



## Regulatory Circular RG 09-23

DATE: February 17, 2009

TO: All Exchange Members

FROM: Department of Market Regulation

RE: Revised Summary Fine Schedule for Position Limit Violations

Exchange Rule 17.50, Imposition of Fines for Minor Rule Violations, has been revised as it relates to position limit violations. Rule 17.50 enables the Exchange staff to process certain minor rule violations, including position limit violations, on an expedited basis in lieu of commencing a disciplinary proceeding provided that the fine imposed for any such violation(s) does not exceed **\$5,000.00**. More specifically, Rule 17.50(g)(1) provides for the imposition of the following fines for violations of Exchange Rule 4.11, which governs position limits.<sup>1</sup>

### **Number of Cumulative Violations In Any Twenty Four (24) Month Period**

<b>Number of Violations</b>	<b>Fine Amount</b>
First Offense	\$500
Second Offense	\$1,000
Third Offense	\$2,500
Fourth and Each Subsequent Offense	\$5,000

The Exchange has adopted the following policy guidelines in connection with the application of Rule 17.50(g)(1):

(1) *Offense Calculations.* In calculating the number of position limit violations within a rolling twenty four (24) month period, the Exchange has defined a violation as (i) a one trade date overage, (ii) a consecutive string of trade date overage violations where the position does not change or where a steady reduction in the overage occurs, or (iii) a consecutive string of trade date overage violations resulting from other mitigating circumstances, may be deemed to constitute one offense, provided that the violations are inadvertent.

(2) *Two-Sided Violations.* If a member exceeds the position limit due to both (a) a long call and short put position and (b) a short call and long put position, the fine will be computed based on the total contract overage after combining both sides, but will be considered only one occurrence.

(3) *Broad-Based Index Violations.* Any member who violates both the overall limit and, if applicable, the near term limit

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<sup>1</sup>Although Rule 17.50(g)(1) does not specifically reference all of the Exchange's rules which govern position limits, all position limit violations under the Exchange rules (no matter what type of option they relate to) are deemed to be violations of Rule 4.11 and thus are subject to fine under Rule 17.50(g)(1).

contained in Rule 24.4 will be fined only on the basis of the larger violation. For example, a member holding 27,000 contracts (25,000 overall position limit) on the same side of the market, 15,500 (15,000 near term position limit) of which have the nearest expiration date, will be fined only on the basis of the 2,000 contracts in excess of the overall limit, and not on the basis of the 500 contracts in excess of the near term limit.

(4) *Pre-Notification.* The Department of Market Regulation shall endeavor to provide pre-notification to all members whose positions are within 10% of the applicable position limit of a specific option class. The Department of Market Regulation shall endeavor to deliver such notice on the business day following detection that a position is within 10% of the applicable position limit.

(5) *Preliminary Notification.* The Department of Market Regulation shall endeavor to notify all members who appear to have violated the position limits. The Department of Market Regulation shall endeavor to deliver such notice on the business day following detection of the violation, and will not take into account out-trades or stock hedges, which could potentially negate the apparent violation.

(6) *Official Notification.* The official notice of the imposition of the summary fine will be contained in the written statement issued by the Exchange pursuant to Rule 17.50(b). Regardless of whether the Exchange has failed to issue the pre-notification and/or preliminary notice pursuant to paragraph (5) above, service of the written statement shall constitute official notice of the fine.

(7) *Reporting Requirements.* Summary fines, which are not in excess of the \$2,500, are reported by the Exchange to the Securities and Exchange Commission (SEC) on a periodic basis. Fines above \$2,500 are reported to the SEC on a current basis.

(8) *Right to Contest.* Any person against whom a fine is imposed pursuant to Rule 17.50(g)(1) may contest that fine in accordance with the terms of Rule 17.50(c). Persons wishing to contest such a fine must comply with the deadlines and all other requirements set forth in Rule 17.50(c).

Any questions in connection with this circular should be directed to Tim MacDonald at (312) 786-7706 or Brian J. Morris at (312) 786-7107, in the Department of Market Regulation.

(RG04-038 Revised; RG02-78 Revised)