

PBOT Memo No. 0032-07-R
Notice to Members: 21-07

Notice to Members

TO: Members of the Philadelphia Board of Trade (“PBOT”)
FROM: Office of the Secretary
RE: Amendments to PBOT By-Laws and Rules
DATE: September 18, 2007

The Philadelphia Board of Trade (“PBOT”) has filed with the Commodity Futures Trading Commission SR-PBOT-2007-19, amending various PBOT By-Laws and Rules, which amendments were previously described by PBOT Circular No. 30-07-R. The text of the amendments to the PBOT By-Laws and Rules is attached as Exhibit A. Specifically, the amendments seek to conform PBOT’s Rules, By-Laws, Certificate of Incorporation and initial offering of PBOT Memberships circular dated August 1, 1984. The rule change is currently effective.

Any questions respecting this amendment may be directed to Walt Smith at (215) 496-5532 or Angela Dunn at (215) 496-5692.

Exhibit A

New text underlined, deleted text bracketed.

Philadelphia Board of Trade By-Laws

Articles I and II – No Change.

Article III

Sec. 1. Classes of Shareholders

The Exchange shall issue one [two] class[es] of stock, which is voting common, [and nonvoting preferred. One nonvoting preferred share of stock shall be issued for each membership in the Exchange from among the authorized number of such shares.] The members of the Exchange[, as nonvoting preferred shareholders of the Exchange,] shall have no interest in, or any right to share in, any dividends or distributions of the assets of the Exchange, or any right to vote, consent or dissent on any matter involving the governance of the Exchange, except as may be explicitly set forth in the Certificate, By-Laws and Rules of the Exchange.

A holder of both legal title and equitable title to memberships of the Exchange shall have the following rights: the right to nominate candidates for director positions set forth in Section 3-6(e), the right to trade on the Exchange, subject to the By-Laws and the Rules of the Exchange; and the right to share in the assets of the Exchange in the event of its liquidation, dissolution or winding up as set forth in that certain document entitled "Circular 84-1 Offer of Membership in The Philadelphia Board of Trade." If legal title to a membership is separated from equitable title to the membership, the holder of equitable title to the membership shall have the right to share in the assets of the Exchange in the event of its liquidation, dissolution or winding up and the holder of legal title shall have the right to nominate candidates for director positions and the right to trade on the Exchange, as described in the immediately preceding sentence.

Sec. 2. Voting Rights of Shareholders

The common shareholders shall have the exclusive right to elect the Board of Directors. The common shareholders may in their sole discretion **appoint two individuals as voting trustees who shall** be authorized to vote all of the common shares collectively with respect to the election of **directors, including the** five directors from among

candidates nominated by the membership of the Exchange in accordance with the procedures set forth in the By-Laws. **The common shareholders may at any time remove any such individual and appoint a new voting trustee.**

Sec. 6. Nomination of Directors; Nominating Committee

(a) There shall be a Nominating Committee which shall submit nominations for the directors to be elected by the common shareholders, as described below.

(b) The Nominating Committee shall consist of the [five individuals described in By-Law Section 4-2(b)] **Chairman and the Vice Chairman of the Board of Governors of PHLX, the President of the Exchange** and two other individuals appointed by the Chairman of the Board, each of whom shall be a member of the Exchange or a general partner or officer of a member organization of the Exchange.

(c) The Nominating Committee shall submit nominations for the directors to be elected by the common shareholders at the annual meeting and election of the Exchange. Such nominations shall include the five individuals described in By-Law Section 4-2(b) and [five] **ten** other individuals **five of whom e shall be the individuals nominated by the membership in accordance with By-Law Section 3-6(e).** In making nominations, the Nominating Committee shall give due consideration to the various functions and activities of the Exchange and its members.

(d) The Nominating Committee shall report in writing to the Secretary of the Exchange, on the second Monday in April, the names of the nominees for the directors to be elected by the common shareholders at the next annual election of the Exchange. The Secretary of the Exchange, upon receipt of the report of the Nominating Committee, shall notify the shareholders of the names of the nominees for the directors to be elected by the common shareholders at the annual meeting and election of the Exchange.

(e) Nominations by the membership for the positions of the five directors which are to be filled at the annual meeting and election of the Exchange shall be made by a written petition filed with the Nominating Committee [in a sealed envelope] within two weeks after the membership has been notified of the names of the nominees for the

directors to be elected by the common shareholders. [No such nomination for a director shall be valid unless it is signed by or on behalf of five (5) members or general partners or officers of member organizations. No member or member organization shall petition for more than one nominee for each membership share held by such member or each membership share which has been registered for such member organization.] All such candidates who qualify for election to the Board shall be deemed nominees for the position of director to be elected by the common shareholders. [If there are fewer than five qualified candidates nominated by petition by the membership, the Nominating Committee shall submit the names of additional nominees as directors so that the number of nominees is equal to at least the number of directors to be elected at such election.]

(f) A ballot shall be prepared by the Secretary of the Exchange containing the names of all nominees for the office of director. The ballot shall indicate the office held by a person who is an individual described in By-Law Section 4-2(b) and whether the person is nominated by the Nominating Committee or the membership, and the membership interest represented by such nominee.

(g) At the annual meeting of shareholders, the [common shareholders shall elect] **following directors shall be elected:** five directors who shall be the individuals described in By-Law Section 4-2(b); and ten directors from among the nominees for such offices submitted by the Nominating Committee, five of whom are nominated for such offices by petition of the membership.

Sec. 9. [Reserved] Voting and Action by Trustees

The trustees shall act in concert and collectively cast votes for a number of nominees for the office of director equal to the number of directors to be elected by the trustees at the annual meeting of the Exchange or at a special meeting called for such purpose, as the case may be. The voting power held by the voting trustees may be exercised only by agreement of a majority of such trustees. One or more trustees may participate at any such meeting by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. The voting trustees shall vote in favor of the candidates for director positions nominated by the membership in accordance with By-Law Section 3-6(e) in each election of directors.

[Sec. 17. 1985 Annual Election and Nominations

Notwithstanding anything in the By-Laws, in 1985 the Board of Directors shall determine the dates for the first annual meeting of shareholders and submission of nominations for directors six months from the date of commencement of trading in the Eurodollar option contract on the Exchange.]

Article IV

Sec. 2. Composition of Board of Directors

(a) The number of directors of the Exchange shall be fifteen, all of whom shall be citizens of the United States

(b) The Chairman and the [two] Vice [Chairmen] **Chairman** of the Board of Governors of PHLX, [the President of PHLX,] **the Chief Financial Officer of PHLX, and an individual appointed by the Chairman of the Board of Governors of PHLX, who shall be a member of the Exchange or a general partner or officer of a member organization of the Exchange,** and the President of the Exchange shall be nominated and elected as ex-officio directors. The Chairman and the [two] Vice [Chairmen] **Chairman** of the Board of Governors of PHLX shall assume office on the Board of Directors of the Exchange on such date as such person is elected to office on the Board of Governors of PHLX and qualify for such office.

The Chairman of the Board of Governors of PHLX shall be Chairman of the Board of Directors of the Exchange. An ex-officio director shall serve until his successor is duly elected and qualified or until he becomes ineligible to act as a director as hereinafter provided. An ex-officio director who fails or ceases to maintain the above-described status with respect to PHLX or as President of the Exchange shall automatically become ineligible to act as a director and the office of director held by him shall become vacant without any further action.

(c) The ten remaining directors shall be elected as provided in the By-Laws at the annual meeting of shareholders of the Exchange and each such director shall be elected for a term of one year and until his successor shall be elected and shall qualify under law and the By-Laws.

(d) Of the ten remaining members of the Board of Directors, exclusive of the ex-officio directors, pursuant to Commodity Futures Trading Commission Regulation 1.64 three shall be non-members of the Exchange, and any two shall qualify as

commercial interest representatives. In total, the Board of Directors shall be comprised of persons from a variety of membership interests who will meaningfully represent the Exchange's diversity of interests, consistent with Commodity Futures Trading Commission Regulation 1.64(b)(3). Specifically, the directors shall represent both on-floor and off-floor interests. If the numbers required by the foregoing classification of directors are not maintained at any time due to a vacancy or vacancies on the Board of Directors such requirements shall be suspended until the earlier of such time as the vacancy or vacancies is filled pursuant to the By-Laws or the election of directors at the next succeeding annual meeting of the Exchange and their qualification for office, except as otherwise required by Commodity Futures Trading Commission regulations.

(e) The Vice Chairman of the Board shall be the [President] **Vice Chairman of the Board of Governors of PHLX**. The Vice Chairman shall report to the Chairman of the Board and, in the absence or incapacity of the Chairman, shall perform all the duties of that office.

(f) Members of the Board of Directors shall be ineligible for service if any of the conditions specified in Commodity Futures Trading Commission Regulation 1.63 (b) (1) through (6) are met. If for such reason any director becomes ineligible for continued service, that director shall be removed in a manner permitted by the By-laws.

Articles V through X – No Change.

Article XI

Sec. 4. Method of Giving Written Notice

Unless otherwise specifically provided, written notice required to be given to any person by statute, the Certificate, By-Laws or Rules of the Exchange may be given to such person either personally or by sending a copy thereof through the mail, **or by facsimile**, or by [telegram charges prepaid,] **electronic mail** to his address appearing on the books of the Exchange, or supplied by him to the Exchange for the purpose of notice. If notice is sent by mail, **or by facsimile**, or by [telegraph] **electronic mail**, it shall be deemed to have been given to the person entitled thereto when deposited in the United States mail [or with a telegraph office for transmission to such person]. If such notice is of a meeting, it shall specify the place, day and hour of the meeting, and in the case of a special meeting of shareholders, the general nature of the business to be transacted.

Article XII – No Change.

Philadelphia Board of Trade By-Laws

Definitions

Rule 1 – Rule 16 No Change.

Rule 17. **Equitable Title**

The term "equitable title" means the rights and privileges of membership to share in the assets of the Exchange upon any liquidation, dissolution or winding up of the Exchange. Equitable title does not include any other rights and privileges of membership in the Exchange.

Rule [17] **18**. Employee of the Exchange and Exchange Employee

The terms "employee of the Exchange" and "Exchange employee" mean individuals employed directly by the Exchange and individuals employed by PHLX who provide services to the Exchange.

Rule [18] **19**. Exchange

The term "Exchange" means the Philadelphia Board of Trade, Inc. and when used with reference to the administration of any By-Law or Rule of the Exchange, means either the Board of Directors or the officer, employee, agent or committee to whom appropriate authority to administer such provision has been delegated by the Board.

Rule [19] **20**. Expiration Date

The term "expiration date" means in respect of an option contract the day and time fixed by the Rules of the Exchange or the Rules of the Clearing Corporation for the expiration of all option contracts covering the same commodity or futures contract and having the same expiration month as such option contract.

Rule [20] **21**. Expiration Month

The term "expiration month" in respect of an option contract means the month and year in which such option contract expires.

Rule [21] 22. Floor

The term "Floor" means pits, rings, posts or other places which have been designated by the Exchange as the trading areas for commodity interests and all adjacent areas.

Rule [22] 23. Floor Member

The term "floor member" means a member who has been granted permission to act on the Floor pursuant to the Rules of the Exchange.

Rule [23] 24. Futures Contract

The term "futures contract" means any contract for the purchase or sale of any commodity for future delivery which is executed on or subject to the Rules of the Exchange.

Rule [24] 25. **Legal Title**

The term "legal title" means the rights and privileges of membership in the Exchange of the natural person holding legal title to a membership share, except that if another person holds "equitable title" to such membership share, the rights and privileges of membership afforded to the holder of legal title do not include the right to share in the assets of the Exchange upon any liquidation, dissolution or winding up of the Exchange.

Rule [24] 26. Member

The term "member" means a natural person admitted to membership in the Exchange.

Rule [25] 27. Member Organization

The term "member organization" means an organization for which a membership has been registered pursuant to the Rules of the Exchange.

Rule [26] **28**. Option Contract

The term "option contract" means any option to buy or sell any commodity or any futures contract which is executed on or subject to the Rules of the Exchange and issued or subject to issuance by the Clearing Corporation pursuant to the Rules of the Clearing Corporation.

Rule [27] **29**. Organization

The term "organization" means an association (including but not limited to a cooperative association), partnership, trust or corporation.

Rule [28] **30**. Person

The term "person" means an individual or an organization.

Rule [29] **31**. PHLX

The term "PHLX" means the Philadelphia Stock Exchange, Inc.

Rule [30] **32**. Physical Emergency

The term "physical emergency" means any circumstance which may have a severe, adverse effect upon the physical functions of the Exchange including, for example, fire or other casualty, bomb threats, substantial inclement weather, power failures, communications breakdowns, computer system breakdowns, screen-based trading system breakdowns, malfunctions of plumbing, heating, ventilation and air conditioning systems; and transportation breakdowns.

Rule [31] **33**. Put

The term "put" means an option contract under which:

- (a) the holder of the option has the right, but not the obligation, in accordance with the terms of the option, to sell to the Clearing Corporation the number of units of the commodity or futures contract (or the cash equivalent of such number of units) covered by the option contract, and
- (b) the Clearing Corporation is obligated, in accordance with the terms of the option, to purchase from the holder upon the valid exercise of such option contract the

number of units of the commodity or futures contract (or the cash equivalent of such number of units) covered by the option contract.

Rule [32] **34**. Rule of the Clearing Corporation

The term "Rule of the Clearing Corporation" means any provision of the Certificate of Incorporation or the By-Laws, or any Rule, regulation, interpretation, stated policy, or instrument corresponding thereto, as adopted or amended by the Clearing Corporation.

Rule [33] **35**. Rule of the Exchange

The term "Rule of the Exchange" means any Rule, regulation, interpretation, stated policy, or instrument corresponding thereto, as adopted or amended by the Exchange.

Rule [34] **36**. Self-Regulatory Organization

The term "self-regulatory organization" shall have the meaning ascribed to it in the Securities Exchange Act of 1934 and, in addition, shall include any contract market, commodity clearing organization and registered futures association.

Rule [35] **37**. Series of Options

The term "series of options" means all option contracts of the same class of options having the same expiration date, exercise price and unit of trading.

Rule [36] **38**. Unit of Trading

The term "unit of trading" means in respect of any futures or option contract the number of units of the commodity or, in the case of an option on a futures contract, of the futures contract which are covered by a single option or futures contract.

Rule[s 37.] 39. Reserved.

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Philadelphia Board of Trade By-Laws

Membership Rules

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Rule 104. Member Organizations

(a) – (f) No Change.

[(g) As used herein, the following terms shall have the following meanings:

- (1) The term "legal title" means the rights and privileges of membership in the Exchange of the natural person holding legal title to a membership share, except that if another person holds "equitable title" to such membership share, the rights and privileges of membership afforded to the holder of legal title do not include the right to share in the assets of the Exchange upon any liquidation, dissolution or winding up of the Exchange.
- (2) The term "equitable title" means the right to share in the assets of the Exchange upon any liquidation, dissolution or winding up of the Exchange, which does not include any other rights and privileges of membership in the Exchange.]

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