finance and thereafter the other Vice Presidents, in order of their seniority, shall, in the absence of the President, perform the President's duties. Seniority shall be determined first by tenure as a Vice President, then by tenure on the Executive Committee and then by length of service as a Director. Any Vice President shall perform such other duties as may from time to time be assigned by the Board of Directors, the Executive Committee, the Management Committee, the Chairman of the Board or the President.

Section 8.9 Vice President-Finance. If required by the Executive Committee, the Vice President-Finance shall give a bond for the faithful discharge of the officer's duties, in such sum and with such surety or sureties as the Committee shall determine, the cost of such bond to be borne by the Corporation. The Vice President-Finance shall perform or cause to be performed the following duties: (i) have custody of and be responsible for all funds and assets of the Corporation; (ii) receive and give receipts for moneys due and payable to the Corporation from any source and deposit all such moneys in the name of the Corporation in such banks, trust companies or other depositories as shall be selected by the Executive Committee; (iii) pay all proper bills of the Corporation; (iv) at each meeting of the Executive Committee, or upon its request, present for consideration a written report of the Corporation's financial status and operations; (v) prior to the Mid-Year Meeting, have the financial records and affairs audited and certified by the auditor selected by the Board of Directors at the last Annual Meeting; (vi) participate, without vote, in meetings of the Finance Committee; and (vii) in general, perform all duties incident to the office of Vice President-Finance and such other duties as from time to time may be assigned by the Board of Directors, the Executive Committee, the Management Committee, the Chairman of the Board or the President.

Section 8.10 Secretary. The Secretary shall (i) attend and keep the minutes of all meetings of the Board of Directors, the Executive Committee and the Management Committee; (ii) see that all notices are duly given in accordance with the provision of these By-laws or as required by law; (iii) conduct the correspondence of the Corporation; (iv) be custodian of the corporate records and of the seal of the Corporation and see that the seal of the Corporation is affixed to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized under the provisions of these By-laws; (v) keep a register of the names and post office addresses of each Member, which shall be furnished to the Secretary by such member; and (vi) in general, perform all duties incident to the office of Secretary and such other duties as may from time to time be assigned by the Board of Directors, the Executive Committee, the Management Committee, the Chairman of the Board or the President. Any participation on a committee shall be without vote.

Section 8.11 General Counsel. The General Counsel shall not be an officer or a director of a Member. The General Counsel shall supervise elections by the Board of Directors pursuant to Section 3.9(c) and shall perform such other duties, appropriate to the General Counsel's office, as shall from time to time be assigned by the Board of Directors, the Executive Committee, the Management Committee, the Chairman of the Board or the President. The General Counsel shall report activities undertaken by the General Counsel at each meeting of the Executive Committee and the Board. Any participation on a committee shall be without vote.

Section 8.12 Compensation. The Management Committee, irrespective of any personal interest of any of the members thereof, shall have authority to establish reasonable compensation for all salaried employees, the Executive Director, the Secretary, and the General Counsel for their services to the Corporation. All other officers, including any honorary officers, shall, unless otherwise ordered by the Board of Directors, serve without compensation.

ARTICLE IX FINANCES

Section 9.1 Fiscal Year. The fiscal year of the Corporation shall begin on January 1st of each year and end on December 31st of such year.

Section 9.2 Budget. The Finance Committee shall prepare a budget for the Corporation for the ensuing fiscal year and shall submit the same to the Executive Committee for its approval.

Section 9.3 Dues and Assessments. The Board of Directors, upon the recommendation of the Executive Committee, shall, from time to time, fix the dues and assessments, if any, of the Members and the payment terms with respect thereto.

Section 9.4 Delinquencies. Any Member who shall fail to pay dues or assessments for a period of 60 days after the billing date shall be delinquent. If payment of dues or assessments, as the case may be, is not made within the next succeeding 30 days, the delinquent Member may be expelled, suspended or otherwise disciplined pursuant to Section 2.5(b).

ARTICLE X CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 10.1 Contracts. The Executive Committee may authorize any one or more officers or agents to enter into any contract or execute and deliver any instrument and affix the corporate seal in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instruments.

Section 10.2 Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Corporation shall be signed by such officers or agents of the Corporation and in such manner as shall from time to time be determined by the resolution of the Executive Committee.

Section 10.3 Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Executive Committee may select.

Section 10.4 Gifts. The Executive Committee may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Corporation.

ARTICLE XI RECORDS

The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of the Board of Directors, Executive Committee, other committees and focus committees and shall keep at its registered office or principal office a record of the names and addresses of the Members by classification. All books and records of the Corporation may be inspected by any Member, or any Member's agent or attorney, for any proper purpose at any reasonable time.

ARTICLE XII MISCELLANEOUS

Section 12.1 Amendments. Notwithstanding Section 3.5, any provision of these By-laws may be altered, amended or repealed from time to time by not less than a majority of the Board of Directors.

Section 12.2 Indemnification. Each person who at any time is or shall have been a Director, officer, employee or agent of this Corporation, or is or shall have been serving at the request of the Corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the Corporation in accordance with and to the full extent permitted by the Delaware General Corporation Law as in effect at the time of adoption of these By-laws or as amended from time to time. Expenses (including attorneys' fees) incurred by a Director, officer, employee or agent in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director, officer, employee or agent to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Section 12.2. The foregoing rights of indemnification and advancement of expenses shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any agreement, vote of Directors or disinterested members of the Executive or Management Committee or otherwise. The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 12.2 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person. If authorized by the Executive Committee,

the Corporation may purchase and maintain insurance on behalf of any person to the full extent permitted by the Delaware General Corporation Law as in effect at the time of the adoption of these By-laws or as amended from time to time.

Section 12.3 Seal. The corporate seal, an impression of which is set forth in the margin of this page, shall have inscribed thereon the name of the Corporation and the words "CORPORATE SEAL" and "DELAWARE," and it shall otherwise be in the form approved by the Executive Committee. Such seal may be used by causing it, or a facsimile thereof, to be impressed or affixed or otherwise reproduced.

Section 12.4 Proxies. Each Member of the Corporation may, through its representative director, exercise its voting right in person or by proxy at any meeting of the Board of Directors.



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