

MEMORANDUM

TO: Philadelphia Board of Trade Members and Member Organizations

FROM: Legal Department

DATE: June 20, 2007

RE: SR-PBOT-2007-08: Rule E37, Limitation of Liability for PBOT XL, and Rule E38, EFP Transactions

The Philadelphia Board of Trade ("PBOT") has filed with the Commodity Futures Trading Commission SR-PBOT-2007-08, amending Rule E37, Limitation of Liability For PBOT XL. The filing also adopts new Rule E38, EFP Transactions. These rule changes are effective immediately.

The text of amended Rule E37 and new Rule E38 are set forth below. If you have any questions regarding these rule amendments, please contact Carla Behnfeldt, Director and Counsel, at (215) 496-5208.

Rule E37. Limitation of Liability For PBOT XL (New language is underlined.)

(a) Except for any party found to have engaged in willful or wanton misconduct, neither the Exchange (which for purposes of this Rule E37 includes its parents, subsidiaries and affiliates), its Members or Clearing Members, nor any of its or their respective officers, directors, employees, or agents shall be liable to any Person (including, but not limited to, a Customer) for any losses, damages, costs or expenses (including, but not limited to, loss of profits, loss of use, direct, indirect, incidental or consequential damages) arising from (1) any failure or malfunction of PBOT XL or the Clearing Corporation or any Exchange services or facilities used to support PBOT XL including but not limited to any user interface or any inability to enter or cancel Orders (the "PBOT XL Complex"), or (2) any fault in delivery, delay, omission, suspension, inaccuracy or termination, or any other cause, in connection with the furnishing, performance, maintenance, use of or inability to use all or any part of the PBOT XL Complex. The foregoing shall apply regardless of whether a claim arises in contract, tort, negligence, strict liability or otherwise. The foregoing shall not limit the liability of any Member, Member Organization, Clearing

Member, or any of their respective officers, directors or employees for any act, incident, or occurrence within their control. For purposes of this Rule E37, the “PBOT XL Complex” shall include any exchange facilities or services used to support block trades and exchange of futures for physicals transactions pursuant to Rules E23 and E38.

(b) – (d) No Change.

Rule E38. EFP Transactions (all new text)

EFP Transactions involving Exchange Futures Contracts designated by the Exchange as eligible for EFP Transactions are not required to be made competitively as long as such Transactions comply with the following terms and conditions:

(a) Transaction Requirements

- (i) At the time such Transaction is effected, the buyer and the seller under the EFP Transaction shall be the seller and the buyer, respectively, in one (1) or more transactions entered into off the Exchange for the delivery of a quantity of the Cash Commodity covered by the Commodity Contracts involved (or any derivative, by-product or related product) that has a high degree of correlation to the quantity covered by such Contracts.
- (ii) EFP Transactions executed on the Last Trading Day for any delivery month must be executed and reported before the final half hour of trading.
- (iii) Any Member participating in an EFP Transaction shall provide the Exchange with such material and information with respect thereto as it may request, including without limitation copies of the documents evidencing title to, or contracts to buy or sell, the Cash Commodity (or the derivative, by-product or related product) involved in such Transaction.
- (iv) With respect to EFPs in foreign currency futures wherein the parties immediately offset a cash transaction (“transitory EFPs”), the Exchange would expect to see confirmation statements issued by any bank/foreign exchange dealer party to the Transaction. These confirmation statements should be the type normally produced by the bank/foreign exchange dealer for confirmation of currency deals and should indicate, by name, the identity of the counterparty principal to the Transaction. However, in circumstances where the EFP Transaction is between a bank/foreign exchange dealer and a CTA, account controller, or other Person acting on behalf of a third party (such as a commodity

pool or fund), the cash side confirmation statement must identify, at a minimum, the name of the third party's Carrying Clearing Member and the third party's account number (or other account specific designation), but need not identify the third party by name.

- (v) Exchange Traded Funds ("ETFs") are an acceptable cash or physical component of an EFP for Stock Indexes. The Exchange shall determine which ETFs are an acceptable cash or physical component of an EFP transacted in a particular stock index futures contract.

(b) Reporting Requirements

- (i) The parties to an EFP Transaction shall cause the Transaction to be reported to the Exchange in accordance with such procedures as are determined by the Exchange from time to time.
- (c) All Commodity Contracts effected as part of EFP Transactions shall be cleared pursuant to the rules and bylaws of the Clearing Corporation.
- (d) For purposes of this Rule E38, the following terms shall have the following meanings:
 - (i) "Transaction" shall mean any purchase or sale of any Commodity Contract made in accordance with the Rules of the Exchange.
 - (ii) "Cash Commodity" shall mean a physical or actual commodity.
 - (iii) "Commodity Contract" shall include any interest or instrument traded on or subject to the Rules of the Exchange.
 - (iv) "Carrying Clearing Member" shall mean a Clearing Member who is a futures commission merchant carrying one or more accounts for Customers.
 - (v) "Exchange Futures Contract" shall mean any contract for the purchase or sale of a commodity for future delivery traded on the Exchange or subject to the Rules of the Exchange.