



Rule Self-Certification

June 19, 2007

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OFFICE OF THE SECRETARY

Office of the Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st St., N.W.
Washington, D.C. 20581

Re: Certification of new Rule E38, EFP Transactions, two Notices to Members, and amendment to Rule E37, Limitation of Liability For PBOT XL Reference File SR-PBOT-2007-08


Ladies and Gentlemen:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Section 40.6 of the regulations promulgated by the Commodity Futures Trading Commission under the Act, the Philadelphia Board of Trade, Inc. (“PBOT” or “Exchange”) hereby submits new Rule E38, EFP Transactions, an amendment to Rule E37, Limitation of Liability for PBOT XL, and two Notices to Members. Rule E38 and the amendment to Rule E37, as well as the two Notices to Members, will become effective on June 20, 2007.

There were no opposing views among the PBOT’s Executive Committee, members or market participants.

PBOT hereby certifies that the attached new rule and rule amendments and the Notices to Members comply with the Commodity Exchange Act and regulations thereunder.

Yours truly,


C. Robert Paul
Executive Vice President
and General Counsel

cc: Mr. Allen J. Cooper
Ms. Jane Croessmann
Ms. Gabrielle Sudik
Mr. Edward J. Dasso

New language is underlined.

Rule E37. Limitation of Liability For PBOT XL

(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.

All New Text

Rule E38. EFP Transactions

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.



EFP Eligible Futures Contracts: World Currency Futures Contracts

Designated Contracts

Through this Notice to Members and pursuant to the Philadelphia Board of Trade ("PBOT") Rule E38, PBOT designates currency futures contracts as being Exchange of Futures for Physicals ("EFP") eligible. The Euro Currency Future and British Pound Currency Future contracts, currently listed, are EFP eligible. Any new currency futures contracts listed by the PBOT will also be EFP eligible.

EFP characteristics

An EFP involves simultaneous transactions in the futures and cash commodity markets. The futures market transaction consists of a noncompetitive transfer of a futures position between the parties to the EFP. Thus one party buys the physical commodity and simultaneously sells (or gives up a long) futures contract while the other party sells the physical commodity and simultaneously buys (or receives a long) futures contract.

EFPs on the PBOT must be *bona fide*. The Commodity Futures Trading Commission ("CFTC") has stated that for an EFP to be *bona fide* it must have the following three essential elements: (i) a futures transaction and a cash transaction which are integrally related; (ii) an "exchange" of futures contracts for cash commodity, where the cash commodity contract provides for the transfer of ownership of the cash commodity to the cash buyer upon performance of the terms of the contract, with delivery to take place within a reasonable time thereafter in accordance with prevailing cash market practice; and (iii) separate parties to the EFP, where the accounts involved have different beneficial ownership or are under separate control. The CFTC has also identified other indicia to be considered in determining whether an EFP is *bona fide*. These include: (i) the degree of price correlation between the futures and cash legs of the EFP; (ii) the prices of the futures and cash legs of the EFP and their relationship to the prevailing prices in their respective markets; (iii) whether the cash seller has possession, the right to possession, or the right to future possession of the cash commodity prior to the execution of the EFP; (iv) the cash seller's ability to perform on his delivery obligation in the absence of prior possession of the cash commodity, i.e., the cash seller's access to the cash market; and (v) whether the cash buyer acquires title to the cash commodity.

Member firms may facilitate, as principal, the cash commodity component of an EFP on behalf of a customer provided that the member firm can demonstrate that the cash commodity transaction was passed through to the customer that received the futures position as part of the EFP.

In EFP transactions, the associated cash product must be the commodity underlying the futures contract or a derivative, by-product, or related product that is reasonably correlated to the futures being exchanged. The parties to the transaction may be

required to demonstrate that the cash and futures products being exchanged are reasonably correlated.

The futures exchanged in an EFP must be outright futures contracts. Futures combinations are not a permissible component of an EFP. The quantity of futures exchanged must be approximately equivalent to the underlying quantity of the cash product being exchanged. The parties involved may be required to demonstrate such equivalency.

Transitory EFP characteristics

EFPs in foreign currency futures where the parties immediately offset the cash leg of the transaction separate from the EFP are called "Transitory EFPs." Unlike other EFPs, Transitory EFPs involve a cash transfer immediately prior to (or simultaneously with) an EFP in which the cash position acquired is reconveyed incident to the EFP. The transfer of ownership (title) of the cash commodity is a key indicator as to the *bona fide* quality of a Transitory EFP. The cash transfer must be able to stand on its own (be severable) as a commercially appropriate transaction, with no obligation on either party to carry out the EFP.

Prohibited EFP practices

EFP transactions shall not be used to circumvent traditional order flow and access.

Contingent EFPs are prohibited. A contingent EFP is a transitory EFP in which the EFP and the cash transfer are tied together so that the cash transfer cannot stand on its own and where title is not transferred in the initial cash market. In a contingent EFP the transactions are not severable but are contingent upon each other.

The terms and structure of the cash portion of the transaction should be substantially the same in all material respects as other cash commodity transactions in the market in order to avoid characterization of the EFP as a contingent EFP. By way of illustration:

- If the price of the cash commodity is not determined in the same manner as for other cash market transfers engaged in by the participants, the cash transfer may not be commercially appropriate apart from the EFP.
- If a lower level of capitalization is required of the customer for the cash transfer than would normally be required to engage in cash market transactions with the opposite party, there would be an indication that there was no intended cash transfer, but rather that the cash purchase and sale was used as a pretext for establishing a futures position.

EFP Documentation

Member and Member firms must fully document Foreign Currency Futures EFP transactions. All documents typically generated in accordance with cash market conventions must be generated and retained. EFP confirmations should at a minimum include: identification of all cash and futures legs of the EFP, the name and or identity of the counterparty principal to the transaction, the account controller, or any other Person acting on behalf of a third party, the name of the third party's Carrying Clearing Member and the third party's account number (or other account specific documentation).

The execution time (representing the actual time the negotiation was concluded) shall use Eastern Time (ET) (GMT -4) and the corresponding date for reporting purposes.

Records of the cash portion of EFP transactions must be readily available for SRO audit purposes.

Permissible Counterparties

EFPs may be executed between two accounts provided that one of the following applies:

- The accounts have different beneficial ownership.
- The accounts have the same beneficial ownership, but are under separate control.
- The accounts are commonly controlled, but involve separate legal entities, which may or may not have the same beneficial ownership.

In cases where the parties to a transaction involve the same legal entity, same beneficial owner, or separate legal entities under common control, the parties must be able to demonstrate that the EFP was a legitimate arm's length transaction.

The term "same beneficial ownership" refers to a parent and its wholly owned subsidiaries or subsidiaries that are wholly owned by the same parent.

If you have questions regarding this circular, please contact Dennis Boylan at the PBOT Market Operations Desk at 888-353-8114

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EFP Transactions: Reporting Requirements and Procedures

Executive Summary

In addition to matching orders and quotes through PBOT XL, the Philadelphia Board of Trade ("PBOT") allows its members and member organizations (collectively "members") to negotiate and execute Exchange of Futures for Physicals ("EFP") transactions that comply with PBOT Rule E38.

PBOT members must follow the operational procedures set forth in this *Circular*, related to (1) designating an "Authorized EFP Trade Reporter" and (2) the "EFP Trade ID" and (3) the timely completion and submission of an "EFP Trade Report Form."

PBOT, at PBOT's discretion, may allow members to submit a suitable substitute for the "EFP Trade Report Form" in order to facilitate the submission of transaction information.

PBOT shall designate which Exchange Futures Contracts are EFP eligible in separate Notice(s) to Members.

Designating an Authorized EFP Trade Reporter

To facilitate the timely, accurate, and authorized submission of proposed EFP trades, the PBOT requires members to designate and register with the PBOT Market Operations Desk at least one "Authorized EFP Trade Reporter" before submitting EFP transactions. While the members Authorized Trader Contact remains responsible for any EFP transaction, only a duly designated and Authorized EFP Trade Reporter can submit a proposed EFP transaction to the PBOT Market Operations Desk.¹ To register an Authorized EFP Trade Reporter, a member must complete and submit PBOT's "Authorized EFP Trade Reporter Form."² However, the registration of a member's Authorized EFP Trade Reporter becomes effective upon approval and notification of the PBOT Market Operations Desk.

Submitting the EFP Trade Report Form and Trade ID

Taking into account that EFP transactions may occur outside PBOT's regular trading hours, the submission of the "EFP Trade Report Form" should include a unique trade ID (up to nine characters) agreed upon by the parties to the EFP while recording their trade terms.

The parties to the EFP must then deliver to the PBOT Market Operations Desk (email: pmod@phlx.com) a completed EFP Trade Report Form in a manner approved by the Exchange within a reasonable period of time.

¹ See PBOT Rule E2(a) (defines "Authorized Trader Contact"); see also PBOT Rule E7 and PBOT *Notice to Members* 02-2006 (describe the duties and responsibilities of Authorized Trader Contact).

² See Attachment A for a copy of "Authorized EFP Reporter Registration Form."

The PBOT Market Operations Desk (888-353-8114) will compare the details of the EFP for suitability and will post the EFP transaction to the match engine. This will cause the EFP transaction to be disseminated in PBOT's Market Data Distribution Network and sent to post-trade processing and clearing.

Timing

The PBOT Trading Day ends at 4:15 (ET), however to insure that EFP transactions are correctly posted to the match engine, note these two caveats:

- EFP Transactions in any delivery month (but not on the Last Trading Day) that are reported after 3:45 (ET) will not be posted until the next trading day.
- EFP Transactions executed on the **Last Trading Day** for any delivery month must be executed and reported before the final half hour of trading: 3:45 (ET).

Additional Notes:

Post Trade Processing

The parties to EFP transactions should contact their respective back offices to insure that trade details are reviewed in post-trade processing for accuracy.

EFP Recordkeeping

Members participating in EFPs should review the recordkeeping requirements stipulated in PBOT Rule E38(a)(iii). Records of EFP transactions must be readily available for SRO audit purposes.

If you have questions regarding this circular, please contact Dennis Boylan at the PBOT Market Operations Desk at 888-353-8114.

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**ATTACHMENT A
Authorized EFP Reporter Registration Form**

Member Name: _____

Member ID: _____

The undersigned Authorized Trader Contact hereby certifies that the person or persons listed below ("Authorized EFP Reporters") are authorized to submit EFP transactions on behalf of the above-designated member or member organization. I understand that pursuant to PBOT Rule E7 and Notice to Members 02-2006 I remain responsible for EFP transactions submitted by or through my firm's Member ID. Send this completed form to the PBOT Market Operations Desk for approval by email at pmod@phlx.com. PBOT Market Operations Desk: 888-353-8114

Authorized EFP Trade Reporters

Name of Authorized EFP Reporter	Trader ID for Authorized EFP Reporter or other unique number	Password (6 character maximum)	Telephone Number

Affirmed by:

Authorized Trader Contact (printed name)

Signature of Authorized Trader Contact and Date

Authorized Trader Contact E-mail Address

Authorized by:

PBOT staff (printed name)

Signature of authorized PBOT staff and Date

PBOT staff contact number and E-mail Address

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ATTACHMENT B EFP Trade Report Form

INSTRUCTIONS:

1. An Authorized EFP Reporter must complete all parts of this form. PBOT will reject the form if any information is incomplete or illegible or the instructions are not followed.
2. Members, Member Organizations, and their employees and persons associated with them (including Authorized Trader Contacts or Authorized EFP Reporters) must comply in all respects with PBOT Rule E38.
3. Parties submitting this form need to originate and use a common EFP Trade ID (no longer than 9 characters and starting with EFP) that will identify this trade. SAMPLE: EFP4534AA SAMPLE: EFPws3456
4. Submit this form to PBOT Market Operations Desk by email at pmod@phlx.com. Call 888-353-8114 with any questions regarding this procedure.
5. This form should be submitted to the PBOT Market Operations Desk in a timely manner, however note:
 - EFP Transactions in any delivery month (but not on the Last Trading Day) that are reported after 3:45 (ET) will not be posted until the next trading day.
 - EFP Transactions executed on the Last Trading Day for any delivery month must be executed and reported before the final half hour of trading: 3:45 (ET).

EFP TRADE ID: EFP

<u>EFP Transaction Details</u>		
Symbol: _____	Volume: _____	Price: _____
Date and Time at End of Negotiation: _____		

BUY SIDE	SELL SIDE
Member ID:	Member ID:
Authorized Trader ID:	Authorized Trader ID:
Open or Close Position Indicator (as applicable):	Open or Close Position Indicator (as applicable):
CTI Code:	CTI Code:
Customer Account Number:	Customer Account Number:
Clearing Account Number:	Clearing Account Number:
Clearing Origin Code:	Clearing Origin Code:

Authorized EFP Trade Reporter (printed name)

Authorized EFP Trade Reporter (printed name)

Signature and Date

Signature and Date

For Official Use Only Time: _____
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