



**PBOT Memo No.:1-08 R**  
**Notice to Members: 1-08**

### **Notice to Members**

**TO:** Members of The Philadelphia Board of Trade, Inc.

**FROM:** Office of the Secretary

**RE:** Amendments to PBOT's Articles of Incorporation and By-Laws regarding Issuance of Nonvoting Preferred Membership Share

**DATE:** January 14, 2008

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The Philadelphia Board of Trade, Inc. ("PBOT") has filed with the Commodity Futures Trading Commission SR-PBOT-2008-01, amending PBOT's Articles of Incorporation and By-Laws to conform PBOT's Rules, By-Laws, Articles of Incorporation with that certain offering memorandum dated August 1, 1984, entitled: "Offer of Membership in The Philadelphia Board of Trade (Circular 84-1)" (the "Offering Circular"). The text of the amendments to PBOT's Articles of Incorporation and By-Laws is attached as Exhibit A and Exhibit B, respectively.

Specifically, PBOT has amended the Articles of Incorporation and By-Laws in order to issue nonvoting preferred membership shares in conformance with the Offering Circular. In connection with the issuance of preferred shares, the authorized number of shares of PBOT has been increased from 1,000 to 2,000 shares, and PBOT is now authorized to issue 1,000 common shares, with a par value of \$1 per share and 1,000 nonvoting preferred membership shares, with a par value of \$5,000 per share. The holders of nonvoting preferred membership shares will have no interest in, or any right to share in, any dividends or distributions of the assets of PBOT except for the right to share in the assets of PBOT in the event of its liquidation, dissolution or winding up. In addition, the holders of nonvoting preferred membership shares will not have any right to transfer a nonvoting preferred membership share or any right to vote, consent or dissent on any matter involving the governance of PBOT, except as may be explicitly set forth in PBOT's Articles of Incorporation, By-Laws and Rules. The nonvoting preferred membership shares are not investment vehicles.

A member of PBOT holding both legal title and equitable title to a PBOT membership has the following rights: the right to nominate candidates for director positions as set forth in PBOT's By-Laws at Section 3-6(e), the right to trade on PBOT's Exchange, subject to PBOT's By-Laws and Rules, the right to share in the assets of PBOT in the event of its liquidation, dissolution or winding up as set forth in the Offering Circular and the right to a certificate representing a nonvoting preferred membership share. If legal title to a membership is separated from equitable title to a membership, the holder of equitable title to the membership shall have the right to share in the assets of PBOT in the event of its liquidation, dissolution or winding up and the right to a certificate representing the nonvoting preferred membership shares, and the

holder of legal title to the membership shall have the right to nominate candidates for director positions and the right to trade on PBOT's Exchange, subject to PBOT's By-Laws and the Rules.

Certificates representing the nonvoting preferred membership shares will be sent to members holding equitable title to PBOT memberships in the next few weeks. Any questions respecting this amendment or the issuance of shares may be directed to Edith Hallahan, Esquire at (215) 496-5179 or Scott Donnini at (215) 496-5358.

## Exhibit A

*The Articles of Incorporation of PBOT are amended as follows:*

(a) by striking Article 5 which now reads as follows:

“The aggregate number of shares which the corporation shall have authority to issue is 1,000 shares of common stock, par value \$1 per share.”

and inserting in place thereof:

“The aggregate number of shares which the corporation shall have authority to issue is 2,000. The corporation is authorized to issue two classes of shares designated, respectively, as “Common Shares” and “Nonvoting Preferred Membership Shares.” The corporation is authorized to issue 1,000 shares of Common Shares with a par value of \$1 per share. The corporation is authorized to issue 1,000 shares of Nonvoting Preferred Membership Shares with a par value of \$5,000 per share.

The respective classes of shares shall be entitled to the following preferences, privileges and restrictions:

1. Nonvoting Preferred Membership Shares in Series. The Nonvoting Preferred Membership Shares may be issued from time to time in one or more series in any manner permitted by law, as determined from time to time by the Board of Directors and stated in the resolution or resolutions providing for the issuance of such shares adopted by the Board of Directors pursuant to authority hereby vested in it, each series to be appropriately designated prior to the issuance of any shares thereof, by a distinguishing letter and such resolution shall state the preferential amount to which the shares of such series are entitled under Section 2(a) of this Article 5. All shares of each series of Nonvoting Preferred Membership Shares shall be alike in every particular and all Nonvoting Preferred Membership Shares shall be equal in rank and have the same powers, preferences, and rights, and shall be subject to the same qualifications, limitations, and restrictions without distinction between the shares of different series thereof, except only in regard to the amount or amounts payable to holders thereof upon voluntary or involuntary liquidation, dissolution, or winding up of the corporation, which rights may be different in different series and with respect to the length of time which a particular share has been outstanding as provided herein.

Except as provided herein, the designation of each particular series of Nonvoting Preferred Membership Shares and its terms shall be fixed and determined by the Board of Directors in any manner permitted by law and stated in the resolution or resolutions providing for the issuance of such shares adopted by the Board of Directors pursuant to authority hereby vested in it, before any shares of such series are issued. The Board of Directors may from time to time increase the number of shares of any series of Nonvoting Preferred Membership Shares already created by providing that any unissued Nonvoting Preferred Membership Shares shall constitute part of such series, or may decrease (but not below the number of shares thereof then outstanding) the number of

shares of any series of Nonvoting Preferred Membership Shares already created by providing that any unissued shares previously assigned to such series shall no longer constitute a part thereof. The Board of Directors is hereby empowered to classify or reclassify any unissued Nonvoting Preferred Membership Shares by fixing or altering the terms thereof and by assigning the same to an existing or newly-created series before the issuance of such shares.

2. Initial Series of Nonvoting Preferred Membership Shares. The Board of Directors has designated, and the corporation shall have the authority to issue, the following series of Nonvoting Preferred Membership Shares: (i) "Series A Nonvoting Preferred Membership Shares" to be associated with memberships initially purchased for a purchase price of \$5,000 per share, (ii) "Series B Nonvoting Preferred Membership Shares" to be associated with memberships initially purchased for a purchase price of \$7,500 per share, (iii) "Series C Nonvoting Preferred Membership Shares" to be associated with memberships initially purchased for a purchase price of \$15,000 per share, (iv) "Series D Nonvoting Preferred Membership Shares" to be associated with memberships initially purchased for a purchase price of \$20,000 per share and (v) "Series E Nonvoting Preferred Membership Shares" to be associated with memberships initially purchased for a purchase price of \$25,000 per share; which shall each have the same powers, preferences, rights, qualifications, limitations and restrictions, without distinction between the shares of different series thereof, except with regard to the amount or amounts payable to holders thereof upon voluntary or involuntary liquidation, dissolution, or winding up of the corporation as set forth in the corporation's Articles of Incorporation.

3. Liquidation Preferences. Upon any liquidation, dissolution, or winding up of the corporation, whether voluntary or involuntary, the following distributions of the assets of the corporation shall be made with respect to the corporation's shares in the order indicated:

(a) first, to the Nonvoting Preferred Membership Shares of each series, before any distribution shall be made with respect to the Common Shares, the full amount contributed by each holder for the purchase of such holder's shares of Nonvoting Preferred Membership Shares;

(b) second, to the Common Shares, before any other distributions in respect of the Nonvoting Preferred Membership Shares, the full amount of consideration paid with respect to such Common Shares at the time of such share's initial subscription or purchase;

(c) third, with respect to each share of Nonvoting Preferred Membership Shares, before any other distributions in respect of the Common Shares, an amount equal to five percent of the par value of each share of Nonvoting Preferred Membership Shares multiplied by the number of years that such Nonvoting Preferred Membership Share has been outstanding; provided, however, that any such distribution shall not exceed 25 percent of the par value of such Nonvoting Preferred Membership Share; and

(d) fourth, any remaining assets shall be distributed ratably with respect to all shares of Common Shares outstanding.

If upon such liquidation, dissolution, or winding up of the corporation, whether voluntary or involuntary, the assets of the corporation shall be insufficient to permit the payment to all outstanding shares of Nonvoting Preferred Membership Shares of all series of (i) the initial preferential amount to which they are respectively entitled under subsection (a), then the entire assets of the corporation distributable with respect to the Nonvoting Preferred Membership Shares shall be distributed ratably to all outstanding shares of Nonvoting Preferred Membership Shares based on the proportion which the full preferential amount that each such share is entitled under subsection (a), bears to the aggregate preferential amount to which all outstanding shares of Nonvoting Preferred Membership Shares are entitled under subsection (a), or (ii) the remaining preferential amount to which they are respectively entitled under subsection (c), after giving effect to the distributions required by subsections (a) and (b), then all of the remaining assets of the corporation, after giving effect to the distributions required by subsections (a) and (b), shall be distributed ratably to all outstanding shares of Nonvoting Preferred Membership Shares based on the proportion which the full preferential amount that each such share is entitled under subsection (c), bears to the aggregate preferential amount to which all such shares are entitled under subsection (c).

4. Voting. The holders of Common Shares shall exercise and possess all of the voting power with respect to the corporation. Except as required by law, the holders of Nonvoting Preferred Membership Shares shall have no voting rights.

5. Dividends. Except as otherwise provided herein, no dividends shall be paid with respect to the Nonvoting Preferred Membership Shares.”

6. Restrictive Legend. Each certificate representing each initial series of Nonvoting Preferred Membership Shares shall bear the following legend:

‘THESE SHARES ARE ENTITLED TO CERTAIN LIMITED RIGHTS AND PRIVILEGES ACCRUING TO MEMBERS AS SET FORTH IN THE INITIAL OFFERING CIRCULAR NO. 84-1, DATED AUGUST 1, 1984 (THE “OFFERING CIRCULAR”), AND ARE SUBJECT TO CERTAIN RESTRICTIONS AND CONDITIONS SET FORTH IN THE BY-LAWS AND RULES OF THE CORPORATION. THIS CERTIFICATE MAY NOT BE TRANSFERRED EXCEPT AS EXPRESSLY PERMITTED UNDER THE OFFERING CIRCULAR AND THE BY-LAWS AND RULES OF THE CORPORATION. PURSUANT TO THE TERMS OF THE BY-LAWS OF THE CORPORATION, ANY SUBSEQUENT HOLDER OF THIS CERTIFICATE TAKES THE SHARES REPRESENTED HEREBY SUBJECT TO THE RESTRICTIONS SET FORTH THEREIN.

THESE SHARES SHOULD NOT BE VIEWED OR ACQUIRED AS AN INVESTMENT AND NO HOLDER HEREOF SHOULD EXPECT TO DERIVE ANY ECONOMIC BENEFITS OR PROFITS FROM THESE SHARES EXCEPT WITH

REGARD TO AMOUNTS PAYABLE UPON LIQUIDATION, DISSOLUTION OR  
WINDING UP OF THE CORPORATION.'

Each certificate representing Nonvoting Preferred Membership Shares other than the initial series thereof shall bear legend similar to the foregoing legend.

(b) by inserting the word "common" between the words "the" and "shareholders" in line 3 of Article 7; and

(c) by deleting Section C of Article 7 and relettering Section D of Article 7 as Section C.

## Exhibit B

New text underlined, deleted text bracketed.

### PROPOSED BY-LAW AMENDMENT

#### Article III

##### Sec. 1. Classes of Shareholders

The Exchange shall issue [one] two classes of [stock] shares, which [is] are voting common[.] and nonvoting preferred membership shares. A certificate representing one nonvoting preferred membership share, with a par value of \$5,000, shall be issued for each membership in the Exchange from among the authorized number of such shares. The [members of the Exchange] holders of nonvoting preferred membership shares, shall have no interest in, or any right to share in, any dividends or distributions of the assets of the Exchange, any right to transfer a nonvoting preferred membership share 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. The nonvoting preferred membership shares are not investment vehicles.

A holder of both legal title and equitable title to membership[s] 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[.]”; and the right to a certificate representing a nonvoting preferred membership share. 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 right to a certificate representing the nonvoting preferred membership shares, 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.