REGULATORY CIRCULAR RG94-60

DATE: September 8, 1994

TO: All Exchange Members

RE: Position Limit Violations

The purpose of this circular is to advise members of the provisions of Exchange Rule 17.50, Imposition of Fines for Minor Rule Violations, as they relate 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**.

The fine schedule provided for under Rule 17.50 for position limit violations is set forth in Rule 17.50(g)(1). This fine schedule originally became effective on March 2, 1992, and was revised effective February 18, 1994, to include a separate fine schedule for position limit violations occurring in non-member customer accounts[1] that are carried by CBOE member firms. 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.[2]

Number of Violations
Within One Calendar Year

Fine Amount	Accounts of Non-Member Customers	All Other Accounts
Letter of Caution, plus $1 per contract over 5% of the applicable limit	1 - 6	1 - 3
$1 per contract over limit	7 - 12	4 - 6
$5 per contract over limit	13+	7+

Fines imposed for position limit violations under Rule 17.50 (g) (1) shall be
in the minimum amount of $100

[1] For purpose of this rule, all accounts of non-member broker-dealers will be treated as non-member customer accounts, and for each CBOE member, all violations occurring in such accounts will be tallied cumulatively.

[2] 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).

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

(1) *Transaction Calculations.* In calculating the number of position limit violations in any calendar year, the Exchange will count each day in which a position limit is exceeded as a separate violation, regardless of whether a violation is continuous.

(2) *Joint Accounts.* In the event that trading in a joint account exceeds the position limits, only those participants in the joint account who traded on the day of the violation will be subject to sanction. A potential fine will be calculated with respect to each participant who traded on the day of the violation, and a single fine will be imposed which is equal to the highest potential individual fine. Participants who traded will be jointly and severally liable to the extent of what the fine would have been based on their individual history. If a nominee of a firm is involved, the firm and the individual will be jointly and severally liable, and the firm's history will not be taken into account in computing the fine.

(3) *Exemptions.* If an individual has a higher limit due to an exemption, and violates that limit, the fine will be calculated with reference to the higher limit. With respect to the first three (3) violations, however, any fine will be computed on the basis of 5% of the regular position limit, rather than the individual's higher limit.

(4) *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.

(5) *OEX Violations.* Any member who violates both the over-all limit and the front-month limit contained in Rule 24.4 will be fined only on the basis of the larger violation. For example, a member holding 27,000 contracts on the same side of the market, 15,500 of which have the nearest expiration date, will be fined only on the basis of the 2,000 contracts in excess of the over-all limit, and not on the basis of the 500 contracts in excess of the front-month limit.

(6) *Preliminary Notification.* The Department of Market Surveillance shall notify all members that appear to have violated the position limits. Such notice shall be delivered one (1) 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.

(7) *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 preliminary notice pursuant to paragraph (6) above, service of the written statement shall constitute official notice of the fine.

(8) *Excluded Defenses.* Absent a showing of extraordinary circumstances, the following defenses shall not be considered in determining whether a fine shall be upheld:

(a) Failure to understand the Rule;

(b) Erroneous belief that exemption existed;

(c) Lack of preliminary notification by the Exchange;

(d) Status as stand-up market maker;

(e) DPM status;

(f) Miscalculation by member;

(g) High volume and volatility;

(h) Absence from the Exchange at time of violation;

(i) Participant in, not manager of, joint account;

(j) Eligibility for non-aggregation status.

(9) *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 Patricia Cerny at (312) 786-7722 or Karen Charleston at (312) 786-7724, Department of Market Surveillance.

(RG92-15 revised)