

Form PTO-1594 (Rev. 06/04)
OMB Collection 0651-0027 (exp. 6/30/2005)

Please Referen

U.S. DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

Board of Trade of the City of Chicago

- Individual(s) Association
- General Partnership Limited Partnership
- Corporation-State Delaware Not for Profit,
- Other Non-Stock Corporation

Citizenship (see guidelines) _____

Execution Date(s) April 22, 2005

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

- Assignment Merger
- Security Agreement Change of Name
- Other Change of Corporate Status

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: Board of Trade of the City of Chicago

Internal Address: _____

Street Address: 141 West Jackson Boulevard

City: Chicago

State: Illinois

Country: _____ Zip: _____

- Association Citizenship _____
- General Partnership Citizenship _____
- Limited Partnership Citizenship _____
- Corporation Citizenship _____
- Delaware Not for Profit, Non-Stock
- Other Corporation Citizenship _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and Identification or description of the Trademark.

A. Trademark Application No.(s)

1,414,563; 1,410,0007; 1,516,834; 1,913,905; 2,403,561; 2,606,234

B. Trademark Registration No.(s) 909,351; 1,350,953;

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: Jeanne M. Gills

Internal Address: Suite 2800

Street Address: 321 North Clark Street

City: Chicago

State: Illinois Zip: 60610

Phone Number: 312-832-4500

Fax Number: 312-832-4700

Email Address: PtoMailChicago@foley.com

6. Total number of applications and registrations involved:

8

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 215.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number 06-1450

Authorized User Name FOLEY & LARDNER LLP

9. Signature:

Jeanne M. Gills
Signature

Signature

12/1/05
Date

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 20

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1460, Alexandria, VA 22313-1460

TRADEMARK

REEL: 003235 FRAME: 0964

Please Reference Document No. *700212412A*

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Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"CBOT MERGER SUB, INC.", A DELAWARE CORPORATION,

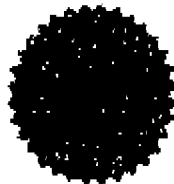
WITH AND INTO "BOARD OF TRADE OF THE CITY OF CHICAGO, INC."

UNDER THE NAME OF "BOARD OF TRADE OF THE CITY OF CHICAGO, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-SECOND DAY OF APRIL, A.D. 2005, AT 12:05 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.

3226044 81008

050326216



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3830272

DATE: 04-22-05

TRADEMARK

REEL: 003235 FRAME: 0965

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:05 PM 04/22/2005
FILED 12:05 PM 04/22/2005
SIX 050326218 - 3226044 FILE

**CERTIFICATE OF MERGER
OF
CBOT MERGER SUB, INC.
INTO
BOARD OF TRADE OF THE CITY OF CHICAGO, INC.**

The undersigned corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY THAT:

First: The name and state of incorporation of each of the constituent corporations of the merger (the "Merger") is as follows:

Name	State of Incorporation
CBOT Merger Sub, Inc.	Delaware
Board of Trade of the City of Chicago, Inc.	Delaware

Second: An Agreement and Plan of Merger dated as of February 10, 2005 (the "Merger Agreement") among the Board of Trade of the City of Chicago, Inc. (the "Corporation"), CBOT Merger Sub, Inc. ("CBOT Merger Sub"), a wholly-owned subsidiary of CBOT Holdings, Inc. ("CBOT Holdings"), and CBOT Holdings, a wholly owned subsidiary of the Corporation, has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with Section 255 of the General Corporation Law of the State of Delaware.

Third: The surviving corporation shall be the Board of Trade of the City of Chicago, Inc.

Fourth: The Amended and Restated Certificate of Incorporation of the Corporation shall, at the effective time of the Merger, be amended and restated to read in its entirety as set forth on Exhibit A attached hereto, and as so amended and restated shall be the Amended and Restated Certificate of Incorporation of the Corporation.

Fifth: The executed Merger Agreement is on file at the office of the Corporation, the address of which is:

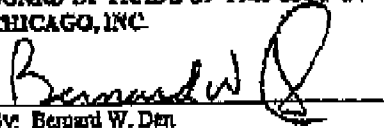
Board of Trade of the City of Chicago, Inc.
141 West Jackson Boulevard
Chicago, Illinois 60604

Sixth: A copy of the Merger Agreement will be furnished by the Corporation, on request and without cost, to any stockholder of any constituent corporation.

CHICAGO_1136588_6

IN WITNESS WHEREOF, the Board of Trade of the City of Chicago, Inc. has caused this Certificate to be signed by an authorized officer as of the 22nd day of April, 2005.

BOARD OF TRADE OF THE CITY OF
CHICAGO, INC.



By: Bernard W. Den
Its: President and Chief Executive Officer

EXHIBIT A

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF THE CORPORATION**

See attached.

AMENDED AND RESTATED
 CERTIFICATE OF INCORPORATION
 OF
**BOARD OF TRADE OF THE
 CITY OF CHICAGO, INC.**
 (ORIGINALLY INCORPORATED IN THE STATE OF DELAWARE UNDER THE NAME
 DELAWARE CBOT, INC. ON MAY 12, 1997)

ARTICLE I

NAME

The name of the corporation is Board of Trade of the City of Chicago, Inc. (hereinafter referred to as the "Corporation").

ARTICLE II

REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is Suite 1D, 9 East Lockwood Street, in the City of Dover, County of Kent, Delaware 19901. The name of the registered agent of the Corporation at such address is National Registered Agents, Inc.

ARTICLE III

CORPORATE PURPOSES

The nature of the business or purposes to be conducted or promoted by the Corporation are to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law (as amended from time to time, the "DGCL").

ARTICLE IV

MEMBERSHIP

A. General.

The Corporation shall have no authority to issue capital stock. The terms and conditions of membership in the Corporation shall be as provided in or pursuant to this Certificate of Incorporation and the Bylaws of the Corporation which incorporate by reference the Rules and Regulations (collectively, the "Rules") of the Corporation (the "Bylaws"), which shall be part of the Bylaws in all respects.

B. Classes and Series of Membership.

Membership in the Corporation shall be divided into classes and series as set forth in this Article IV.

1. Class A Membership.

There shall be one Class A Membership in the Corporation (the "Class A Membership" and the holder thereof, the "Class A Member"), which Class A Membership shall be held by CBOT Holdings, Inc., a Delaware corporation ("CBOT Holdings"). It shall be a term and condition of such Class A Membership that such membership may not be transferred to or held by any person or entity other than CBOT Holdings unless authorized by an amendment to this Section B(1) of Article IV. Except to the extent (if any) expressly provided herein or required by law, the Class A Member shall have the right to vote on any matter to be voted on by the members of the Corporation other than on those matters expressly reserved to the vote of the holders of Series B-1 Memberships and Series B-2 Memberships (such as defined in Section B(2) of this Article IV) and shall have the exclusive right to receive any dividend or other distribution (including upon liquidation, dissolution, winding-up or otherwise) to be declared, paid or distributed by the Corporation (except as provided in Section B(2) of this Article IV), and no other member of or class or series of membership in the Corporation shall be entitled to vote on any matter except as set forth below or to receive any such dividend or other distribution (except as provided in Section B(2) of this Article IV). In addition

to those general voting rights of the Class A Membership set forth in this Section B(1) of this Article IV, the affirmative vote of the Class A Membership shall be required to permit the Corporation to approve, in one transaction or in a series of related transactions: (a) any merger or consolidation of the Corporation with or into another entity, (b) any purchase by, investment in, or other acquisition or formation by the Corporation of any business or assets which are, or are intended to be, competitive, as determined by the board of directors of the Corporation (the "Board of Directors") in its sole and absolute discretion, with the business conducted or proposed to be conducted at such time by the Corporation, (c) any sale (or other transfer) to a third party of assets of the Corporation that constitute a significant amount of the total assets of the Corporation, or (d) any dissolution or liquidation of the Corporation. For purposes of clause (c) of the foregoing provision, a significant amount of the total assets of the Corporation shall mean 10% of the fair market value of the assets, both tangible and intangible, of the Corporation as of the time of the approval by the Board of Directors of the proposed sale (or other transfer), as determined by the Board of Directors in its sole and absolute discretion.

2. Class B Membership.

(a) Class B Memberships in the Corporation (each a "Class B Membership" and the holder thereof, a "Class B Member") shall represent the right to vote and otherwise utilize the facilities of the Corporation in accordance with and to the extent permitted by this Certificate of Incorporation, the Bylaws and the Rules. There shall be authorized three thousand six hundred eighty-one (3,681) Class B Memberships, which shall be divided into five (5) series ("Series") as follows:

- 1,402 Series B-1 Memberships (each, a "Series B-1 Membership" and the holder thereof, a "Series B-1 Member");
- 867 Series B-2 Memberships (each, a "Series B-2 Membership" and the holder thereof, a "Series B-2 Member");
- 128 Series B-3 Memberships (each, a "Series B-3 Membership" and the holder thereof, a "Series B-3 Member");
- 641 Series B-4 Memberships (each, a "Series B-4 Membership" and the holder thereof, a "Series B-4 Member"); and
- 643 Series B-5 Memberships (each, a "Series B-5 Membership" and the holder thereof, a "Series B-5 Member");

(b) Notwithstanding Section B(2)(a) of this Article IV, (i) following the issuance of memberships of the Corporation in the merger of the Corporation with a subsidiary of CBOT Holdings (the "Merger") to be effected in connection with the Restructuring (as defined in this Section B(2) of Article IV), the Corporation may have additional authorized but unissued Series B-2 Memberships only in connection with the conversion of Series B-3 Memberships into Series B-2 Memberships pursuant to Section D(13) of this Article IV and no person may become or qualify as a Series B-2 Member following consummation of the Merger at any time by acquiring a share or shares authorized but unissued Series B-2 Membership except as a result of such a conversion, and (ii) the Corporation may issue authorized but unissued Series B-3 Memberships only pursuant to the terms of the agreement and plan of merger relating to the Merger and no person may become or qualify as a Series B-3 Member following consummation of the Merger at any time by acquiring a share or shares authorized but unissued Series B-3 Membership.

(c) Class B Memberships shall have no right to receive any dividend or other distribution (including upon liquidation, dissolution, winding-up or otherwise) to be declared, paid or distributed by the Corporation with the sole exception of the dividend of shares of CBOT Holdings to be declared and paid in connection with the restructuring of the Corporation and the creation of the Class B Memberships (the "Restructuring"). The respective rights and privileges of each Series of Class B Membership shall be as provided in or pursuant to this Certificate of Incorporation, the Bylaws and the Rules.

C. Class B Voting Rights.

Except as otherwise expressly provided in this Certificate of Incorporation, the holders of Class B Memberships shall not be entitled to vote on any matter. On any matter on which the holders of Series B-1 Memberships and Series B-2 Memberships are entitled to vote together as a single class pursuant to this Certificate of Incorporation, each holder of Series B-1 Memberships shall be entitled to one (1) vote per such membership and each holder of Series B-2 Memberships shall be entitled to one-sixth (1/6) of one (1) vote per such membership.

D. Special Rights of Class B Membership.

The holders of each Series of Class B Membership shall have the trading rights and other rights and privileges, and shall be subject to the restrictions, terms and conditions, set forth below.

1. Series Trading Rights.

(a) *Series B-1 Memberships.* Each holder of a Series B-1 Membership who satisfies the qualifications for and requirements of Full Membership in the Corporation as set forth in the Rules shall be entitled to the rights and privileges of, and shall be subject to the restrictions, conditions and limitations on, a Full Member as set forth in this Certificate of Incorporation, the Bylaws and the Rules.

(b) *Series B-2 Memberships.* Each holder of a Series B-2 Membership who satisfies the qualifications for and requirements of Associate Membership in the Corporation as set forth in the Rules shall be entitled to the rights and privileges of, and shall be subject to the restrictions, conditions and limitations on, an Associate Member as set forth in this Certificate of Incorporation, the Bylaws and the Rules.

(c) *Series B-3 Memberships.* (1) Each holder of a Series B-3 Membership who satisfies the qualifications for and requirements of being a holder of a one-half Associate Membership as set forth in clause (2) of Rule 296.00 of the Rules shall be entitled to the rights and privileges of, and subject to the restrictions, conditions and limitations on, a holder of a one-half Associate Membership as set forth in the Certificate of Incorporation, the Bylaws and the Rules.

(2) Each holder of a Series B-3 Membership who satisfies the qualifications for and requirements of being a holder of a CDM Membership Interest in the Corporation as set forth in clause (1) of Rule 296.00 of the Rules shall be entitled to the rights and privileges of, and shall be subject to the restrictions, conditions and limitations on, a holder of a CDM Membership Interest as set forth in this Certificate of Incorporation, the Bylaws and the Rules.

(d) *Series B-4 Memberships.* Each holder of a Series B-4 Membership who satisfies the qualifications for and requirements of being a holder of an IDEM Membership Interest in the Corporation as set forth in the Rules shall be entitled to the rights and privileges of, and shall be subject to the restrictions, conditions and limitations on, a holder of an IDEM Membership Interest as set forth in this Certificate of Incorporation, the Bylaws and the Rules.

(e) *Series B-5 Memberships.* Each holder of a Series B-5 Membership who satisfies the qualifications for and requirements of being a holder of a COM Membership Interest in the Corporation as set forth in the Rules shall be entitled to the rights and privileges of, and shall be subject to the restrictions, conditions and limitations on, a holder of a COM Membership Interest as set forth in this Certificate of Incorporation, the Bylaws and the Rules.

(f) In addition to the rights and privileges set forth above, except as otherwise provided in the Certificate of Incorporation, the Bylaws or the Rules, each holder of a Class B Membership of any Series shall be entitled to all trading rights and privileges with respect to those products that such holder is entitled to trade on the open outcry exchange system of the Corporation or any electronic trading system maintained by the Corporation or any of its affiliates or any of their respective successors or successors-in-interest.

2. Series B-1 Membership and B-2 Membership Voting Rights.

(a) In addition to any approval of the Board of Directors required by this Certificate of Incorporation, the Bylaws or applicable law, the affirmative vote of the holders of a majority of the votes cast by the holders of Series B-1 Memberships and Series B-2 Memberships, voting together as a class based on their respective voting rights at any annual or special meeting of the Corporation, shall be required to adopt any amendment to this Certificate of Incorporation.

(b) In addition to any approval of the Board of Directors required by this Certificate of Incorporation, the Bylaws or applicable law, the affirmative vote of the holders of a majority of the votes cast, except in the case of paragraph (a) below, by the holders of Series B-1 Memberships and Series B-2 Memberships, voting together as a class based on their respective voting rights at any annual or special meeting of the Corporation,

shall be required to adopt any amendment to the Bylaws or the Rules that, in the sole and absolute determination of the Board of Directors, adversely affects:

(1) the allocation of products that a holder of a specific Series of Class B Membership is permitted to trade on the exchange facilities of the Corporation (including both the open outcry trading system and the electronic trading system);

(2) the requirement that, except as provided in that certain Agreement, dated August 7, 2001, between the Corporation and the Chicago Board Options Exchange (the "CBOE"), as modified by that certain Letter Agreement, dated October 7, 2004, between the Corporation, CBOE Holdings and the CBOE, in each case, as may be amended from time to time in accordance with their respective terms, holders of Class B Memberships who meet the applicable membership and eligibility requirements will be charged transaction fees for trades of the Corporation's products for their accounts that are lower than the transaction fees charged to any participant who is not a holder of Class B Membership for the same products, whether trading utilizing the open outcry trading system or the electronic trading system;

(3) the membership qualifications or eligibility requirements for holding any Series of Class B Membership or exercising any of the membership rights and privileges associated with such Series;

(4) the commitment to maintain open outcry markets set forth in Section F of Article IV of this Certificate of Incorporation, which must be approved by a majority of the voting power of the outstanding Series B-1 Memberships and Series B-2 Members, voting together as a class; or

(5) the requirement that any proposal to offer electronic trading between the hours of 6:00 a.m., Central Time, and 8:00 p.m., Central Time, of agricultural contracts or agricultural products currently traded on the Corporation's open outcry markets be approved by the holders of the Series B-1 Memberships and Series B-2 Memberships.

For purposes of Section D(2)(b)(1) of Article IV, the allocation of products that the holders of any Series of Class B Membership are permitted to trade on the exchange facilities of the Corporation shall be deemed to be adversely affected only if a product is eliminated from the allocation of products the holders of a particular Series of Class B Memberships are permitted to trade.

(e) In addition to their right to vote on the matters specified in the preceding paragraph (d), holders of Series B-1 Memberships and Series B-2 Memberships shall also be entitled, at any annual or special meeting of members, to (i) adopt, repeal or amend the Bylaws of the Corporation, or (ii) make non-binding non-amicable resolutions that the Board of Directors of the Corporation consider proposals that require the approval of the Board of Directors, (including recommendations that the board consider a specific proposal), in each case subject to such requirements and conditions for the initiation of proposals by members as may be stated in this Certificate of Incorporation or in the Bylaws. Any proposal brought pursuant to Section D(2)(e) of this Article IV shall require the affirmative vote of the holders of a majority of the votes cast by the holders of Series B-2 Memberships and Series B-3 Memberships, voting together as a single class based on their respective voting rights at any annual or special meeting of the Corporation.

(f) On any matter on which holders of Series B-1 Memberships and Series B-2 Memberships are entitled to vote pursuant to paragraphs (e), (b) and (c) of this Section D(2) of Article IV, such holders of Series B-1 Memberships and Series B-2 Memberships shall be the only members of the Corporation entitled to vote thereon. Holders of Series B-1 Memberships and Series B-2 Memberships shall have no other voting rights except as expressly set forth herein and shall not have the right to take action by written consent in lieu of a meeting. One-third of the total voting power of the Series B-1 Memberships and Series B-2 Memberships present in person or by proxy shall constitute a quorum at any meeting to take action on the matters as to which such holders are entitled to vote pursuant to paragraphs (a), (b) and (c) of Section D(2) of this Article IV. Series B-3 Memberships, Series B-4 Memberships and Series B-5 Memberships shall have no right to vote on any matters or to initiate any proposals at or for any meeting of members. For purposes of any vote of the holders of Series B-1 Memberships and Series B-2 Memberships permitted by this Certificate of Incorporation, the Board of Directors shall be entitled to fix a record date, and only holders of records as of such record date shall be entitled to vote on the matter to be voted on.

3. Conversion Rights of Series B-3 Memberships.

(a) *Conversion.* Subject to, and upon compliance with, the provisions of this Section D(3) of Article IV, any two (2) Series B-3 Memberships shall be convertible at the option of the holder into one (1) Series B-2 Membership.

(b) *Mechanism of Conversion.* A holder of Series B-3 Memberships may exercise the conversion right specified in Section D(3)(a) of Article IV by delivering to the Corporation or any transfer agent of the Corporation written notice stating that the holder elects to convert such memberships, accompanied by the certificates or other instruments, if any, representing the memberships to be converted. Conversion shall be deemed to have been effected on the date when delivery of such written notice, accompanied by such certificates or other instruments, if any, is made, and such date is referred to herein as the Conversion Date. As promptly as practicable after the Conversion Date, the Corporation may issue and deliver to or open the written order of such holder a certificate or other instrument, if any, representing the number of Series B-2 Memberships to which such holder is entitled as a result of the exercise of such conversion right. The person in whose name the certificates or other instruments representing Series B-2 Memberships are to be issued shall be deemed to have become the holder of record of such Series B-2 Memberships on the applicable Conversion Date.

(c) *Memberships Reserved for Issuance.* The Corporation shall take all actions necessary to reserve and make available at all times for issuance upon the conversion of Series B-3 Memberships, such number of Series B-2 Memberships as are issuable upon the conversion of all outstanding Series B-3 Memberships.

E. Restriction on Transfer.

1. Except as otherwise provided in this Section E of Article IV, no Class B Membership may be sold, transferred or otherwise disposed of (including any hypothecation thereof) except (a) by operation of law, (b) to a bona fide pledge to a commercial bank, a savings and loan institution or any other lending or financial institution or any Class B Member or voting member of the CBOT Subsidiary as security for obligations of the holder incurred to acquire a membership in the CBOT Subsidiary, or (c) in a transaction consummated in compliance with and conditioned upon the sale, transfer or disposition of shares of Series A-1, Class A Common Stock of CBOT Holdings ("Series A-1 Common Stock"), Series A-2, Class A Common Stock of CBOT Holdings ("Series A-2 Common Stock") or Series A-3 Class A Common Stock of CBOT Holdings ("Series A-3 Common Stock," and together with Series A-1 Common Stock and the Series A-2 Common Stock, the "Restricted Class A Common Stock") that results in the number of shares of Restricted Class A Common Stock included with the series of such Class B Membership, as set forth hereinafter in this Section E of Article IV, being simultaneously sold, transferred or disposed of to the same transferee of such Class B Membership. The number of shares of Common Stock that must be sold, transferred or otherwise disposed of in accordance with the preceding sentence is as follows: at least nine thousand one hundred fourteen (9,114) shares of Series A-1 Common Stock, nine thousand one hundred twelve (9,112) shares of Series A-2 Common Stock and Series A-3 Common Stock with one (1) Series B-1 Membership; at least three thousand three hundred thirty-four (3,334) shares of Series A-1 Common Stock, three thousand three hundred thirty-three (3,333) shares of Series A-2 Common Stock or three thousand three hundred thirty-three (3,333) shares of Series A-3 Common Stock with one (1) Series B-2 Membership; at least one thousand six hundred sixty-eight (1,668) shares of Series A-1 Common Stock, one thousand six hundred sixty-six (1,666) shares of Series A-2 Common Stock or one thousand six hundred sixty-six (1,666) shares of Series A-3 Common Stock with one (1) Series B-3 Membership; at least three hundred sixty-eight (368) shares of Series A-1 Common Stock, three hundred sixty-six (366) shares of Series A-2 Common Stock or three hundred sixty-six (366) shares of Series A-3 Common Stock with one (1) Series B-4 Membership; and at least eight hundred thirty-four (834) shares of Series A-1 Common Stock, eight hundred thirty-three (833) shares of Series A-2 Common Stock or eight hundred thirty-three (833) shares of Series A-3 Common Stock with one (1) Series B-5 Membership. Notwithstanding the foregoing, for purposes of identifying the requirements of this Section E(1) of Article IV, a holder of Restricted Class A Common Stock shall not be obligated to sell, transfer or dispose of any Class A Common Stock for which the applicable transfer restrictions have expired in connection with the lapse of the applicable transfer restriction period and have converted into unrestricted Class A Common Stock.

2. The restrictions contained in this Section E of Article IV shall be terms and conditions of ownership in the Corporation and any purported sale, transfer or other disposition of a Class B Membership not in accordance

with this Section E of Article IV shall be void and shall not be recorded on the books of or otherwise recognized by the Corporation.

3. If and when a majority of the outstanding Class A Common Stock of CBOT Holdings, voting together as a single class, approves a proposal to provide the board of directors of CBOT Holdings the power to authorize CBOT Holdings to issue all or any portion of the authorized shares of capital stock of CBOT Holdings that remain unissued after the issuance of shares in conjunction with the restructuring in one or more transactions of any nature when and if determined by the board of directors of CBOT Holdings in its sole discretion (the "Second Approval") the reciprocal restrictions on transfer described in Section E(1) above will terminate and Class B Memberships will thereafter be transferable without the applicable Series A-1 Common Stock, Series A-2 Common Stock and Series A-3 Common Stock, subject to any applicable membership requirements of the Corporation and any other restrictions imposed by the Bylaws, Rules and Regulations or applicable law.

F. *Commitment to Maintain Open OTC Markets.* Subject to the terms and conditions of this Section F of Article IV, the Corporation shall maintain open outcry markets operating as of the effective date of the amendment and restatement of this Certificate of Incorporation meeting Class B Memberships (the "Effective Date") and provide financial support to such such market for technology, marketing and research, which the Board of Directors determine, in its sole and absolute discretion, is reasonably necessary to maintain each such open outcry market.

Notwithstanding the foregoing or any other provision of this Certificate of Incorporation, the Board of Directors may discontinue any open outcry market at such time and in such manner as it may determine if (1) the Board of Directors determines, in its sole and absolute discretion, that a market is no longer "liquid" or (2) the holders of a majority of the voting power of the then outstanding Series B-1 Memberships and Series B-2 Memberships, voting together as a single class based on their respective voting rights, approve the discontinuance of such open outcry market.

For purposes of the foregoing, an open outcry market will be deemed "liquid" for as long as it meets either of the following tests, in each case as measured on a quarterly basis:

- (a) If a comparable exchange-traded product exists, the open outcry market has maintained at least 30 percent (30%) of the average daily volume of such comparable product (including for calculation purposes, volume from Exchange-Fac-Physicals transactions in such open outcry market); or
- (b) If no comparable exchange-traded product exists, the open outcry market has maintained at least 40 percent (40%) of the average quarterly volume in that market as maintained by the Corporation in 2001 (including, for calculation purposes, volume from Exchange-Fac-Physicals transactions in such open outcry market).

The commitment to maintain open outcry markets set forth in this Section F of Article IV will not apply to markets introduced after the Effective Date.

ARTICLE V MANAGEMENT OF AFFAIRS

The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

A. In accordance with Sections 141(a) and 141(j) of the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, the composition of which shall be as set forth in Article VI of this Certificate of Incorporation. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation, the Bylaws or the Rules, the directors are hereby empowered to exercise all powers and do all acts and things as may be exercised or done by the Corporation.

B. A special meeting of members shall be called by the Chairman of the Board or the Board of Directors upon receipt by the Chairman of the Board or the Secretary of the Corporation of a written demand of the holders of Series B-1 Memberships and Series B-2 Memberships entitled to cast 10% of the total number of votes entitled to be cast at such meeting. Any such written demand shall specify the purpose of

such special meeting and the special meeting so called shall be limited to the purpose so set forth. The written demand shall also specify the date of such special meeting that shall be a business day not less than ten (10) nor more than sixty (60) days from the date of such written demand. The purpose of any special meeting shall be stated in the notice thereof.

C. Any action required or permitted to be taken by the members of the Corporation must be effected at a duly called annual or special meeting of members of the Corporation and may not be effected by any consent in writing by such members, provided that the Class A Member shall have the right to effect by consent in writing any action which would require the approval of the Class A Member at a duly called annual or special meeting of the members of the Corporation.

ARTICLE VI

BOARD OF DIRECTORS

A. *Designation of Directors Prior to a Qualified Initial Public Offering.* After the Effective Date but prior to a Qualified Initial Public Offering, the members of the Board of Directors of the Corporation shall not be elected by the members of the Corporation but, rather, shall be those persons who are serving as directors of CBOT Holdings from time to time; such persons shall automatically become directors of the Corporation if they are directors of CBOT Holdings, and shall automatically cease to be directors of the Corporation if they cease to be directors of CBOT Holdings. The Chairman of the Board of Directors of CBOT Holdings shall, whenever he or she is serving as a member of the Board of Directors, be Chairman of the Board of Directors and the Vice Chairman of the Board of Directors of CBOT Holdings shall, whenever he or she is serving as a member of the Board of Directors, be Vice Chairman of the Board of Directors. Pursuant to Section 144(a) of the DGCL, the person appointed to serve as President and Chief Executive Officer of CBOT Holdings shall, whenever he or she is serving as a member of the Board of Directors, not be entitled to any voting rights held by other directors. For purposes of this Certificate of Incorporation, the term "Qualified Initial Public Offering" shall mean an initial public offering of Class A Common Stock of CBOT Holdings, which has occurred following the Second Approval, that has been underwritten by one or more nationally recognized underwriting firms, following which shares of Class A Common Stock of CBOT Holdings are listed on a national securities exchange.

B. *Designation and Election of Directors Following a Qualified Initial Public Offering.* Upon completion of a Qualified Initial Public Offering, the Board of Directors will be reconstituted such that it is composed of seventeen directors and classified into two classes of nine and eight directors, respectively, each class to serve for two-year terms. There will be eleven directors designated as "Parent Directors" and six directors designated as "Subsidiary Directors." Upon election or appointment as Parent Directors of CBOT Holdings, the Parent Directors shall automatically become members of the Board of Directors and shall continue to hold such directorships for as long as they remain members of the board of directors of CBOT Holdings. The Subsidiary Directors shall be elected by the holders of Series B-1 Memberships ("Series B-1 Members") and the holders of Series B-2 Memberships ("Series B-2 Members"), voting together as a single class according to their respective voting power, beginning with the first annual election following completion of a Qualified Initial Public Offering for two-year terms. The following qualifications for Subsidiary Directors shall apply: four directors, on the date of their first nomination or selection as nominees for the Board of Directors, shall be Series B-1 Members and shall satisfy the qualifications for and requirements of the applicable class and series of membership as set forth in the Bylaws, Rules and Regulations and two directors, on the date of their first nomination or selection as nominees for the Board of Directors, shall be Series B-2 Members and shall satisfy the qualifications for and requirements of the applicable class and series of membership as set forth in the Bylaws, Rules and Regulations. The Chairman of the Board of Directors shall, whenever he or she is serving as a member of the Board of Directors, be Chairman of the Board of Directors and the Vice Chairman of the Board of Directors of CBOT Holdings shall, whenever he or she is serving as a member of the Board of Directors, be Vice Chairman of the Board of Directors. The President and Chief Executive Officer of CBOT Holdings shall, whenever he or she is serving as a member of the Board of Directors, be entitled to the same voting rights held by other directors.

ARTICLE VII

NOMINATING COMMITTEE

Upon completion of a Qualified Initial Public Offering, the Corporation shall maintain an elected nominating committee (the "Nominating Committee"), which shall receive proposals from the holders of Series B-1

Memberships and Series B-2 Memberships, review the qualifications of proposed individuals and such other individuals as the Nominating Committee may from time to time select, and advise the Board of Directors of the Corporation as to its recommendations for the nomination of individuals to serve as directors of the Corporation or as members of the Nominating Committee. The members of the Nominating Committee shall be subject to the qualifications set forth below in Section A of Article VII.

A. *Composition.* The Nominating Committee shall be composed of five persons, including (a) four persons who shall, on the date of their first nomination or selection as members for election to the Nominating Committee, be Series B-1 Members and (b) one person who shall, on the date of his or her first nomination or selection as a nominee for election to the Nominating Committee, be a Series B-2 Member. Any member of the Nominating Committee who, at any time during his or her term of office, fails to continue to satisfy the qualifications under which he or she was last elected to the Nominating Committee shall thereupon cease to be qualified to serve as a member of the Nominating Committee and the term of office of such person on such committee shall automatically end.

B. *Election.* Members of the Nominating Committee shall be elected by Series B-1 Members and Series B-2 Members, voting together as a single class according to their respective voting power, for a term of three years.

C. *Organization.* The Nominating Committee shall elect its own chairman, who for so long as he or she serves in such capacity shall at all times be a Series B-1 Member.

D. *Term Limits.* Members of the Nominating Committee may not be elected or appointed to serve again as a member of the Nominating Committee until the third annual meeting following the annual meeting in which his or her term ended. However, there is no other limit to the number of terms a member of the Nominating Committee may serve.

E. *Removal; Vacancies.* Members of the Nominating Committee may be removed by a majority of the Series B-1 Members and Series B-2 Members, voting together as a single class according to their respective voting power, with or without cause. Any vacancies in the Nominating Committee shall be filled by the Board of Directors of the Corporation, and members so chosen shall hold their position for a term expiring at the next annual meeting of the members of the Corporation.

ARTICLE VIII

AMENDMENT OF BYLAWS

The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Corporation, provided that any change to the matters set forth in Section D(2)(b) of Article IV shall also require the approval of holders of Series B-1 Memberships and Series B-2 Memberships as specified therein. The Series B-1 Members and Series B-2 Members shall also have power to adopt, amend or repeal the Bylaws. The only members of the Corporation with any power to adopt, amend or repeal the Bylaws or the Rules of the Corporation shall be the Series B-1 Members and Series B-2 Members, as set forth in Section D(2) of Article IV of this Certificate of Incorporation, and no other member of, or class or series of membership in, the Corporation shall have any such power.

ARTICLE IX

LIMITATION OF LIABILITY

A director of the Corporation shall not be personally liable to the Corporation or its members for monetary damages for breach of fiduciary duty as a director, except for liability (A) for any breach of the director's duty of loyalty to the Corporation or its members, (B) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (C) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification. For purposes of this Article IX, the term "director" shall, to the fullest extent permitted by the DGCL, include any person who, pursuant to this

Certificate of Incorporation, is authorized to exercise or perform any of the powers or duties otherwise conferred upon a board of directors by the DQCL.

ARTICLE X

AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware, and all rights conferred upon the members of the Corporation are granted subject to this reservation. Any amendment of, or repeal of any provision contained in this Certificate of Incorporation shall require, first, the approval of the Board of Directors and, second, the approval of the Series B-1 Members and Series B-2 Members, voting together as a single class. No other Members or Membership class shall be entitled to vote thereon and such amendment or repeal shall require the approval of the holders of a majority of the votes cast on any such properly presented proposal at any annual or special meeting of the members of the Corporation.
