

October 20, 2004

Ms. Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

Reference File # 2502.01
Rule Certification

Dear Ms. Webb:

Pursuant to Commission Regulation 40.6(a), the Chicago Board of Trade (CBOT[®]) hereby submits the following:

- **Amend Regulation 465.02 per the attached text (additions underlined; deletions bracketed and struck through).**

Regulation 465.02 addresses the application and closing out of offsetting long and short positions. Thus it is CBOT's parallel provision to CFTC Regulation 1.46. The referenced amendments will update Regulation 465.02 to bring it into conformity with Commission Regulation 1.46.

The CBOT intends to implement these amendments one day after the Commission's receipt of this submission.

There were no opposing views concerning these amendments.

The CBOT certifies that these amendments comply with the Commodity Exchange Act and the rules thereunder.

Sincerely,

Paul J. Draths
Vice President and Secretary

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465.02 Application and Closing Out of Offsetting Long and Short Positions -

- (a) APPLICATION OF PURCHASES AND SALES. Except with respect to purchases or sales which are for omnibus accounts, or where the customer or account controller has instructed otherwise, a[A]ny futures commission merchant, subject to the Rules of the [Association] Exchange, who
- (1) Shall purchase any commodity for future delivery for the account of any customer [~~(other than the "Customers' Account" of another commission merchant)~~] when the account of such customer at the time of such purchase has a short position in the same future of the same commodity on the same market, or
 - (2) Shall sell any commodity for future delivery for the account of any customer [~~(other than the "Customers' Account" of another commission merchant)~~] when the account of such customer at the time of such sale has a long position in the same future of the same commodity on the same market, or
 - (3) Shall purchase a put or call option for the account of a customer when the account of such customer at the time of such purchase has a short put or call option position in the same option series as that purchased, or
 - (4) Shall sell a put or call option for the account of a customer when the account of such customer at the time of such sale has a long put or call option position in the same option series as that sold

shall on the same day apply such purchase or sale against such previously held short or long futures or options position, as [~~the case may be~~]applicable, and shall promptly furnish such customer a [~~purchase and sale~~] statement showing the financial result of the transactions involved.

- (b) [~~CUSTOMERS'S INSTRUCTIONS~~] CLOSE-OUT AGAINST OLDEST OPEN POSITION. In all instances where[~~in~~] the short or long futures or options position in such customer's account immediately prior to such offsetting purchase or sale is greater than the quantity purchased or sold, the futures commission merchant shall apply such offsetting purchase or sale to such portion of the previously held short or long position as may be specified by the customer. In the absence of specific instructions from the customer, the futures commission merchant shall apply such offsetting purchase or sale to the oldest portion of the previously held ~~short~~[~~long~~] or ~~long~~[~~short~~] position[~~, as the case may be~~]. Such instructions also may be accepted from any person who, by power of attorney or otherwise, actually directs trading in the customer's account unless the person directing the trading is the futures commission merchant (including any partner thereof), or is an officer, employee, or agent of the futures commission merchant. With respect to every such offsetting transaction that, in accordance with such specific instructions, is not applied to the oldest portion of the previously held futures or options position, the futures commission merchant shall clearly show on the [~~purchase and sale~~] statement issued to the customer in connection with the futures or options transaction, that as a result of the specific instructions given by or on behalf of the customer the transaction was not applied in the usual manner, i.e., against the oldest portion of the previously held futures or options position. However, no such showing need be made if the futures commission merchant has received such specific instructions in writing from the customer for whom such an account is carried.

- (c) IN-AND-OUT TRADES; DAY TRADES. Notwithstanding the provisions of paragraphs (a) and (b) above, this Regulation shall not be deemed to require the application of purchases or sales closed out during the same day (commonly known as "in-and-out trades" or "day trades") against short or long positions carried forward from a prior date.
- (d) EXCEPTIONS. The provisions of this Regulation shall not apply to:
- (1) ~~purchases or sales of futures contracts for the purpose of covering the granting of options on a contract market, if such purchases or sales are accompanied by instructions and other evidence that such futures contracts are cover for granted options.~~
 - (2) Purchases or sales constituting "bona fide hedging transactions" as defined in [C.F.T.C.] CFIC Regulation 1.3(z).
 - (~~3~~2) sales during a delivery period for the purpose of making delivery during such delivery period if such sales are accompanied by instructions to make delivery thereon, together with warehouse receipts or other documents necessary to effectuate such delivery.
 - (~~4~~) Purchases or sales made in separate account of a commodity pool, provided that:
 - (i) ~~The trading for such pool is directed by two or more unaffiliated commodity trading advisors acting independently, each of which is directing the trading of a separate account;~~
 - (ii) ~~The commodity pool operator maintains only such minimum control over the trading for such pool as is necessary to fulfill its duty to supervise diligently the trading for such pool;~~
 - (iii) ~~Each trading decision made by a commodity trading advisor for such pool is determined independently of all trading decisions made by any other commodity trading advisor for such pool;~~
 - (iv) ~~The purchases and sales for such pool directed by different commodity trading advisors acting independently are executed by open and competitive means on or subject to the rules of a contract market; and~~
 - (v) ~~No position held for or on behalf of separate pool accounts traded in accordance with paragraphs (d) (4) (i), (d) (4) (ii), (d) (4) (iii) and (d) (4) (iv) of this section may be closed out by transferring such an open position from one of the separate accounts to another account of the pool.~~
 - (5) ~~Purchases or sales made in separate accounts owned by a customer or option customer, provided that:~~
 - (i) ~~Each person directing trading for one of the separate accounts is unaffiliated with and acts independently from each other person directing trading for a separate account;~~
 - (ii) ~~Each person directing trading for one of the separate accounts, unless he is the account owner himself, does so pursuant to a power of attorney signed and dated by the customer, and which includes, at a minimum, the name, address~~

~~and telephone number of the person directing trading and the account number over which such power is granted;~~

- ~~(iii) Each trading decision made for each separate account is determined independently of all trading decisions made for the other separate account or accounts;~~
 - ~~(iv) The purchases and sales for such accounts are executed by open and competitive means on or subject to the rules of a contract market;~~
 - ~~(v) No position held for or on behalf of separate accounts traded in accordance with paragraphs (d) (5) (i), (d) (5) (ii), (d) (5) (iii) and (d) (5) (iv) of this section may be closed out by transferring such an open position from one of the separate accounts to another of such accounts; and~~
 - ~~(vi) The customer or option customer and each person directing trading for the customer or option customer provides the futures commission merchant with written confirmation that the trading and the operation of the customer's or option customer's accounts will be in accordance with paragraphs (d) (5) (i), (d) (5) (ii), (d) (5) (iii), (d) (5) (iv) and (d) (5) (v) of this section. The written confirmation must be signed and dated, and received by the futures commission merchant before it can avail itself of this exception provided by this paragraph.~~
- ~~(6) Purchases or sales made in separate accounts of a person granted an exemption in accordance with 425.05 and 495.05 of this chapter, provided that:~~
- ~~(i) The purchases and sales for such accounts are executed in open and competitive means on or subject to the rules of a contract market; and~~
 - ~~(ii) No position held for or on behalf of separate accounts traded in accordance with this paragraph may be closed out by transferring such an open position from one of the separate accounts to another of such accounts.~~
- ~~([7]3) Purchases or sales held in error accounts, including but not limited to floor broker error accounts, and purchases or sales identified as errors at the time they are assigned to an account that contains other purchases or sales not identified as errors and held in that account ("error trades"), provided that:~~
- ~~(i) Each error trade does not offset another error trade held in the same account;~~
 - ~~(ii) Each error trade is offset by open and competitive means on or subject to the rules of a contract market by not later than the close of business on the business day following the day the error trade is discovered and assigned to an error account or identified as an error trade, unless at the close of business on the business day following the discovery of the error trade, the relevant market has reached a daily price fluctuation limit and the trader is unable to offset the error trade, in which case the error trade must be offset as soon as practicable thereafter; and~~
 - ~~(iii) No error trade is closed out by transferring such an open position to another account also controlled by that same trader.~~

- ~~(8) Purchases or sales held in the separate accounts of a customer who has granted discretionary authority to a futures commission merchant, an associated person of a futures commission merchant, or a commodity trading advisor trading separate trading programs which have been marketed separately, provided that:~~
- ~~(i) The purchases or sales for such accounts are executed in open and competitive means on or subject to the rules of a contract market; and~~
 - ~~(ii) No position held for or on behalf of separate accounts traded in accordance with this paragraph (d)(8) may be closed out by transferring such an open position from one of the separate accounts to another of such accounts.]~~
- (c) [With respect to the exception from the provisions of this section set forth in paragraph (d) (5) of this section, if a futures commission merchant that carries the separate accounts of a customer or option customer, or if an associated person of such futures commission merchant, directs trading for one of the separate accounts:
- (1) ~~the futures commission merchant must first furnish the customer or option customer with a written statement disclosing that, if held open, offsetting long and short positions in the separate accounts may result in the charging of additional fees and commissions and the payment of additional margin, although offsetting positions will result in no additional market gain or loss. Such written statement shall be attached to the risk disclosure statement required to be provided to a customer or option customer under CFTC Regulation 1.55. (07/01/94)] The statements required by paragraph (a) of this Regulation may be furnished to the customer or account controller by means of electronic transmission, in accordance with CFTC Regulation 1.33(g).~~