

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>  <b>RHODIUM ENCORE LLC., et al., Debtors.</b>	<b>Bankruptcy Court for the Southern District of Texas Chapter 11 Case No. 24-90448-(ARP)  (Jointly Administered)</b>
<b>345 PARTNERS SPV2 LLC, GRANT FAIRBAIRN, AS TRUSTEE AND ON BEHALF OF GRANT FAIRBAIRN REVOCABLE TRUST, NINA FAIRBAIRN, AS TRUSTEE AND ON BEHALF OF NINA CLAIRE FAIRBAIRN REVOCABLE TRUST, RICHARD FULLERTON, WILLIAM HO, AS TRUSTEE AND ON BEHALF OF GR FAIRBAIRN FAMILY TRUST, NCF EAGLE TRUST, GRF TIGER TRUST, AND NC FAIRBAIRN FAMILY TRUST, SCOTT KINTZ, AS TRUSTEE AND ON BEHALF OF KINTZ FAMILY TRUST, JACOB RUBIN, TRANSCEND PARTNERS LEGEND FUND LLC, VALLEY HIGH LP, JERALD WEINTRAUB, AS TRUSTEE AND ON BEHALF OF JERALD AND MELODY HOWE WEINTRAUB REVOCABLE LIVING TRUST DTD 02/05/98, AS AMENDED, AND MIKE WILKINS, AS TRUSTEE AND ON BEHALF OF WILKINS-DUIGNAN 2009 REVOCABLE TRUST  Plaintiffs,   vs.</b>	<b>Bankruptcy Court for the Northern District of Texas  Adv. Pro. No. 25-04008</b>



<p><b>NATHAN NICHOLS, CHASE BLACKMON, CAMERON BLACKMON, NICHOLAS CERASUOLO, AND IMPERIUM INVESTMENTS HOLDINGS, LLC,</b></p>	
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**Defendants,**

<p><b>SPECIAL COMMITTEE OF THE BOARD OF DIRECTORS OF RHODIUM ENTERPRISES, INC.</b></p>	
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**Intervenor-Defendant.**

**INTERVENOR-DEFENDANT SPECIAL COMMITTEE OF THE BOARD OF  
DIRECTORS OF RHODIUM ENTERPRISES, INC.’S BRIEF IN SUPPORT  
OF DEFENDANTS’ MOTION TO TRANSFER VENUE AND IN OPPOSITION  
TO PLAINTIFFS’ MOTION TO REMAND**

**INTRODUCTION**

The Plaintiffs in this matter allege that they are investors in Rhodium Enterprises, Inc. and its corporate affiliates. The Defendants (as defined below) are current directors, officers, and shareholders in those entities. Rhodium Enterprises, Inc. (“Rhodium Enterprises”) and certain of its corporate affiliates (as defined below, the “Debtors”), including those entities in which Plaintiffs allege they have invested, are currently parties to bankruptcy proceedings pending in the United States Bankruptcy Court for the Southern District of Texas. Those proceedings are being jointly administered under the caption *In re Rhodium Encore LLC, et al.*, Case No. 24-90448 (ARP) (Bankr. S.D. Tex.), filed August 24, 2024 and August 29, 2024 (the “Bankruptcy Case”).<sup>1</sup>

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<sup>1</sup> The “Debtors” include: Rhodium Encore LLC, Jordan HPC LLC, Rhodium JV LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium 30MW LLC, Rhodium Enterprises, Inc., Rhodium Technologies LLC, Rhodium Renewables LLC, Air HPC LLC, Rhodium Shared Services LLC, Rhodium Ready Ventures

A Suggestion of Bankruptcy was filed in this matter when it was pending in Tarrant County, Texas on December 13, 2024, available in this action at ECF No. 1-5. In that filing, the Debtors notified the Court that “Debtors’ property includes causes of action that allege harm to the Debtors and their investors” and that any action to continue this proceeding would violate the automatic stay in the Bankruptcy Case.

Intervenor-Defendant the Special Committee of the Board of Directors of Rhodium Enterprises (the “Special Committee”) submits this brief in opposition to the Motion to Remand this action filed by Plaintiffs and in support of Defendants Nathan Nichols, Chase Blackmon, Cameron Blackmon, and Imperium Investments Holdings, LLC’s (collectively, “Individual Defendants,” and together with Defendant Nicholas Cerasuolo, the “Defendants”) Motion to Transfer Venue. In support, the Special Committee states as follows.

### **FACTS**

On August 28, 2024, the Board of Directors of Debtor Rhodium Enterprises (the “Enterprises Board”) determined that, in connection with the Debtors’ Chapter 11 filings, it was advisable and in the best interests of the Debtors and their stakeholders to establish a special committee of the

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LLC, Rhodium Industries LLC, Rhodium Encore Sub LLC, Jordan HPC Sub LLC, Rhodium 2.0 Sub LLC, Rhodium 10MW Sub LLC, Rhodium 30MW Sub LLC, and Rhodium Renewables Sub LLC.

Enterprises Board. (Schmeltz Decl. at ¶ 2.)<sup>2</sup> The Enterprises Board did so and authorized the Special Committee to take any action with respect to any Conflict Matter. (*Id.* at ¶ 3.)

A “Conflict Matter” is defined in the resolution creating the Special Committee as a matter in which a conflict of interest exists or is reasonably likely to exist between Rhodium Enterprises and any of its direct or indirect equity holders, affiliates, subsidiaries, directors, officers, or other stakeholders, or any affiliate or other related party of the foregoing (each a “Related Party” and, collectively, the “Related Parties”). (*Id.*) The actions that may be taken by the Special Committee, as determined in the sole judgment of the Special Committee, include, but are not limited to: (a) any release or settlement of potential claims or causes of action of Rhodium Enterprises or its subsidiaries, if any, against the Related Parties; and (b) investigating any past or current transaction that may involve a Conflict Matter. (*Id.*)

The Special Committee has acted since its appointment to investigate the Conflict Matters. Specifically, the Special Committee retained Barnes & Thornburg LLP (“Barnes”) as its counsel shortly after its appointment. (*Id.* at ¶ 4.) Since then, Barnes has conducted an extensive investigation under the Special Committee’s supervision covering fifteen (15) categories of allegations, which include potential claims of breaches of fiduciary duties relating to the

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<sup>2</sup> Citations to the “Schmeltz Decl.” refer to the Declaration of Trace Schmeltz supporting the Special Committee’s Motion to Intervene.

allegations in this action. (*Id.* at ¶ 5.) Barnes has substantially completed its investigation and continues to assist and advise the Special Committee within its authorized scope, including with respect to inquiries from stakeholders in the Debtors' Chapter 11 cases concerning Conflict Matters, the potential resolution of Conflict Matters, and the impact of any such resolutions on the Debtors' plan of reorganization. (*Id.* at ¶ 6.)

The Conflict Matters investigated by the Special Committee include numerous potential claims and causes of action against the Defendants. (*See id.* at ¶ 5.) Those claims fall within the Special Committee's area of responsibility because (i) the Defendants are unquestionably Related Parties and (ii) of the nature of the pre-bankruptcy transactions involved. As a result, the Special Committee has the authority and responsibility to investigate, assert, and—if necessary—resolve those Conflict Matters for the benefit of Rhodium Enterprises and its stakeholders.

## ARGUMENT

### **A. Plaintiffs' Claims Arise Out of the Same Facts and Circumstances as Conflict Matters Investigated by the Special Committee**

The facts and circumstances described in Plaintiffs' Petition are clearly bases for Conflict Matters, in that they involve Related Parties and past transactions involving the Debtors and those Related Parties. Case law establishes that the claims asserted by Plaintiffs in this matter are derivative claims belonging to the Debtors' bankruptcy estates.

Under Delaware law, the analysis for determining if a claim is derivative involves two questions: “(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?” *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004).<sup>3</sup> Though Plaintiffs have styled their claims here as direct, the Court is not bound by that characterization. *See, e.g., Zacarias v. Stanford Int’l Bank, Ltd.*, 945 F.3d 883, 900-901 (5th Cir. 2019) (“[Plaintiffs’ pleading of direct claims] is word play ... Plaintiffs-Objectors’ suits are derivative of and dependent on the receiver’s claims and compete with the receiver for the dollars in Willis’s and BMB’s pockets.”); *In re Dexterity Surgical, Inc.*, 365 B.R. 690, 702 (Bankr. S.D. Tex. 2007) (concluding Plaintiffs’ claims were “merely a clever restatement of a claim for breach of fiduciary duty”).<sup>4</sup> Indeed, Plaintiffs allege that the Defendants—fiduciaries and Related

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<sup>3</sup> Delaware law is relevant to the derivative claim analysis, because it is the state of incorporation of Rhodium Enterprises.

<sup>4</sup> Even though they are incorrectly restyled as direct claims, Plaintiffs also fail to establish standing to bring derivative claims. *See In re Highland Cap. Mgmt., L.P.*, No. 19-34054-SGJ-11, 2025 WL 854623, at \*\*12-13, n.55 (Bankr. N.D. Tex. March 18, 2025) (granting judgment on the pleadings for failure to state a claim by failing to meet derivative standing requirements despite pleading direct claims) (citing *7547 Corp. v. Parker & Parsley Dev. Partners*, 38 F.3d 211, 221 (5th Cir. 1994) (unitholders and limited partners may not sue directly under Texas law for wrongs suffered by the partnership); *In re Chiron Equities, LLC*, 552 B.R. 674, 687 (Bankr. S.D. Tex. 2016) (under Texas law, the court looks to the nature of the wrongs alleged, and if it is of indirect harm to the equity holder, through a diminution of the value of its interest by virtue of harm inflicted on the entity, the claim is derivative). The court in *Highland Capital Management* explained, “just because [plaintiff] alleges that it is asserting a direct, and not derivative, claim under Texas law, does not make it so: ‘a claim is not ‘direct’ simply because it is pleaded that way.’” *In re Highland Cap., Mgmt. L.P.*, 2025 WL 854623, at \*\*12-13.

Parties of the Debtors—harmed Rhodium Enterprises based on actions that were purportedly contrary to the best interests of the Debtors. For example:

- Petition at ¶ 47: “The Rollup Transaction should have resulted in Rhodium Enterprises owning approximately 44.4% of the economics of the Operating Companies, but Defendants’ self-dealing **caused Rhodium Enterprises to own only around 37.9%.**” (emphasis added);
- Petition at ¶ 49: “Defendants directed the movement of cash and assets (that could have been used to pay debt) **from Rhodium-related entities...**” (emphasis added);
- Petition at ¶ 52: “Defendants mismanaged and defrauded **Rhodium** in numerous other ways” including “embezzl[ing]”, “usurping” “corporate opportunities” belonged to Rhodium, and “pocketing” profits that “should have gone to **Encore.**”

Significantly, the harms alleged by Plaintiffs are not particularized to Plaintiffs, but instead fall on all stakeholders in Rhodium Enterprises. The alleged failure to disclose in Plaintiffs’ Riot Transaction claim (Petition at ¶¶ 54-57) would have harmed all similarly situated stakeholders, as would the alleged misrepresentations in their Roll-Up Transaction claim (*Id.* at ¶¶ 58-61).

The fact that Plaintiffs’ claims are based solely on actions that allegedly harmed Rhodium Enterprises (and its operations) makes them Conflict Matters within the purview of the Special Committee to investigate and resolve, capable of resolution only in the Bankruptcy Case. *See Torch Liquidating Tr. ex rel. Bridge Assocs. L.L.C. v. Stockstill*, 561 F.3d 377, 386 (5th Cir. 2009); *La. World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 245 (5th Cir. 1988). Indeed, most of the Plaintiffs have already filed proofs of claim in

the Bankruptcy Case based on the facts and circumstances set forth in their Petition, effectively conceding that those claims will need to be addressed in the Bankruptcy Case. [See ECF No. 13, Defs. Objection to Pls. Mot. to Remand at 9.]

The Special Committee, which as a subset of the Enterprises Board and therefore has a duty to all stakeholders of Rhodium Enterprises, has conducted an extensive investigation of numerous breach of fiduciary duty claims involving the Defendants and arising out of the same factual circumstances set out in Plaintiffs' Petition. (Schmeltz Decl. at ¶¶ 3-6.) Regardless of how they are specifically asserted, Plaintiffs' ultimately claim they put millions of dollars of value into the Debtors' estates, that the Defendants misused those funds while managing the Debtors, and now the estates cannot repay that value. These are creditor claims for recovery. The Special Committee is already ready pursuing these claims as appropriate for the benefit of all stakeholders. (*Id.* at ¶ 7.) Therefore, Plaintiffs' claims must be transferred to the Bankruptcy Court to be addressed in connection with the Bankruptcy Case.

**B. Plaintiffs' Claims are "Related To" the Bankruptcy Case and the Bankruptcy Court is Best Positioned to Evaluate Them.**

Plaintiffs' claims also unquestionably fall within the Bankruptcy Court's jurisdiction as claims "related to" the Bankruptcy Case. The Bankruptcy Court's jurisdiction over matters "related to" a bankruptcy case under 28 U.S.C. § 1334(b) is broad. The test for "related to" jurisdiction is whether the outcome of the proceeding could conceivably affect the estate being



administered in a bankruptcy action. *See, e.g., In re TXNB Internal Case*, 483 F.3d 292, 298 (5th Cir. 2007). Claims “relate to” a bankruptcy proceeding if the outcome could alter the debtor’s rights, liabilities, options, freedom of action, or could influence the administration of the bankrupt estate. *Id.*

Adjudication of Plaintiffs’ claims against the Defendants in this case has an obvious effect on the Debtors’ estates. As explained above, Plaintiffs have asserted multiple claims in the Bankruptcy Case on the same facts and theories as here. (*See* Schmeltz Decl. ¶¶ 8-9.) Those claims are unliquidated but asserted to be not less than tens of millions of dollars. In addition to the potential treatment of those claims, Plaintiffs are no doubt hoping that the outcome of this action will have a favorable preclusive effect on their claims in the Bankruptcy Case. If that hope were realized, the outcome of this action could have a substantial effect on the allowability and amount of a significant portion of the claims asserted in the Bankruptcy Case, which may in turn affect the distributions to other creditors and interest holders.

Therefore, even the very question of whether these claims are individual, derivative, within the Special Committee’s purview, or otherwise, should be resolved in the Bankruptcy Case given that the allegations obviously “relate to” the outcome of the Bankruptcy Case.<sup>5</sup>

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<sup>5</sup> In fact, bankruptcy courts have the authority to stay direct claims that “relate to” the bankruptcy proceeding’s subject matter and outcome, to ensure the claims are addressed in the order in which they belong. *See Fisher v. Apostolou*, 155 F.3d 876, 881–82 (7th Cir. 1998) (entering stay of proceedings where the plaintiffs’ claims were “to the same limited pool of money, in the possession of the same defendants, as a result of the same acts, performed by the same individuals, as part of the same conspiracy”); *In re Mem’l Ests., Inc.*, 950 F.2d 1364, 1368 (7th Cir. 1991) (explaining jurisdiction for stay includes claims affecting “the allocation of property among creditors”); *In re Juneau’s Builders*

### **C. Judicial Economy and Fairness are Best Served by Transferring Plaintiffs' Claims**

As the Individual Defendants have argued, the Bankruptcy Case is the most appropriate, fair, and efficient means of addressing Plaintiffs' claims. As noted above, most of the Plaintiffs filed proofs of claim in the Bankruptcy Case, which cover subject matter substantially similar to their claims in the present action. Plaintiffs no doubt named only the directors, officers, and Imperium—and not the Debtors—in a transparent attempt to get around the automatic stay imposed in the Bankruptcy Case.

Once a party files a proof of claim in bankruptcy, however, that party has consented to the bankruptcy court's jurisdiction to adjudicate the matter. *See, e.g., Langenkamp v. Culp*, 498 U.S. 42, 44 (1990) (“by filing a claim against a bankruptcy estate, the creditor triggers the process of ‘allowance and disallowance of claims,’ thereby subjecting himself to the bankruptcy court’s equitable power”); *In re Hudson Shipbuilders, Inc.*, 794 F.2d 1051, 1054 (5th Cir. 1986) (“by filing a proof of claim in the bankruptcy proceeding, [creditor] impliedly consented to the jurisdiction of the bankruptcy court, at least as to a determination of the validity and amount of the claim asserted”); *In re Raygoza*, 556 B.R. 813, 823 (Bankr. S.D. Tex. 2016) (same).

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*Ctr., Inc.*, 57 B.R. 254, 258 (Bankr. M.D. La. 1986) (“To get an injunction against a creditor prohibiting an action against a third party, therefore, the debtor must show that the creditor is not pursuing his legitimate right to collect from the third party, but rather is using the action against the third party primarily to pressure the debtor.”). Plaintiffs must then “await the bankruptcy court’s disposition of the common claim since the shareholder cannot measure its injury until then.” *Cf. Bankers Tr. Co. v. Rhoades*, 859 F.2d 1096, 1106 (2d Cir. 1988), *cert. denied*, 490 U.S. 1007, (1989); *In re Granite Partners, L.P.*, 194 B.R. 318, 325 (Bankr. S.D. N.Y. 1996), *corrected* (Apr. 16, 1996).

Even if this Court disagrees that the proofs of claim constitute consent to the Bankruptcy Case's jurisdiction, they nevertheless support the judicial economy of consolidating the claims in the Bankruptcy Case. The proofs of claim show—in Plaintiffs' own words—that their claims against the Debtors in the Bankruptcy Case and their claims against the Individual Defendants here are essentially the same. Allowing duplicative litigation to proceed in different courts creates the risk of inconsistent judgments, prolongs litigation, wastes the estate on duplicative legal expenses and competes for the funds available for recovery. *See Zacarias v. Stanford Int'l Bank, Ltd.*, 945 F.3d 883, 900-01 (5th Cir. 2019).

### CONCLUSION

WHEREFORE, for the reasons stated above, Intervenor-Defendant Special Committee respectfully requests this Court grant the Individual Defendants' Motion to Transfer and Deny Plaintiffs' Motion to Remand, and for such other relief as this Court deems just.

Dated: October 2, 2025

Respectfully submitted,

/s/ Trace Schmeltz  
Vincent P. (Trace) Schmeltz III  
(*pro hac vice*)  
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Special Committee of the Board of  
Directors of Rhodium Enterprises, Inc.*

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>  <b>RHODIUM ENCORE LLC., <i>et al.</i>, Debtors.</b>	<b>Bankruptcy Court for the Southern District of Texas Chapter 11 Case No. 24-90448-(ARP)  (Jointly Administered)</b>
<b>345 PARTNERS SPV2 LLC, GRANT FAIRBAIRN, AS TRUSTEE AND ON BEHALF OF GRANT FAIRBAIRN REVOCABLE TRUST, NINA FAIRBAIRN, AS TRUSTEE AND ON BEHALF OF NINA CLAIRE FAIRBAIRN REVOCABLE TRUST, RICHARD FULLERTON, WILLIAM HO, AS TRUSTEE AND ON BEHALF OF GR FAIRBAIRN FAMILY TRUST, NCF EAGLE TRUST, GRF TIGER TRUST, AND NC FAIRBAIRN FAMILY TRUST, SCOTT KINTZ, AS TRUSTEE AND ON BEHALF OF KINTZ FAMILY TRUST, JACOB RUBIN, TRANSCEND PARTNERS LEGEND FUND LLC, VALLEY HIGH LP, JERALD WEINTRAUB, AS TRUSTEE AND ON BEHALF OF JERALD AND MELODY HOWE WEINTRAUB REVOCABLE LIVING TRUST DTD 02/05/98, AS AMENDED, AND MIKE WILKINS, AS TRUSTEE AND ON BEHALF OF WILKINS-DUIGNAN 2009 REVOCABLE TRUST Plaintiffs,  vs.</b>	<b>Bankruptcy Court for the Northern District of Texas  Adv. Pro. No. 25-04008</b>

<b>NATHAN NICHOLS, CHASE BLACKMON, CAMERON BLACKMON, NICHOLAS CERASUOLO, AND IMPERIUM INVESTMENTS HOLDINGS, LLC, Defendants.</b>	
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### **DECLARATION OF TRACE SCHMELTZ**

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I, VINCENT P. (TRACE) SCHMELTZ III, declare as follows under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am a partner at the law firm of Barnes & Thornburg LLP (“Barnes”). I am lead counsel at Barnes in its retention and appointment to facilitate, assist and advise the Special Committee of the Board of Directors of Rhodium Enterprises, Inc., one of several debtors in bankruptcy proceedings pending in the United States Bankruptcy Court for the Southern District of Texas, which are being jointly administered under the caption *In re Rhodium Encore LLC, et al.*, Case No. 24-90448 (ARP) (Bankr. S.D. Tex.), filed August 24, 2024 and August 29, 2024 (the “Bankruptcy Action”).

2. On August 28, 2024, the Board of Directors of Rhodium Enterprises, Inc. (“Rhodium Enterprises” and the “Enterprises Board”) established a Special Committee after determining it was advisable and in the best interests of the Debtors and their stakeholders to so. In connection with that determination, the Enterprises Board appointed David Eaton as its initial member. On September 20, 2024, the Enterprises Board appointed Spencer Wells, another independent director, as a second member. A copy of the Enterprises Board resolutions appointing Mr. Wells

and further delineating the scope of the Special Committee's authority and responsibilities is attached as **Exhibit A**.

3. The Enterprises Board authorized the Special Committee to—as the Special Committee deems appropriate or desirable in its discretion—take any action with respect to any Conflict Matter. A “Conflict Matter” is defined as a matter in which a conflict of interest exists or is reasonably likely to exist between Rhodium Enterprises, on the one hand, and any of its direct or indirect equity holders, affiliates, subsidiaries, directors, officers, or other stakeholders, or any affiliate or other related party of the foregoing (each a “Related Party” and, collectively, the “Related Parties”). The actions that may be taken by the Special Committee, determined in the sole judgment of the Special Committee, include, but are not limited to: (a) any release or settlement of potential claims or causes of action of the Corporation or its subsidiaries, if any, against the Related Parties; and (b) the investigation of any past or current transaction that may involve a Conflict Matter.

4. The Special Committee retained Barnes as its counsel shortly after its appointment.

5. Since then, Barnes has conducted an extensive investigation under the Special Committee's supervision covering fifteen (15) categories of allegations, which include potential claims of breach of fiduciary duties relating to the allegations in this action.

6. Barnes has substantially completed its investigation and continues to assist and advise the Special Committee within its authorized scope, including with

respect to inquiries from stakeholders in the Debtors' Chapter 11 cases concerning Conflict Matters, the potential resolution of Conflict Matters, and the impact of any such resolutions on the Debtors' plan of reorganization.

7. The Special Committee is already pursuing these claims as appropriate for the benefit of all stakeholders.

8. As counsel for the Special Committee, Barnes is facilitating the Special Committee in its pursuit of claims against the Defendants, among other parties, to maximize the Debtors' estates for the benefit of their creditors, including Plaintiffs, and considering how to distribute the assets for the estate.

9. I have analyzed Plaintiffs' Petition and their claims overlap with and "relate to" the claims pursued by the Special Committee, and Plaintiffs' claims will inhibit the Special Committee's ability to collect for the Estate. They are claims to the same limited pool of money, in the possession of the same defendants, as a result of the same acts, performed by the same individuals, as part of the same conduct.

PURSUANT TO 28 U.S.C. § 1746, I VERIFY UNDER PENALTY OF PERJURY THAT THE STATEMENTS IN THIS DECLARATION ARE TRUE AND CORRECT AND BASED UPON MY PERSONAL KNOWLEDGE.

Dated this 2nd day of October, 2025.

/s/ Trace Schmeltz

Vincent P. (Trace) Schmeltz III



# EXHIBIT A

**WRITTEN CONSENT TO ACTION  
OF THE BOARD OF DIRECTORS  
OF RHODIUM ENTERPRISES, INC.**

September 20, 2024

**THE UNDERSIGNED**, Board of Directors (the “**Board**”) of Rhodium Enterprises, Inc., a Delaware corporation (the “**Corporation**”), hereby waives notice of a meeting of the Board and takes the following actions and adopts the following resolutions by written consent to action without a meeting pursuant to Section 3.09 of the Bylaws of the Corporation adopted May 6, 2021 and Section 141(f) of the Delaware General Corporation Law.

**WHEREAS**, on August 23, 2024, the Board approved and directed the filing of a voluntary Chapter 11 bankruptcy petition of certain direct or indirect subsidiaries of the Corporation as well as of as of August 28, 2024 (the “**Bankruptcy Filing**”);

**WHEREAS**, the Rhodium subsidiaries named or that will be named in the Bankruptcy Filing are: the Corporation, Rhodium JV LLC, a Delaware limited liability company, Rhodium Encore LLC, a Texas limited liability company, Rhodium 2.0 LLC, a Texas limited liability company, Rhodium 30MW LLC, a Texas limited liability company, Rhodium 10MW LLC, a Delaware limited liability company, Jordan HPC LLC, a Delaware limited liability company, Rhodium Technologies LLC, a Delaware limited liability company, Rhodium Renewables LLC, a Delaware limited liability company, Rhodium Ready Ventures LLC, a Delaware limited liability company, Rhodium Industries LLC, a Delaware limited liability company, Rhodium Shared Services LLC, a Delaware limited liability company, Rhodium Renewables Sub LLC, a Delaware limited liability company, Rhodium 30MW Sub LLC, a Delaware limited liability company, Rhodium Encore Sub LLC, a Delaware limited liability company, Rhodium 10MW Sub LLC, a Delaware limited liability company, Rhodium 2.0 Sub LLC, a Delaware limited liability company, Air HPC LLC, a Delaware limited liability company, and Jordan HPC Sub LLC, a Delaware limited liability company (collectively, the “**Debtors**”);

**WHEREAS**, in connection with the Bankruptcy Filing, and to facilitate restructuring efforts for the Debtors, the Board has determined in the exercise of its business judgment that it is advisable and in the best interests of the Debtors and their stakeholders to establish a special, independent committee of the Board, as set forth in these resolutions (the “**Special Committee**”);

**WHEREAS**, the Board determined in its good faith judgment that David Eaton should be appointed as a member of the Special Committee, and appointed Mr. Eaton as the sole member of the Special Committee in its resolutions of August 28, 2024;

**WHEREAS**, the Board has further determined in its good faith judgment that Spencer Wells does not have material business, close personal relationships, or other affiliations, or any history of any such material business, close personal relationships, or other affiliations, with the Debtors or the Corporation or any of its direct or indirect equity holders, affiliates, subsidiaries, directors, officers, or other stakeholders, or any affiliate or other related party of the foregoing (collectively, the “**Related Parties**”) that would cause him to be unable to (a) exercise independent judgment based on the Corporation’s best interests; or (b) make decisions and carry out his responsibilities as a Board member;

**WHEREAS**, the Board has determined in an exercise of its business judgment that it is advisable and in the best interests of the Corporation to appoint Spencer Wells as an additional member of the Special Committee; and

**WHEREAS**, the Board has determined in an exercise of its business judgment that it is advisable and in the best interests of the Corporation to delegate to the Special Committee: (a) the task of exploring various potential strategic and/or financial alternatives, which may include, without limitation, each of the following and any combination of the following: refinancing or new capital raising transactions, amendments to or restructuring of the existing indebtedness and other obligations of the Debtors; a potential sale of one or more of the Debtors or any of their assets; a business combination or change of control transaction; and implementation of a restructuring and recapitalization transaction for the Corporation (each, a “**Transaction**”) to the extent any of the foregoing may involve a Conflict Matter (as defined below); (b) authority on behalf of the Corporation to investigate, resolve, settle, or take other action with respect to any claims belonging to the Corporation that may constitute Conflicts Matters; and (c) certain other rights, authority, and powers in connection with any Conflict Matter; and the authority to investigate, resolve, settle, or take other action with respect to any past or current matter or transaction that may involve a Conflict Matter.

**NOW, THEREFORE, IT IS RESOLVED** that the Board hereby adopts the following resolutions:

**ESTABLISHMENT OF SPECIAL COMMITTEE; RELATED MATTERS**

**IT IS HEREBY RESOLVED**, that the Board has determined in the exercise of its business judgment that it is advisable and in the best interests of the Corporation and its stakeholders to establish the Special Committee; and be it hereby

**FURTHER RESOLVED**, that the Special Committee is hereby constituted and established, with the full power and authority with respect to any Corporation matters in which a conflict of interests exists or is reasonably likely to exist between the Corporation, on the one hand, and any Related Party, on the other hand (the “**Conflict Matters**”), as more fully set forth herein; and be it hereby

**FURTHER RESOLVED**, that the Special Committee shall consist of David Eaton and Spencer Wells, each of whom shall hold such position until his successor is duly elected and qualified or until his death, resignation, or removal; and be it hereby

**FURTHER RESOLVED**, that the Corporation’s obligations with respect to the appointment of Mr. Eaton and Mr. Wells to the Special Committee shall be the valid obligations of, and binding on, the Corporation; and be it hereby

**FURTHER RESOLVED**, that the form, terms, and provisions of the engagement letter to be entered into between the Company and Mr. Eaton, together with any schedules and exhibits attached thereto (the “**Engagement Letter**”), and the Company’s performance of its obligations under the Engagement Letter, be, and hereby are, in all respects, approved; and each of the Chief Executive Officer, the Chief Financial Officer, the President, and Secretary of the Corporation, and such other officers of the Corporation as may be designated by the Board or the foregoing officers (the “**Authorized Officers**”) be, and each hereby is, authorized and empowered to execute

and deliver the Engagement Letter in the name and on behalf of the Corporation, substantially in the form attached as Exhibit "A" hereto, with such changes therein and modifications and amendments thereto as the Authorized Officers may in his or her sole discretion approve, which approval shall be conclusively evidenced by the Authorized Officer's execution thereof; and be it hereby

**FURTHER RESOLVED**, that the Board hereby authorizes and empowers the Special Committee to investigate and determine, in the Special Committee's business judgment (upon advice of the Special Committee's legal counsel), whether any matter constitutes a Conflict Matter, and that any such determination shall be binding on the Corporation; and be it hereby

**FURTHER RESOLVED**, that the Board authorizes and empowers the Special Committee to, on behalf of the Board and as the Special Committee deems appropriate or desirable in its discretion, take any action with respect to the Conflict Matters, as determined in the sole judgment of the Special Committee, including, but not limited to: (a) exploring and making any and all decisions respecting all or any part of any Transaction to the extent it constitutes a Conflict Matter; (b) the investigation, resolution, settlement, or taking of other action with respect to any past or current matter or transaction that may involve a Conflict Matter; (c) the investigation, resolution, settlement or taking of other action with respect to any potential claims or causes of action of the Corporation or its subsidiaries, if any, against any of the Related Parties, to the extent such claims or causes of action constitute a Conflict Matter; (d) making any decisions or taking any actions respecting any other matter involving the Corporation or its subsidiaries in which a Related Party has an interest; (e) interviewing and soliciting information and views from management, representatives, consultants, advisors, or any other party in connection with any past or current matter or transaction which may involve a Conflict Matter that the Special Committee deems necessary and appropriate; and (f) requesting documentation and information regarding the Corporation's business, assets, properties, liabilities and business dealings with respect to any past or current matter or transaction which may involve a Conflict Matter that the Special Committee deems necessary and appropriate to review; and that the authorization in this paragraph shall control over the authorizations made by the Board with respect to the actions that may be taken by the Special Committee on August 28, 2024; and be it hereby

**FURTHER RESOLVED**, that the Special Committee shall control any attorney-client work product or other privilege belonging to the Corporation in connection with the Conflict Matters and as to whether any matter constitutes a Conflict Matter; and be it hereby

**FURTHER RESOLVED**, that the Board hereby (a) delegates to the Special Committee the authority and power to review, discuss, consider, negotiate, approve, and authorize the Corporation's entry into and consummation of a Transaction, solely to the extent that a Transaction constitutes a Conflict Matter, and (b) retains for itself (the Board) the authority and power to review, discuss, consider, negotiate, approve, and authorize the Corporation's entry into and consummation of a Transaction, solely to the extent that such a Transaction does not constitute a Conflict Matter; and be it hereby

**FURTHER RESOLVED**, that the Special Committee is authorized to take any and all actions with respect to any review, discussion, consideration, deliberation, examination, investigation, analysis, assessment, evaluation, exploration, response, and negotiation on behalf of the Corporation of the terms and conditions of any Transaction, to the extent that all or a portion of the Transaction constitutes a Conflict Matter, including, without limitation, to: (a) review and

evaluate any Transaction, to the extent that all or a portion of a Transaction constitutes a Conflict Matter, and consider whether or not it is fair to and in the best interests of the Corporation and its stakeholders to proceed with such a Transaction; (b) consult with the Corporation's management and the Corporation's advisors with respect to discussions and negotiations regarding the terms and conditions of a Transaction, to the extent that all or a portion of a Transaction constitutes a Conflict Matter, and other communications regarding any such Transaction; and (c) consider such other matters as may be requested by the Corporation or the Board or take such further actions or consider such other matters as it may deem reasonably appropriate or advisable in connection with the foregoing; and be it hereby

**FURTHER RESOLVED**, that the Special Committee shall have the power and authority to establish such rules of order and other administrative and ministerial matters as it may determine from time to time to be necessary or appropriate to its orderly functioning and its deliberations, and any and all materials related thereto, to the extent relating to a Conflict Matter, shall be kept confidential and not shared with any other members of the Board or management of the Corporation or any other party, other than any legal, financial, or other advisors or agents of the Special Committee; and be it hereby

**FURTHER RESOLVED**, that the Special Committee is authorized and empowered, at the expense of the Corporation, to retain and employ and to enter into agreements providing for the retention and employment of, or direct the Corporation to retain and employ and enter into contracts providing for the retention and employment of, legal, financial, and other advisors to advise and assist the Special Committee in connection with fulfilling its duties and functions as are authorized in these resolutions, and the Corporation hereby is authorized and empowered to pay or cause to be paid all reasonable fees, expenses, and disbursements of such legal and financial advisors and other agents or advisors; and be it hereby

**FURTHER RESOLVED**, that the Special Committee will regularly and timely update the Board at meetings regarding any investigation, analysis, and decisions made as to any Conflict Matters, *provided* that the Special Committee may withhold from any such update any information that Special Committee determines it is appropriate or necessary to withhold to fulfill its duties and obligations with respect to Conflict Matters, taking into account the confidentiality of the Special Committee's work; and be it hereby

**FURTHER RESOLVED**, that the Special Committee hereby is authorized and empowered to take any and all actions it deems necessary, advisable, or desirable to fully carry out, comply with, and effectuate the intent and accomplish the purpose of the resolutions herein, subject to any limitations imposed by applicable law or as expressly provided herein, including, without limitation, to be advised by counsel in the conduct of its affairs; and be it hereby

**FURTHER RESOLVED**, that the Board hereby delegates to the Special Committee, and hereby consents to any such matters as are approved by the Special Committee in accordance with, the authority and power granted hereby.

#### **GENERAL AUTHORIZATION**

**BE IT HEREBY FURTHER RESOLVED**, that the officers of the Corporation are hereby authorized in the name of the Corporation to execute and deliver all such necessary instruments or documents, if any, and take all such actions as such officer(s) shall determine to

be necessary or appropriate to carry out the intent and purposes of the foregoing resolutions (such determination to be conclusively, but not exclusively, evidenced by the execution and delivery of such instruments and documents or the taking of such actions by such officer(s); and be it hereby

**FURTHER RESOLVED**, that all actions taken consistent with purposes and intent of the foregoing resolutions be, and are, in all respects, hereby ratified, approved, confirmed and adopted.

**IN WITNESS WHEREOF**, the undersigned, being all of the directors of Rhodium Enterprises, Inc., a Delaware corporation, hereby adopt the foregoing resolutions and certify that such resolutions were adopted without a meeting, effective as of the date and year first written above.

Signed by:  
  
BD4E91FF0A1B4D7...  
Cameron K Blackmon

\_\_\_\_\_  
Chase A. Blackmon

\_\_\_\_\_  
David Eaton

\_\_\_\_\_  
Nathan B. Nichols

\_\_\_\_\_  
Jonas L. Norr

\_\_\_\_\_  
Renata K. Szkoda

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Cameron K Blackmon

DocuSigned by:

*Chase Blackmon*

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Chase A. Blackmon

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David Eaton

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Nathan B. Nichols

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Jonas L. Norr

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Renata K. Szkoda

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Cameron K Blackmon

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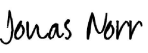
Chase A. Blackmon

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David Eaton

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Nathan B. Nichols

DocuSigned by:  
  
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Jonas L. Norr

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Renata K. Szkoda



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Cameron K Blackmon

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Chase A. Blackmon

DocuSigned by:  
  
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David Eaton

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Nathan B. Nichols

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Jonas L. Norr

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Renata K. Szkoda

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Cameron K Blackmon

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Chase A. Blackmon

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David Eaton

Signed by:  
  
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Nathan B. Nichols

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Jonas L. Norr

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Renata K. Szkoda

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Cameron K Blackmon

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Chase A. Blackmon

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David Eaton

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Nathan B. Nichols

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Jonas L. Norr

Signed by:

*Renata Szkoda*

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Renata K. Szkoda

**Exhibit A**

Engagement Letter

*(see attached)*

# Rhodium Enterprises, Inc.



August 23, 2024

David L. Eaton  
Via email: deatondirector@gmail.com

RE: Board of Directors Appointment

Dear David:

On behalf of the entire board, we are pleased that you have agreed to join the Board of Directors (the "Board") of Rhodium Enterprises, Inc (the "Company"). This letter will confirm our agreement (the "Agreement") regarding your service as a director of the Company (a "Director"), and shall be effective as of August 23, 2024, the date your appointment to the Board was approved. The terms of your service as a Director are as follows:

- In consideration for your service as a Director, the Company will pay to you \$20,000 per month, payable in advance, for each month during which you serve as a Director (the "Monthly Fee"), provided, however, that you shall be entitled receive the Monthly Fee for a minimum of three (3) months. In addition, the Company will pay you \$2,500 per diem for any day during which you are preparing to appear or appearing for a deposition, or preparing to appear or appearing in Court, provided, however, that such per diem amounts shall not exceed \$5,000 in the aggregate in any month. The Company will also reimburse you for reasonable and documented out-of-pocket expenses incurred by you in connection with your attendance at Board meetings, and other Company matters.
- You acknowledge that, to your knowledge, you do not possess material business, close personal relationships, or other affiliations, with the Company or any of its respective affiliates, subsidiaries, directors, managers, officers, major debtholders, or controlling equityholders that would cause you to be unable to (a) exercise independent judgment based on the best interests of the Company or (b) make decisions and carry out your responsibilities as a member of the Board in accordance with the terms of the Company's respective organizational documents and applicable law.
- You acknowledge that you do not know of any conflict or legal prohibition that would restrict you from becoming, or could reasonably be expected to preclude you from remaining, a member of the Board.
- You will be added as an insured party to the Company's Directors and Officers Liability insurance policies (the "D&O Insurance") and any future such policies entered into during the period of time you are a Director. The Company will continue to maintain D&O Insurance in form, substance, and amount reasonably acceptable to you at all times during your tenure as a Director. Further, with respect to or based upon any act or omission taken or omitted in any such capacity related to your service as a Director, the Company agrees to indemnify you and advance costs and expenses to the greatest extent permitted by law in accordance with the Company's by-laws and other formational documents of the Company.

- In conjunction with your role as a Director, the Company shall provide you with unfettered access to their employees, officers, directors, advisors, and other persons and professionals.
- You acknowledge that, in connection with your service as a Director, you will receive and have access to confidential and proprietary information regarding the Company and its subsidiaries (the “Confidential Information”). All such Confidential Information is provided solely for use in connection with your service as a Director, shall be treated by you as strictly confidential, and may not be disclosed by you to any third parties other than employees, advisors, and professionals of the Company, unless required by applicable law. Upon the request of the Board, you shall return or destroy (at the option of the Board) any such Confidential Information in your possession (and, in such case, you shall certify to the Board in writing that you have complied with such request). The foregoing obligations shall survive any termination of your service as a Director for any reason.
- You and the Company acknowledge that this letter agreement is governed by and shall be construed in accordance with laws of the state of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the state of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdictions other than the state of Delaware.
- You will be serving solely as a Director in accordance with the Bylaws of [the Company], and the Restated Certificate of Incorporation of the Company (copies of which are attached hereto as **Exhibit A** and **Exhibit B**, respectively), and not as an employee or officer of the Company. As such, you will be solely responsible for all federal, state, local, foreign, and other taxes due in respect of the Monthly Fee and all other similar charges required by law. You will not be entitled to any health insurance or other benefits that the Company may provide to its employees from time to time.

This letter agreement sets forth the terms of your service with the Company and supersedes any and all prior representations or agreements, whether written or oral, with respect to the subject matter contained herein. This letter agreement may not be modified or amended, except by a written agreement, signed by a duly authorized representative of the Company and by you.

Please acknowledge your agreement to the foregoing by executing this letter where indicated and returning a copy of it to me at the above address or via email. We look forward to working with you.

Yours very truly,

Signed by:



BD4E91EF0A1B4D7...

Name: Cameron Blackmon

Title: President

Accepted and Agreed to as of the date set forth  
above:

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David L. Eaton

Error!

Please acknowledge your agreement to the foregoing by executing this letter where indicated and returning a copy of it to me at the above address or via email. We look forward to working with you.

Yours very truly,

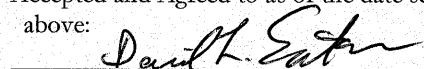
Signed by:



Name: Cameron Blackmon

Title: President

Accepted and Agreed to as of the date set forth  
above:



David L. Eaton

Error!



**Exhibit A**

Bylaws

(see attached)

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Corporate Office  
4146 West US Hwy 79  
Rockdale, TX 76567

**Error!**

**BYLAWS  
OF  
RHODIUM ENTERPRISES, INC.**  
a Delaware corporation (the “*Corporation*”)

*Adopted as of May 6, 2021*

**ARTICLE I  
OFFICES; BOOKS AND RECORDS**

**Section 1.01. Registered Office.** The registered office of the Corporation in the State of Delaware is Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808, New Castle County. The name of the Corporation’s registered agent at such address is Corporation Service Company.

**Section 1.02. Other Offices.** The Corporation may also have offices at such other places both within and without the State of Delaware as the Corporation’s Board of Directors (the “*Board*”) may from time to time determine or the business of the Corporation may require.

**Section 1.03. Books and Records.** The books and records of the Corporation may be kept within or without the State of Delaware as the Board may from time to time determine or the business of the Corporation may require.

**ARTICLE II  
MEETINGS OF STOCKHOLDERS**

**Section 2.01. Time and Place of Meetings.** All meetings of stockholders shall be held at such place, either within or without the State of Delaware, on such date and at such time as may be determined from time to time by the Board (or the President in the absence of a designation by the Board). The Board, in its sole discretion, may determine that such meetings be held wholly or partially by means of remote communication. For any meeting of stockholders to be held by remote communication, the Corporation shall (i) implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by remote communication is a stockholder or proxy holder, (ii) implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

**Section 2.02. Annual Meetings.** An annual meeting of stockholders shall be held for the election of directors and for the transaction of such other business as may properly be brought before such meeting. Stockholders may, unless the Corporation’s Certificate of Incorporation (as it may be amended from time to time, the “*Certificate*”) otherwise provides, act by written consent to elect directors.

**Section 2.03. Special Meetings.** Special meetings of stockholders for any proper purpose or purposes may be called at any time by the Board or the President or shall be called by the Secretary of the Corporation whenever the stockholders of record owning a majority of the then issued and outstanding capital stock of the Corporation entitled to vote on matters to be submitted to stockholders of the Corporation shall request therefor (either by written instrument signed by a majority, by resolution adopted by a vote of the majority or by a ballot submitted by electronic transmission, provided that any such electronic transmission shall set forth or be submitted with information from which it can be determined

*Bylaws of Rhodium Enterprises, Inc.*

that the electronic transmission was authorized by the stockholder or proxy holder). Any such written request shall state a proper purpose or purposes of the meeting and shall be delivered to the President or Secretary of the Corporation.

**Section 2.04. Notice of Meetings and Adjourned Meetings; Waivers of Notice.**

(a) Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting of stockholders shall be given which shall state the hour, means of remote communication, if any, date and place, if any, thereof, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, such notice shall be delivered either personally or by mail, not less than ten (10) nor more than sixty (60) days before the date of the meeting, to each stockholder of record entitled to vote at such meeting.

(b) A written waiver of any such notice signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of an individual at a meeting in person, by proxy, or by remote communication shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice. Neither the business to be transacted at, nor the purpose of, an annual or special meeting of stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate or these bylaws. Unless these bylaws otherwise require, when a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 2.05. Quorum.** Unless otherwise provided under the Certificate or these bylaws and subject to the Delaware General Corporation Law (the “*DGCL*”), the presence, in person, by proxy, or by remote communication, of the holders of record of a majority of the then issued and outstanding capital stock of the Corporation entitled to vote at a meeting of stockholders shall be necessary and sufficient to constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, any officer entitled to preside at or act as secretary of a meeting of stockholders shall adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally notified.

**Section 2.06. Voting and Proxies.**

(a) Unless otherwise provided in the Certificate and subject to the *DGCL*, each stockholder shall be entitled to one vote for each then issued and outstanding share of capital stock held by such stockholder. Any share of capital stock of the Corporation held by the Corporation shall have no voting rights. Unless otherwise provided in the *DGCL*, the Certificate or these bylaws, the affirmative vote of a majority of the shares of Common Stock of the Corporation present, in person, by means of remote communication, or by written proxy, at a meeting of stockholders and entitled to vote on the subject matter

*Bylaws of Rhodium Enterprises, Inc.*

shall be the act of the stockholders. If the Certificate provides for more or less than one vote for any share, on any matter, every reference in these bylaws to a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

(b) Any stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to a corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by written proxy, provided that the instrument authorizing such proxy to act shall have been executed in writing (which shall include faxing, telegraphing or cabling) or by electronic transmission by such stockholder or by such stockholder's duly authorized attorney and no such proxy shall be voted or acted upon after three (3) years from its date of authorization, unless the proxy provides for a longer period.

#### **Section 2.07. Action by Consent.**

(a) Unless otherwise provided in the Certificate, any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, 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 holders of outstanding capital stock 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 shares entitled to vote thereon were present and voted.

(b) Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

**Section 2.08. Organization.** At each meeting of stockholders, the President, if one shall have been elected, or in his or her absence or if one shall not have been elected, such person designated by the vote of the majority of the stockholders present at such meeting, shall act as chairman of the meeting. The Secretary of the Corporation (or in his or her absence or inability to act, the person whom the chairman of the meeting shall appoint secretary of the meeting) shall act as secretary of the meeting and keep the minutes thereof. The order of business at all meetings of stockholders shall be as determined by the chairman of the meeting.

**Section 2.09. Inspectors of Election.** The Board, in advance of any meeting of the stockholders, may appoint one or more inspectors to act at the meeting or any adjournment thereof. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his or her ability.

### **ARTICLE III** **DIRECTORS**

**Section 3.01. General Powers.** Except as otherwise provided in the DGCL or the Certificate, the business and affairs of the Corporation shall be managed by or under the direction of the Board.

**Section 3.02. Number, Election and Term of Office.** The number of directors which shall constitute the whole Board shall be fixed from time to time by resolution of the Board but shall not be fewer than one (1) nor more than twelve (12). The directors shall be elected at the annual meeting of the stockholders, and each director so elected shall hold office until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. Directors need not be stockholders. The initial Board shall consist of one (1) director until changed as herein provided. All elections of directors shall be

*Bylaws of Rhodium Enterprises, Inc.*

held by written ballot, except as otherwise provided in the Certificate, or these bylaws; if authorized by the Board, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission.

**Section 3.03. Quorum and Manner of Acting.** Unless the Certificate or these bylaws require a greater number, a majority of the total number of directors serving on the Board shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of the directors deemed to be present at a meeting at which a quorum is present shall be the act of the Board. When a meeting is adjourned to another time or place, if any (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which directors may be deemed to be present in person and vote at such meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Board may transact any business which might have been transacted at the original meeting. If a quorum shall not be present at any meeting of the Board the directors present thereat shall adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

**Section 3.04. Time and Place of Meetings.** The Board shall hold its meetings at such place, either within or without the State of Delaware, or by remote communication, and at such time as may be determined from time to time by the Board (or the President in the absence of a determination by the Board).

**Section 3.05. Annual Meeting.** The Board shall meet for the purpose of organization, the election of officers and the transaction of other business, as soon as practicable after each annual meeting of stockholders, on the same day and at the same place where such annual meeting shall be held. Notice of such meeting need not be given. In the event such annual meeting is not so held, the annual meeting of the Board may be held at such place either within or without the State of Delaware, or by remote communication, on such date and at such time as shall be specified in a notice thereof given as hereinafter provided in Section 3.07 herein or in a waiver of notice thereof signed by any director who chooses to waive the requirement of notice.

**Section 3.06. Regular Meetings.** After the place and time of regular meetings of the Board shall have been determined and notice thereof shall have been once given to each member of the Board, regular meetings may be held without further notice being given.

**Section 3.07. Special Meetings.** Special meetings of the Board may be called by the President and shall be called by the President or Secretary on the written request of any two (2) directors (unless there are less than two (2) directors at such time). Notice of special meetings of the Board shall be given to each director at least two (2) days before the date of the meeting in such manner as is determined by the Board. A written waiver of any such notice, signed by the director entitled hereto, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

**Section 3.08. Committees.** The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified

*Bylaws of Rhodium Enterprises, Inc.*

member. Any such committee, to the extent provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to the stockholders for approval, (ii) adopting, amending or repealing any bylaw of the Corporation, (iii) amending the Certificate, (iv) adopting an agreement of merger or consolidation, (v) recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, or (vi) recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution and unless the resolution of the Board or the Certificate expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

**Section 3.09. Action by Consent.** Unless otherwise restricted by the Certificate or these bylaws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting, if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of the Board, or committee. Such filings shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**Section 3.10. Telephonic or Electronic Meetings.** Unless otherwise restricted by the Certificate or these bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or such committee, as the case may be, by means of conference telephone, remote communication, or similar communications equipment by means of which all persons participating in the meeting can hear, speak, and/or communicate with each other, and such participation in a meeting shall constitute presence in person at the meeting.

**Section 3.11. Resignation.** Any director may resign at any time by giving written notice to the Board or to the Secretary of the Corporation. The resignation of any director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 3.12. Vacancies.** Unless otherwise provided in the Certificate, vacancies and newly created directorships resulting from any increase in the authorized number of directors to be elected by all the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Each director so chosen shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal. If there are no directors in office, then an election of directors may be held in accordance with the DGCL. Unless otherwise provided in the Certificate, when one or more directors shall resign from the Board, effective at a future date, a majority of the directors then in office shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in the filling of other vacancies.

**Section 3.13. Removal.** Any and all directors may be removed, with or without cause, at any time by the affirmative vote of the holders of a majority of the outstanding capital stock of the Corporation entitled to vote and the vacancies thus created may be filled in accordance with Section 3.12 herein.



*Bylaws of Rhodium Enterprises, Inc.*

**Section 3.14. Compensation.** Unless otherwise restricted by the Certificate or these bylaws, the Board shall have authority to fix the compensation of directors, including fees and reimbursement of expenses.

#### **ARTICLE IV** **OFFICERS**

**Section 4.01. Principal Officers.** The principal officers of the Corporation shall be a President, a Treasurer and a Secretary, or the equivalent of such officers, who shall have the duty, among other things, to record the proceedings of the meetings of stockholders and directors in a book kept for that purpose. The Corporation may also have such other principal officers as the Board may in its discretion appoint. One person may hold the offices and perform the duties of any two or more of said offices.

**Section 4.02. Election, Term of Office and Remuneration.** The principal officers of the Corporation shall be elected annually by the Board at the annual meeting thereof. Each such officer shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal. The remuneration of all officers of the Corporation shall be fixed by the Board. Any vacancy in any office shall be filled in such manner as the Board shall determine.

**Section 4.03. Subordinate Officers.** In addition to the principal officers enumerated in Section 4.01 herein, the Corporation may have one or more Assistant Treasurers or Assistant Secretaries and such other subordinate officers, agents and employees as the Board may deem necessary, each of whom shall hold office for such period as the Board may from time to time determine. The Board may delegate to any principal officer the power to appoint and to remove any such subordinate officers, agents or employees.

**Section 4.04. Removal.** Except as otherwise permitted with respect to subordinate officers, any officer may be removed, with or without cause, at any time, by resolution adopted by the Board.

**Section 4.05. Resignations.** Any officer may resign at any time by giving written notice to the Board (or to a principal officer if the Board has delegated to such principal officer the power to appoint and to remove such officer). The resignation of any officer shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 4.06. Powers and Duties.** The officers of the Corporation shall have such powers and perform such duties incident to each of their respective offices and such other duties as may from time to time be conferred upon or assigned to them by the Board.

#### **ARTICLE V** **EXECUTION OF INSTRUMENTS AND DEPOSIT OF CORPORATE FUNDS**

**Section 5.01. Execution of Instruments Generally.** The Board may authorize any officer or officers, or agent or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation, and such authorization may be general or confined to specific instances.

**Section 5.02. Borrowing.** No loans or advance shall be obtained or contracted for, by or on behalf of the Corporation and no negotiable paper shall be issued in its name, unless and except as authorized by the Board. Such authorization may be general or confined to specific instances. Any officer or agent of the Corporation thereunto so authorized may obtain loans and advances for the Corporation, and for such loans and advances may make, execute and deliver promissory notes, bonds, or other evidences of indebtedness of the Corporation. Any officer or agent of the Corporation thereunto so authorized may

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pledge, hypothecate or transfer as security for the payment of any and all loans, advances, indebtedness and liabilities of the Corporation, any and all stocks, bonds, other securities and other personal property at any time held by the Corporation, and to that end may endorse, assign and deliver the same and do every act and thing necessary or proper in connection therewith.

**Section 5.03. Deposits.** All funds of the Corporation not otherwise employed shall be deposited from time to time to its credit in such banks or trust companies or with such bankers or other depositories as the Board may select, or as may be selected by any officer or officers or agent or agents authorized so to do by the Board. Endorsements for deposit to the credit of the Corporation in any of its duly authorized depositories shall be made in such manner as the Board from time to time may determine.

**Section 5.04. Proxies.** Proxies to vote with respect to shares of stock of other corporations owned by or standing in the name of the Corporation may be executed and delivered from time to time on behalf of the Corporation by the President or by any other person or persons thereunto authorized by the Board.

**Section 5.04 Checks.** All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

**Section 5.06. Other Contracts and Instruments.** All other contracts and instruments binding the Corporation shall be executed in the name and on the behalf of the Corporation by those officers, employees or agents of the Corporation as may be authorized by the Board, which authorization may be general or confirmed to specific instances.

## **ARTICLE VI**

### **CERTIFICATES OF STOCK**

**Section 6.01. Form and Execution of Certificates.** The shares of the Corporation will be represented by certificates, or will be uncertificated. Certificates for the shares of stock, if any, of the Corporation will be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of shares of stock in the Corporation represented by certificate will be entitled to have a certificate signed by or in the name of the Corporation by any two authorized officers of the corporation, including but not limited to the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him or her in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he or she were such officer, transfer agent, or registrar at the date of issue.

**Section 6.02. Transfer of Shares.** The shares of the stock of the Corporation shall be transferrable on the books of the Corporation by the holder thereof in person or by his or her attorney lawfully constituted, upon surrender for cancellation of certificates for the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof or guaranty of the authenticity of the signature as the Corporation or its agents may reasonably require. A record shall be made of each transfer. The Board shall have the power and authority to make such rules and regulations as it may deem necessary or proper concerning the issue, transfer and registration of certificates for shares of stock of the Corporation.



*Bylaws of Rhodium Enterprises, Inc.*

**Section 6.03. Closing of Transfer Books.** The stock transfer books of the Corporation may, if deemed appropriate by the Board, be closed for such length of time not exceeding fifty (50) days as the Board may determine, preceding the date of any meeting of stockholders or the date for the payment of any dividend or the date for the allotment of rights or the date when the issuance, change, conversion or exchange of capital stock shall go into effect, during which time no transfer of stock on the books of the Corporation may be made.

**Section 6.04. Lost or Destroyed Certificates.** A new certificate of stock may be issued in the place of any certificate previously issued by the Corporation, alleged to have been lost, stolen, destroyed or mutilated, and the Board may, in its discretion, require the owner of such lost, stolen, destroyed or mutilated certificate, or his or her legal representative, to give the Corporation a bond, in such sum as the Board may direct, in order to indemnify the Corporation against any claims that may be made against it in connection therewith.

**Section 6.05. Consideration and Payment.** The capital stock may be issued for such consideration, not less than the par value of any such stock expressed in dollars, as shall be fixed by the Board. Payment of such consideration may be made, in whole or in part, in money, other tangible or intangible property, labor or services performed.

## **ARTICLE VII**

### **LIABILITY AND INDEMNIFICATION**

**Section 7.01. Limitation of Liability.** To the fullest extent permitted by the DGCL, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

**Section 7.02. Indemnification.** Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a “*Proceeding*”), by reason of the fact that he or she (or a person of whom he or she is the legal representative), is or was a director or officer of the Corporation or a director (or member of a similar governing body) or officer of any of its subsidiaries (any of the foregoing persons, a “*Mandatory Indemnitee*”) shall be indemnified and held harmless by the Corporation to the fullest extent which it is empowered to do so by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against all expense (including court costs, attorneys’ fees, witness fees, fines (including but not limited to excise taxes assessed on a person with respect to an employee benefit plan), amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any Proceeding), liability and loss (including attorneys’ fees actually and reasonably incurred by such person in connection with such Proceeding) and such indemnification shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in Section 7.03, the Corporation shall indemnify any such person seeking indemnification in connection with a Proceeding initiated by such person only if such Proceeding was authorized by the Board. The right to indemnification conferred in this Article VII shall be a contract right and, subject to Sections 7.03 and 7.06, shall include the right to payment by the Corporation of the expenses incurred in defending any such Proceeding in advance of its final disposition. The Corporation may, by action of the Board, provide indemnification to any person who is or was serving as an employee, fiduciary or agent of the Corporation, or any person other than a Mandatory Indemnitee who is or was serving at the request of the Corporation as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (whether the basis of such Proceeding is alleged action in an official

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capacity as a director, officer, employee, fiduciary or agent or in any other capacity while serving as a director, officer, employee, fiduciary or agent) (any of the foregoing persons, an “**Optional Indemnitee**”) with the same scope and effect as the foregoing indemnification of Mandatory Indemnitees.

**Section 7.03. Procedure for Indemnification.** Any indemnification of any Mandatory Indemnitee described in Section 7.02 or advance of expenses under Section 7.06 shall be made promptly, and in any event within thirty (30) days, upon the written request of the Mandatory Indemnitee. If a determination by the Corporation that the Mandatory Indemnitee is entitled to indemnification pursuant of this Article VII is required, and the Corporation fails to respond within sixty (60) days to a written request for indemnification, the Corporation shall be deemed to have approved the request. If the Corporation denies a written request for indemnification or advancement of expenses, in whole or in part, or if payment in full pursuant to such request is not made within thirty (30) days, the right to indemnification or advances as granted by this Article VII shall be enforceable by the Mandatory Indemnitee in any court of competent jurisdiction. Such person’s costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any Proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of such defense shall be on the Corporation. Neither the failure of the Corporation (including the Board, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

**Section 7.04. Nonexclusively of Article VII.** The rights to indemnification and the payment of expenses incurred in defending a Proceeding in advance of its final disposition conferred in this Article VII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the certificate of incorporation, by-law, agreement, vote of stockholders or disinterested directors or otherwise.

**Section 7.05. Insurance.** The Corporation shall purchase and maintain, or shall cause to be purchased and maintained, insurance on its own behalf and on behalf of any Mandatory Indemnitee or Optional Indemnitee, whether or not the Corporation would have the power to indemnify such person against such liability under this Article VII.

**Section 7.06. Expenses.**

The Corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed Proceeding, by reason of the fact that he is or was a Mandatory Indemnitee prior to the final disposition of the Proceeding, promptly following request therefor, all expenses incurred by such Mandatory Indemnitee in connection with such Proceeding, provided, however, that, if the DGCL requires, an advancement of expenses incurred by a Mandatory Indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such Mandatory Indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such Mandatory Indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such Mandatory Indemnitee is not entitled to be

*Bylaws of Rhodium Enterprises, Inc.*

indemnified for such expenses under this Article VII or otherwise. Such expenses described in the preceding sentence incurred by Optional Indemnitees may also be so paid and advanced upon such terms and conditions, if any, as the Board deems appropriate.

Notwithstanding the foregoing, no advance shall be made by the Corporation to an officer of the Corporation (except by reason of the fact that such officer is or was a director of the Corporation, in which event this paragraph shall not apply) in any Proceeding, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the Proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Corporation.

**Section 7.07. Contract Rights.** The provisions of this Article VII shall be deemed to be a contract right between the Corporation and each Mandatory Indemnitee who serves in any applicable capacity at any time while this Article VII and the relevant provisions of the DGCL or other applicable law are in effect, and any repeal or modification of this Article VII or any such law shall not affect any rights or obligations then existing with respect to any state of facts or Proceeding then existing.

**Section 7.08. Merger or Consolidation.** For purposes of this Article VII, references to “the Corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees, fiduciaries and agents, so that any person who is or was a director, officer, employee, fiduciary or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee, fiduciary or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article VII with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

**Section 7.09. Effect of Repeal, Amendment or Modification.** Any repeal, amendment or modification of this Article VII shall be prospective only and shall not adversely affect any right or protection of, or any limitation of the liability of, any director of the Corporation or other Mandatory Indemnitee existing at, or arising out of facts or incidents occurring prior to, the effective date of such repeal, amendment or modification.

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

**Section 8.01. Dividends.** Subject to limitations contained in the DGCL and the Certificate, the Board may declare and pay dividends upon the shares of capital stock of the Corporation. Dividends may be paid in cash, in shares of the Corporation’s capital stock or in the Corporation’s bonds or property, including the shares or bonds of other corporations or entities, subject to any provisions of law and of the Certificate. Before payment of any dividend, the Board may set aside out of any funds available for dividends such sum or sums as the Board, in its absolute discretion, deems proper as a reserve fund to meet contingencies or for equalizing dividends or to repair or maintain property or to serve such other purposes conducive to the interests of the Corporation

*Bylaws of Rhodium Enterprises, Inc.*

**Section 8.02. Fiscal Year.** The fiscal year of the Corporation shall end on December 31 of each year unless otherwise determined by resolution of the Board.

**Section 8.03. Seal.** The Board, in its discretion, may adopt a corporate seal for the Corporation. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

**Section 8.04. Voting of Stock Owned by the Corporation.** The Board may authorize any person, on behalf of the Corporation, to attend, vote at and grant proxies to be used at any meeting of stockholders of any corporation (except this Corporation) in which the Corporation may hold stock.

**Section 8.05 Notice.**

(a) Whenever notice is required to be given by law, the Certificate or these bylaws, such notice may be mailed or given by a form of electronic transmission consented to by the person to whom the notice is given. Any such consent shall be revocable by such person by written notice to the Corporation. Any such consent shall be deemed revoked if (a) the Corporation is unable to deliver by electronic transmission two consecutive notices in accordance with such consent and (b) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(b) Notice given pursuant to these bylaws shall be deemed given: (i) if mailed, when deposited in the United States mail, postage pre-paid, addressed to the person entitled to such notice at his or her address as it appears on the books and records of the Corporation, (ii) if by facsimile telecommunication, when directed to a number at which such person has consented to receive notice; (iii) if by electronic mail, when directed to an electronic mail address at which such person has consented to receive notice; (iv) if by a posting on an electronic network together with separate notice to such person of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (v) if by any other form of electronic transmission, when directed to such person. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated herein.

(c) For purposes of these bylaws, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

**Section 8.06. Waiver of Notice.** Whenever notice is required to be given by law, the Certificate or these bylaws, a waiver thereof submitted by electronic transmission or in writing signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of an individual at a meeting, in person, by written proxy, or by means of remote communication, shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened, and the execution by a person of a consent in writing or by electronic transmission in lieu of meeting shall constitute a waiver of notice of the action taken by such consent. Neither the business to be transacted at, nor the purpose of, any meeting of the stockholders, directors, or members of a committee of the Board need be specified in any such waiver or notice.

*Bylaws of Rhodium Enterprises, Inc.*

**Section 8.07. Counterparts.** The Corporation, through its authorized representatives, the Board and the stockholders shall have the power to execute all instruments, including without limitation, consents of the Board, consents of the stockholders, and agreements of the Corporation, in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A facsimile, telecopy or other reproduction of such instrument may be executed by one or more parties thereto, and an executed copy of such instrument may be delivered by one or more parties thereto by facsimile or similar instantaneous electronic transmission device pursuant to which the signature of or on behalf of such party can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes as of the date first written in such instrument.

**Section 8.08. Interpretation.** The headings of the Articles and Sections of these bylaws are inserted for convenience only and shall not affect the construction or interpretation of these bylaws. Whenever the words “include,” “includes” or “including” are used in these bylaws, they will be deemed to be followed by the words “without limitation.” Unless the context of a provision of these bylaws requires otherwise, (i) “or” is disjunctive but not necessarily exclusive, (ii) words in the singular include the plural and vice versa, and (iii) the use in these bylaws of a pronoun in reference to a party hereto includes the masculine, feminine or neuter, as the context may require.

**Section 8.09. Amendments.** These bylaws may be altered, amended or repealed and new bylaws may be adopted by the Corporation’s stockholders, or the Board when such power is conferred upon the Board by the Certificate, at any meeting of stockholders or the Board, as applicable. If the power to adopt, amend or repeal bylaws is conferred upon the Board by the Certificate, it shall not divest or limit the power of the stockholder to adopt, amend or repeal bylaws.

**Exhibit B**

Amended and Restated Certificate of Incorporation

(see attached)

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Corporate Office  
4146 West US Hwy 79  
Rockdale, TX 76567

**Error!**

# Delaware

The First State

Page 1

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF  
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT  
COPY OF THE RESTATED CERTIFICATE OF "RHODIUM ENTERPRISES,  
INC.", FILED IN THIS OFFICE ON THE TENTH DAY OF JUNE, A.D.  
2021, AT 10:58 O`CLOCK A.M.*



Jeffrey W. Bullock, Secretary of State

5862908 8100  
SR# 20212409703

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 203436620  
Date: 06-14-21



State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 10:58 AM 06/10/2021  
FILED 10:58 AM 06/10/2021  
SR 20212409703 - File Number 5862908

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
RHODIUM ENTERPRISES, INC.

(Pursuant to Sections 242 and 245 of the  
General Corporation Law of the State of Delaware)

Rhodium Enterprises, Inc. (the “**Corporation**”), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “**General Corporation Law**”),

DOES HEREBY CERTIFY:

1. That the name of this Corporation is Rhodium Enterprises, Inc. and that this Corporation was originally incorporated pursuant to the General Corporation Law on April 22, 2021 under the name Rhodium Enterprises, Inc.

2. That the Board of Directors duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatements is as follows.

RESOLVED, that the Certificate of Incorporation of this corporation be amended and restated in its entirety to read as follows:

**FIRST:** The name of this corporation is Rhodium Enterprises, Inc.

**SECOND:** The address of the registered office of the Corporation in the State of Delaware is 251 Little Falls Drive in the City of Wilmington, County of New Castle 19808. The name of its registered agent at such address is Corporation Service Company.

**THIRD:** The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

**FOURTH:** Unless the context otherwise requires, the terms defined below shall have the meanings herein specified.

“**Board**” has the meaning set forth in Article Sixth.

“**Bylaws**” mean the bylaws of the Corporation as the same may be amended, modified, supplemented or restated from time to time.

“**Certificate of Incorporation**” means the Certificate of Incorporation of the Corporation as amended and/or restated from time to time.



“Class A Common Stock” has the meaning set forth in Article Fifth.

“Class B Common Stock” has the meaning set forth in Article Fifth.

“Common Stock” means the Class A Common Stock and the Class B Common Stock collectively.

“Covered Person” has the meaning set forth in Article Ninth.

“Deemed Liquidation Event” means (i) a merger or consolidation or other similar business combination (a “Business Combination”) in which the Corporation is a constituent party, except any Business Combination involving the Corporation in which the Shares outstanding immediately prior to such Business Combination continue to represent, or are converted into or exchanged for Shares that represent, immediately following such Business Combination, at least a majority, by voting power, of the securities of the surviving or resulting entity; (ii) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation of all or substantially all the assets of the Corporation taken as a whole; or (iii) in one transaction or a series of related transactions, the sale of securities of the Corporation representing more than fifty percent (50%) of the aggregate number of outstanding securities of the Corporation.

“Director” has the meaning set forth in Article Sixth.

“Excluded Opportunity” has the meaning set forth in Article Ninth.

“General Corporation Law” means the General Corporation Law of the State of Delaware, as amended from time to time.

“Person” includes any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, or other legal entity or organization.

“Personal Representative” means the successor or legal representative (including without limitation, a guardian, executor, administrator or conservator) of a deceased or incompetent Shareholder.

“Remaining Assets” has the meaning set forth in Article Fifth.

“Securities Act” means the United States Securities Act of 1933, as amended, or any successor statute.

“Shareholder” means the Person or Persons registered in the stock ledger of the Corporation as the holder of record of Shares.

“Shares” means the shares in the capital of the Corporation, including the Class A Common Stock and Class B Common Stock.

“Transfer” has the meaning set forth in Article Seventh.

**FIFTH:** The total number of shares of all classes of stock which the Corporation shall have authority to issue is 400,000,100, comprised of the following classes (i) 400,000,000 shares of Class A Common Stock, \$0.0001 par value per share ("**Class A Common Stock**"), and (ii) 100 shares of Class B Common Stock, \$0.0001 par value per share ("**Class B Common Stock**").

The following is a statement of the designations and the powers, rights and preferences, and the qualifications, limitations or restrictions thereof in respect of the Common Stock.

**A. Common Stock**

1. Voting. The Class A Common Stock shall not be entitled or permitted to vote on any matter. Each share of Class B Common Stock shall be entitled to one (1) vote on any matter required or permitted to be voted on or approved by the Shareholders. There shall be no cumulative voting.

2. Dividends. Dividends may be declared and paid ratably on the Class A Common Stock out of the assets of the Corporation which are legally available for this purpose at such times and in such amounts as the Board in its discretion shall determine. No dividend may be declared on the Class B Common Stock; provided, however, that in the event a dividend is declared in the form of shares of Class B Common Stock, then holders of Class B Common Stock shall receive the dividend in the form of shares of Class B Common Stock.

3. Distribution upon Dissolution. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the remaining assets of the Corporation available for distribution to holders of Shares (the "**Remaining Assets**") shall be distributed to the holders of shares of Class A Common Stock, pro rata according to their relative proportionate ownership of all shares of Class A Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, no Remaining Assets shall be distributed to the holders of shares of Class B Common Stock.

**SIXTH: Board of Directors.** The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors (the "**Board**," and each member thereof being referred to as a "**Director**"). Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation. In furtherance of and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors of the Corporation is expressly authorized to make, amend or repeal Bylaws of the Corporation. The number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation. The holders of a majority in voting power of the outstanding shares of Class B Common Stock, exclusively and as a separate class, shall be entitled to elect each Director of the Corporation. A vacancy in any Director seat shall be filled only by vote or written consent in lieu of a meeting of the holders of a majority in voting power of the outstanding shares of Class B Common Stock.

**SEVENTH: Transfer Restrictions.**

- A. Restrictions. Shares of Class A Common Stock may not, directly or indirectly, be sold, assigned, transferred, pledged, mortgaged, hypothecated or otherwise disposed of (collectively, a “**Transfer**”) by any holder thereof without the prior written approval of the Board, except to a Personal Representative of the transferor in connection with the death or incompetency of the holder.
- B. Notice of Proposed Transfer. Prior to any proposed Transfer of any shares of Class A Common Stock, such holder shall give written notice to the Corporation of its intention to effect such Transfer.
- C. Transfer of Shares. Any attempted Transfer of shares of Class A Common Stock other than in accordance herewith shall be null and void and the Corporation shall not recognize any such Transfer or reflect in its membership any change in registered ownership pursuant thereto.

**EIGHTH:** To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation. Neither any amendment nor repeal of this Article Eighth, nor the adoption of any provision of the Corporation’s Certificate of Incorporation inconsistent with this Article Eighth, shall eliminate or reduce the effect of this Article Eighth in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article Eighth, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

**NINTH:** The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “**Excluded Opportunity**” is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of any director or officer of the Corporation (the “**Covered Persons**”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director or officer of the Corporation while such Covered Person is performing services in such capacity. Any repeal or modification of this Article Ninth will only be prospective and will not affect the rights under this Article Ninth in effect at the time of the occurrence of any actions or omissions to act giving rise to liability.

**TENTH:** Subject to the last sentence in this Article Tenth, and unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by the applicable law, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or

proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the General Corporation Law or this Restated Certificate or the By-Laws, or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine and, if brought outside of Delaware, the stockholder bringing the suit will be deemed to have consented to service of process on such stockholder's counsel except any action (A) as to which the Court of Chancery in the State of Delaware determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), (B) which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or (C) for which the Court of Chancery does not have subject matter jurisdiction. Notwithstanding the foregoing, (i) the provisions of this Article Tenth will not apply to suits brought to enforce any liability or duty created by the Securities Exchange Act of 1934, as amended, or the rules and regulations promulgated thereunder, or any other claim for which the federal courts have exclusive jurisdiction and (ii) unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended, or the rules and regulations promulgated thereunder.


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3. That the foregoing amendment and restatement was approved by the holders of the requisite number of shares of this corporation in accordance with Section 228 of the General Corporation Law.

4. That this Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this corporation's Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

**IN WITNESS WHEREOF**, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 8<sup>th</sup> day of June, 2021.

DocuSigned by:  
  
By: 2A664288FCE44BC...  
Cameron Blackmon  
Co-President