

**MEMORANDUM**

TO: Philadelphia Board of Trade Members and Member Organizations

FROM: Legal Department

DATE: November 5, 2008

RE: SR-PBOT-2008-14 (Amendments to By-Laws and Rules)

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On October 16, 2008, the Board of Directors of the Philadelphia Board of Trade, Inc. (“PBOT”) authorized staff to file with the Commodity Futures Trading Commission (“CFTC”) a proposed rule change to amend the by-laws and rules of PBOT to (a) reduce the size of the Board of Directors; (b) define the roles of Chief Executive Officer and President; (c) redefine the composition and duties of the various Standing Committees of PBOT; and (d) amend the definition of “PHLX”. SR-PBOT-2008-14 was filed as a rule change with the CFTC and is effective as of this date. A copy of the amended by-laws and rules are attached to this memorandum.

If you have any questions regarding this filing, please contact Angela Dunn, Legal Department, at (215) 496-5692.

New text is underlined and deletions appear in brackets.

## **By-Laws of the Philadelphia Board of Trade, Inc.**

### **Article III**

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#### **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 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) b]** 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 ten] eleven [other] individuals five of whom shall be the individuals nominated by the membership in accordance with By-Law Section 3-6(**[e]d**). In making nominations, the Nominating Committee shall give due consideration to the various functions and activities of the Exchange and its members.

**[(d) c]** 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 and the membership 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) d]** 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 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. 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.

~~(f)~~ **e**) 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)~~ **f**) At the annual meeting of shareholders, the following directors shall be elected: [five directors who shall be the individuals described in By-Law Section 4-2(b); and ten] eleven 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.

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## **ARTICLE IV**

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### **Sec. 2. Composition of Board of Directors**

**(a)** The number of directors of the Exchange shall be [fifteen] eleven, all of whom shall be citizens of the United States.

**(b)** The Chairman and the Vice Chairman of the Board of Governors 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 Vice 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.]

**(b)** The Chief Executive Officer of the Exchange [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 eleven [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 eleven [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, consist[a]ent 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 Vice Chairman of the Board of Governors of PHLX.] The Vice Chairman of the Board of Directors 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.

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## **Sec. 6. Special Meetings**

Special meetings of the Board of Directors may be called by the [President] Chief Executive Officer on one hour's notice to each director, either personally or by mail or by telegram; special meetings shall be called by the [President] Chief Executive Officer or Secretary in like manner and on like notice upon the written request of a majority of the directors then in office.

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## **ARTICLE V**

### **Sec. 1. Committees**

(a) The Standing Committees of the Exchange shall consist of an Audit Committee, a Business Conduct Committee, an Executive Committee, a Finance Committee, and a Nominating Committee. Except as otherwise provided in the By-Laws, each of such committees shall be composed of not less than three individuals<sub>],</sub> at least one of whom shall be a director of the Exchange.]

[Unless otherwise specified in the By-Laws, m]Members of such committees [may] shall be directors of the Exchange[, members or general partners or officers of member organizations of the Exchange or other individuals who are considered to be qualified.] The Chairman of the Board [and the President of the Exchange] shall be an ex-officio member[s] of each such Standing Committee.

With respect to the Business Conduct Committee, no person shall serve on that committee who is subject to any of the conditions specified in Commodity Futures Trading Commission Regulation 1.63(b)(1) through (6). Should any member of the Business Conduct Committee thus become ineligible to serve, the chairman of that committee shall remove such member and fill the resulting vacancy.

(b) Except as otherwise specifically provided in the By-Laws, the Standing Committees shall be appointed by the [Chairman of the] Board of Directors[, subject to the approval of the Board of Directors,] as promptly as possible after each annual meeting of the Exchange. Each appointee shall serve for one year or until his successor is appointed, until his resignation or removal by a majority vote of the Board of Directors. Subject to like approval, the Chairman of the Board of Directors shall designate the chairman of each such committee.

(c) Each Standing Committee shall assist in the supervision, management and control of the affairs of the Exchange within its particular area of responsibility and interest. Subject always to the control and supervision of the Board of Directors, each Standing Committee shall recommend for adoption and administer the Rules of the Exchange within its particular area of responsibility and interest and shall make such rules as it may deem necessary for the orderly conduct of its business.

(d) In addition to the Standing Committees, the Board of Directors may constitute and appoint by rule or resolution special committees and designate their composition, responsibilities and powers, as well as their chairmen.

(e) Subject always to the control and supervision of the Board of Directors, each Standing Committee, exclusive of the Finance Committee and the Audit Committee, and each Special Committee shall determine the manner and form in which its proceedings shall be conducted, and may act at a meeting or without a meeting, and through a quorum composed of a majority of all its members then in office, exclusive of ex-officio members. Except as otherwise specifically provided in the By-Laws or Rules, the decision of a majority of those present at a meeting at which a quorum is present, or the decision of a majority of those participating when at least a quorum participates, shall be the decision of the Committee. One or more members of any such committee may participate in any meeting thereof by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.

(f) In the absence or disqualification of any member of such committee, the following individuals, in the order of their availability, may appoint another qualified individual to act at the meeting in the place of any such absent or disqualified member: [(1)] the Chairman of the Board of Directors of the Exchange; [(2)] the President of the Exchange; or [(3)] the Chairman of the particular committee.

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## **Sec. 5. Executive Committee**

(a) The Executive Committee shall consist of [the ex-officio directors and such additional number of individuals as the Board of Directors may authorize who shall be directors of the Exchange.] the Chairman of the Board of Directors and four other directors who the Board of Directors may authorize. The Executive Committee shall execute and implement policy previously established by the Board of Directors, shall make recommendations concerning policy previously established by the Board of Directors, shall appoint a panel of disinterested individuals to arbitrate any dispute between members and member organizations submitted for arbitration pursuant to the Arbitration Rules of the Exchange and exercise other authority incidental thereto and shall have such other powers and shall perform such other duties as the Board of Directors may delegate to it in writing from time to time.

(b) When the Board of Directors is not in session, the Executive Committee shall have and may exercise all power and authority of the Board, which may lawfully be delegated to it by the Board and which are not in conflict with the limitations created by the Board, the Certificate of Incorporation or By-Laws. All actions of the PBOT Executive Committee shall be reported to the Board of Directors within ten (10) days thereof but not later than the start of the next Board meeting.

## **Sec. 6. Finance Committee**

The Finance Committee of the Exchange shall consist of the Chairman and four other directors who the Board of Directors may authorize. [be the Finance Committee of its parent, PHLX, as constituted in, and with the responsibilities and powers granted in PHLX By-Law Section 10-13 and the supplementary material thereto.]

The Finance Committee shall examine the accounts of the Exchange. It shall prepare and present to the Board of Directors an estimate of the income of the Exchange for the succeeding calendar year and its recommendations as to the appropriations for expenses for said period. It may at any time recommend additional appropriations or the increase or decrease of any appropriations made by the Board of Directors and shall make reports and recommendations to the Board of Directors as to the financial policy of the Exchange.

The Finance Committee shall have such other powers and duties as may be delegated to it by the Board of Directors.

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### **Sec. 8. Nominating Committee**

The Nominating Committee shall consist of [the individuals specified in By-Law Section 3-6 and shall have such powers and shall perform such duties as are specified therein] the Chairman, Vice Chairman and one director who the Board of Directors may authorize and who shall be a director of the Exchange.

### **Sec. 9. Audit Committee**

The Audit Committee shall consist of five directors who the Board of Directors may authorize and who shall be directors of the Exchange. [be the Audit Committee of its parent, the Philadelphia Stock Exchange, Inc., as constituted in, and with the responsibilities and powers granted by PHLX By-Law Section 10-9 and the supplementary materials thereto.]

The Audit Committee shall: (A) provide oversight over the Exchange's financial reporting process; (B) provide oversight over the systems of internal controls established by management and the Board and the Exchange's legal and compliance process; (C) select, evaluate and, where appropriate, replace the Exchange's independent auditors; and (D) direct and oversee all the activities of the Exchange's internal audit function, including but not limited to management's responsiveness to internal audit recommendations.

The Internal Audit Department shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Internal Audit Department also report to senior management of the Exchange on matters the Audit Committee deems appropriate and may request that senior management of the Exchange perform such operational oversight as necessary and proper, consistent with the preservation of the independence of the internal audit function. The Internal Audit Department and its head may also be employees of one or more affiliates of the Exchange, and may serve in a similar capacity with respect to such affiliate(s).

The Audit Committee shall have the authority to conduct special reviews of any alleged improper conduct with respect to Exchange related activity, operations, finance or regulation.

The Audit Committee may select and engage its own advisor(s) to assist it in carrying out its duties.

The Audit Committee shall determine the appropriate amount of funding to be provided by the Exchange for the purpose of paying: (i) compensation to external auditors retained by the Audit Committee to prepare or issue an audit report; (ii) compensation to adviser(s) employed by the Audit Committee that it determines are necessary to carry out its duties; and (iii) ordinary administrative expenses of the Audit Committee that are necessary or appropriate to carry out its duties in respect of external auditors.

## **ARTICLE VIII**

### **Sec. 1. Officers**

The officers of the Exchange shall be elected by the Board of Directors and shall be a Chief Executive Officer, a President, one or more Vice Presidents, Secretary, Treasurer and such other officers as the Board of Directors shall authorize from time to time; provided, however, that the Chief Executive Officer [President] of the Exchange, with the approval of the Board of Directors, may appoint one or more of such other officers as provided in the By-Laws. Any number of offices may be held by the same individual except the offices of the President and Treasurer. It shall not be necessary for the officers to be directors, except that the [President] Chief Executive Officer shall be a member of the Board of Directors. The Board of Directors shall elect or appoint such agents as it may deem appropriate.

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### **Sec. 4 Chief Executive Officer**

The Chief Executive Officer of the Exchange shall be a member of the Board of Directors. The Chief Executive Officer shall be Chairman of the Board of Directors of the Exchange. The Chief Executive Officer shall have general supervision over the business and affairs of the Exchange. The Chief Executive Officer shall have all powers and duties of supervision and management usually incident to the office of the Chief Executive Officer of a corporation, except as specifically limited by a resolution of the Board. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to the Chief Executive Officer from time to time by the Board of Directors. The Chief Executive Officer shall be an ex-officio member of all Standing Committees.

Subject to the approval of the Board of Directors, the Chief Executive Officer may appoint the other officers of the Exchange as provided for in the By-Laws and such additional officers as he may determine are required for the efficient management of the Exchange. Subject to like approval, he may fix their duties, responsibilities and terms of office or employment and he may terminate their terms of office or employment at any time. All officers of the Exchange as provided for in the By-Laws shall be responsible to the Board of Directors and all other officers shall be responsible to the Chief Executive



Officer for the proper performance of their duties. The Chief Executive Officer shall have power to appoint or hire agents and all other employees of the Exchange; to fix the duties, responsibilities and terms of their employment and to terminate their employment at any time.

#### **Sec. [4] 5. President**

The President [shall be the chief executive officer of the Exchange and shall be a member of the Board of Directors. He] shall be responsible for general and active management of the business and affairs of the Exchange, and shall see that all orders and resolutions of the Board of Directors are carried into effect, subject, however, to the right of the directors to delegate any specific powers to any other officer or officers of the Exchange. [He shall be ex-officio a member of all Standing Committees, and shall have the general powers and duties of supervision and management usually vested in the office of President of a corporation.]

[Subject to the approval of the Board of Directors, the President may appoint the other officers of the Exchange as provided for in the By-Laws and such additional officers as he may determine are required for the efficient management of the Exchange. Subject to like approval, he may fix their duties, responsibilities and terms of office or employment and he may terminate their terms of office or employment at any time. All such officers shall be responsible to the President for the proper performance of their duties.]

[The President shall have power to appoint or hire agents and all other employees of the Exchange; to fix the duties, responsibilities and terms of their employment and to terminate their employment at any time.]

#### **Sec. [5] 6. Secretary**

The Secretary shall attend all meetings of the Board of Directors and all meetings of the shareholders and shall act as clerk thereof, and record all votes of the Exchange and the minutes of all its transactions in a book to be kept for that purpose. He shall give, or cause to be given, notice of all meetings of the shareholders and of the Board of Directors as required under the By-Laws, and shall perform such other duties as may be prescribed by the Board of Directors or [President] Chief Executive Officer, under whose supervision he shall be. He shall keep in safe custody the seal of the Exchange, and when authorized by the Board of Directors, affix the same to any instrument requiring it.

#### **Sec. [6] 7. Treasurer**

The Treasurer shall have charge of all funds and securities beneficially owned by the Exchange; shall endorse the same for deposit or collection when necessary; and deposit the same to the credit of the Exchange in such banks or depositories as the Board of Directors may authorize. He may endorse all commercial documents requiring

endorsements for or on behalf of the Exchange and may sign all receipts and vouchers for payments made to the Exchange. He shall have all such powers and duties as generally are incident to the position of Treasurer or as may be assigned to him by the Board of Directors or by the [President] Chief Executive Officer.

**Sec. [7] 8. Vacancies**

If the office of one or more officers or agents becomes vacant for any reason, the Board of Directors or, subject to the approval of the Board of Directors, the [President] Chief Executive Officer may choose a successor or successors who shall hold office for the unexpired term in respect of which such vacancy occurred.

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**RULES of the Philadelphia Board of Trade, Inc.**

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**Rule 31. PHLX**

The term "PHLX" means [the Philadelphia Stock Exchange]NASDAQ OMX PHLX, Inc.