

MEMORANDUM

**TO:** PHLX Members, Participants, Member Organizations and Participant Organizations

**FROM:** Office of the Secretary

**RE:** McGowan, et al. v. Frucher, et al.

**DATE:** April 2, 2007

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On Saturday, March 31, 2007, Judge Anita B. Brody of the United States District Court for the Eastern District of Pennsylvania issued an order and opinion granting the defendants' motions to dismiss the case of McGowan, et al. v. Frucher, et al., No. 06-2558. In the case, plaintiffs had alleged violations of the federal securities laws against current and former members of the Exchange's Board of Governors and management and the Exchange's six strategic investors arising out of the demutualization of the Exchange, the strategic investment transactions, and the September 2005 stock buyback. Plaintiffs had sought, among other relief, to unwind the strategic investment transactions and reversal of the Exchange's demutualization. As the court stated in its opinion, "the PHLX defendants always disclosed that one central purpose of demutualization was to create stock that would facilitate strategic investments in the Exchange, and that the inevitable result of any such capital investments would be that the former seat owners would own less than 100 percent of the Exchange." The court went on to observe that "[w]ith this information in hand, the seat owners voted to approve demutualization." Judge Brody found that plaintiffs' amended complaint had no merit and dismissed the case in its entirety with prejudice. The Exchange is gratified by the result.