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BY ELECTRONIC TRANSMISSION

06-10
April 6, 2005

Ms. Jean A. Webb
Secretary of the Commission
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: **Amendments to Definition of “Allowable Claim” and Rules 2.24, 4.29, 20.01, 21.02 and 21.25 -
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6**

Dear Ms. Webb:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, and Commission Regulation 40.6, the Board of Trade of the City of New York, Inc. (“Exchange”) submits, by written certification, amendments to the definition of “Allowable Claim” and Rules 2.24, 4.29, 20.01, 21.02 and 21.25, attached as Exhibit A.

Definition of “Allowable Claim” and Rules 2.24 and 20.01

The amendments to the definition of “Allowable Claim” and Rules 2.24 and 20.01 amend the order in which proceeds from the sale of a membership are distributed among the various claimants and provide for clearing member guarantors to finance their guarantees’ memberships.

Clearing member guarantors have expressed an interest in financing the purchase of memberships if they could look to the financed memberships as security for the loans. Because the priority currently afforded to such guarantors is limited to claims arising solely pursuant to its obligations as a guarantor, a claim arising from a loan default would not take priority. In fact, such a claim would not be recoverable from proceeds distributed under Rule 2.24 because it would not constitute an “Allowable Claim” as defined by the Exchange’s Rules. The amendments to Rule 2.24 give priority to amounts owing under a documented loan made by a clearing member guarantor to one of its guaranteed floor brokers for the purpose of acquiring the membership in issue. The amendments to the definition of “Allowable Claim” and Rule 20.01 add claims made by a clearing member guarantor for amounts owing under such a loan as well as amounts owing under the guaranty to the definition. Changing the definition will have the effect

of requiring that all disputes between the clearing member and the guaranteed member relating to amounts owed under the loan, as well as under the guaranty, to be arbitrated at the Exchange.

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Rule 4.29

A pilot program has been instituted in some of the Exchange's options markets, under which the Settlement Price Committee does not have complete control, but rather, has input to a settlement process that Exchange staff oversees. The pilot program has been used in Sugar Options as follows:

- (1) After the close, Exchange staff distributes settlement sheets to interested parties, soliciting information as to the parties' views on implied volatilities and skews;
- (2) The Exchange staff member and, on occasion, a disinterested member of the Settlement Price Committee, review the collected information (and consider the other factors delineated in the Rule, e.g. trades on the close) and assign the appropriate volatility and skew for each month outstanding;
- (3) The volatility levels are entered into the Exchange's automated Options Settlement Calculator Program, which assigns the settlement prices to the options; and
- (4) The settlement prices are then reviewed by the Exchange's Risk Management staff.

In order to codify the role regularly performed by Exchange staff under the pilot program, Rule 4.29 has been amended to authorize Exchange staff to perform the same functions currently designated only to the Settlement Price Committee.

Rule 21.02

Rule 21.02 authorizes the Vice President of Market Regulation to impose a summary fine for any violation relating to trading card or order ticket record keeping rules. The Commission has authorized such fines to be issued in a summary fashion because the existence of a violation is readily discernible from the face of the document, which either does or doesn't contain the required information.

Before a fine can be imposed, Rule 21.02 requires that the member receive a warning letter from the Compliance Department. After the issuance of the warning letter, subsequent violations may be subject to a summary fine imposed by the Vice President, with a maximum fining authority of one thousand dollars (\$1,000). Granting the Vice President summary fining authority was intended as a way to deal efficiently with the routine, periodic record keeping reviews that the Commission requires the Exchange to perform, and to obviate the need for formal investigative reports to be drafted and presented to the Business Conduct Committee ("BCC") along with the full panoply of hearing and adjudicatory processes that otherwise would apply.

However, because the Rule also allows a member to appeal to the BCC any summary fine imposed by the Vice President, its efficiency has become questionable. When an appeal is filed,

all of the processes applicable to investigations involving substantive trading violations are invoked¹. The amount of staff and BCC time that even one such appeal can entail is significant.

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A case in point occurred over the last few months, where a member appealed a \$200 fine for a third offense of the same rule—failing to identify an opposite broke on 25% of the trades recorded on the broker's eight (8) trading cards for the day in question. The appeal was drawn out literally for months, and resources were diverted from more important matters to drafting reports, sending notices and attempting to contact the member's counsel to find a date counsel could be available for a BCC meeting. Fifteen minutes prior to the second time a BCC meeting had been scheduled, the member's counsel advised that his client wanted to pay the fine and would not be appearing for the BCC meeting that had been requested. On the heels of this episode, another member has requested that a \$100 summary fine be reviewed by the BCC, and countless others are likely to arise over time. In light of the inefficient use of resources that such appeals demand, and the fact that record keeping violations are readily observable without the need for subjective interpretations, Rule 21.02 has been amended to eliminate appeals of summary fines imposed by the Vice President for such violations.

Rule 21.25

In order to avoid the arguments that sometimes take place in the ring between the floor member being issued a summary fine and the member of the Floor Committee attempting to issue the fine, the Floor Committee has begun a practice in some rings whereby members of the Floor Committee meet after the day's trading session and determine who should be issued a summary fine for trading infractions, decorum and other similar matters authorized under the Rules. A fine slip so issued is not signed by one member of the Floor Committee, but rather, is deemed issued by all of the members who met to discuss the day's events. To codify this practice, Rule 21.25 has been amended to create the concept of a "ring fine".

In addition, at times, the facts determined by a Floor Committee hearing panel reviewing a floor fine do not suggest a violation of the subparagraph of Rule 21.25(b) checked off on the floor fine notice, but rather support the finding of a violation of a different subsection on the fine notice. Rule 21.25 has been amended to authorize a hearing panel to change the violation to be consistent with the facts as determined by the hearing panel. If a change in the underlying violation is made, the member would have the right to a further hearing before the same panel, at which he could present evidence regarding the new violation. All prior proceedings would already be part of the record of the case and would not have to be repeated, so that further proceedings should be capable of completion on an expedited basis.

The Exchange certifies that the amendments comply with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder.

¹ Specifically, staff must draft a formal report, afford the member an opportunity to review and submit written comments about the report, provide the opportunity to personally appear before the BCC with counsel or other representatives, and ultimately to hold a full evidentiary hearing in the event that the Member is extended, and rejects, a settlement offer from the BCC.

The amendments were adopted by the Exchange's Board of Governors on April 5, 2006. No substantive opposing views were expressed by members or others with respect to the amendments. The amendments will become effective on a date set by the President twenty-four (24) hours after filing with the Commission.

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If you have any questions or need further information, please contact me at jfassler@nybot.com or 212-748-4084.

Sincerely,

Jill S. Fassler
Vice President
Associate General Counsel

cc: Riva Adriance
CFTC, Division of Market Oversight
Allen Cooper
CFTC, New York Regional Office

(In the text of the amendments below, additions are underlined and deletions are bracketed and lined out.)

The following definition will be amended in the Definitions Chapter of the Rule Book.

Allowable Claim

The term "Allowable Claim" shall mean a Claim for losses arising from (i) any order or Transaction for the purchase, sale, exercise or expiration of an Exchange Futures Contract or Exchange Option or (ii) any cash market transaction which is part of, or directly connected with, any Transaction, (iii) any documented loan made to a floor trader by his Clearing Member guarantor for the express purpose of acquiring a Membership and (iv) the performance of the Clearing member guarantor's obligations pursuant to the terms of its Guaranty Agreement. An Allowable Claim shall not include legal or other incidental expenses incurred in connection with any such losses or with the events giving rise to any such losses.

Rule 2.24 Disposition of Proceeds from Sale of a Membership

(a) The distribution by the Exchange of the proceeds from the sale of a Membership or of funds deposited with the Exchange pursuant to Rule 2.26(b) shall be made as follows:

(i) First, in satisfaction pro rata of any amounts which have been determined to be payable out of such proceeds or funds to the Clearing Member guarantor of the Member whose Membership has been sold for Claims arising directly from (A) any payment by such guarantor pursuant to the Clearing Member guarantee, ~~[or]~~ (B) the clearance by such guarantor of any Transaction executed by such Member on the Exchange or subject to the Rules, or (C) a documented loan made to the Member by the Clearing Member guarantor for the express purpose of acquiring the Membership;

(ii) Second, in satisfaction pro rata of any amounts which have been determined to be payable out of such proceeds or funds to other Members pursuant to paragraph (b) of this Rule with respect to Allowable Claims against the Member whose Membership has been sold; provided however, that no partner shall share in the proceeds from the sale of a Membership of one of his partners or in funds deposited by such partner with the Exchange pursuant to Rule 2.26(b), and no member of a limited liability company shall share in the proceeds of the sale of a Membership of one of the members of such limited liability company or in funds deposited by such member with the Exchange pursuant to Rule 2.26(b), until all Allowable Claims filed by other Members and amounts owing to the Exchange and the Clearing Organization as provided in subparagraph (iii) have been satisfied in full;

(iii) Third, in satisfaction pro rata of any amounts that may be due to the Clearing Organization and the Exchange for dues, assessments, fees or fines; and

(iv) Fourth, to the Person whose Membership was sold, or to his legal representatives or assigns, upon the execution and delivery to the Exchange of a release or releases in form and substance satisfactory to the Exchange.

[REMAINDER OF RULE UNCHANGED]

Rule 20.01. Definitions

Unless otherwise indicated, the following terms shall, for the purposes of these Arbitration Rules, have the following meanings:

* * *

EXHIBIT A

(g) "Allowable Claim" shall mean a Claim for losses arising directly from (i) any order or Transaction for the purchase, sale, exercise or expiration of an Exchange Futures Contract or Exchange Option [executed, or to be executed, on or subject to the Rules or] (ii) any cash market transaction[s] which is [are] part of, or directly connected with, any Transaction, (iii) any documented loan made to a Member by his Clearing Member guarantor for the express purpose of acquiring a Membership and (iv) the performance of the Clearing Member guarantor's obligations pursuant to the terms of its Guaranty Agreement. An Allowable Claim shall not include legal or other incidental expenses incurred in connection with any such losses or with the events giving rise to any such losses.

Rule 4.29. Settlement Premiums

(a) Promptly after the close of trading in each Exchange Option Contract, the Settlement Price Committee or designated Exchange staff shall establish the Settlement Premium for each Striking Price of each Option Month of each Option listed for trading that has open interest. ~~[The Committee]~~ A Settlement Premium may be [elect to] established [a Settlement Premium] for any Strike Price that has no open interest.

(b) Each such Settlement Premium shall be established by the Committee or the Exchange staff after consideration of the following criteria:

* * *

(vi) any other market information known to the Committee or the Exchange.

(c) The Settlement Premiums so established [by the Committee] shall then be verified as to their reasonableness by the Exchange's Option Settlement Program. Whenever the Exchange's Option Settlement Program queries a Settlement Premium, the Committee or the designated Exchange staff shall review such Premium and, if no change is made thereto, shall furnish [document and file with the Exchange] an explanation of the basis on which the Settlement Premium was established. The Exchange shall maintain a record of any such explanation.

(d) Notwithstanding the authority of the Settlement Price Committee as specified above, the Exchange can override any Premium established by the Settlement Price Committee and, if ~~[there is not a quorum of Committee members present,]~~ no Settlement Premium is established by the Settlement Price Committee in any case, it shall be established by designated Exchange staff pursuant to such procedures as may be in effect from time to time. [shall establish Settlement Premiums upon authorization of the President, the Senior Executive Vice President Floor Operations or the Senior Vice President Floor Operations of the Exchange. Any officer acting in accordance with this paragraph] The Exchange shall document the reasons for overriding any Settlement Premium established by the Settlement Price Committee and shall maintain a written record thereof. [therefor and file such documentation with the Exchange.]

[REMAINDER OF RULE UNCHANGED]

Rule 21.02. Compliance Staff — Powers and Duties

* * *

(e) Notwithstanding the provisions of paragraph (d) of this Rule, if in any case, the Vice President concludes that a violation of any trading card or order ticket record keeping rule may have occurred, the Vice President may impose a summary fine of no more than one thousand dollars (\$1,000) after one (1) warning letter has been issued to the Member for the same violation. The authority to impose such a summary fine does not limit the Vice President's authority to refer the matter to the BCC instead of imposing a summary fine. A ~~[Member shall have fifteen (15) calendar days to file with the Vice President a written request for review of the summary fine by the Business Conduct Committee. If no such written request is filed, a]~~ summary fine imposed in accordance with this paragraph shall become final and

effective and payment shall become due and owing to the Exchange fifteen (15) calendar days after the Member receives the fine.

Rule 21.25. Floor Committee Summary Action

(a) Imposition of Fines and Removal from Premises

Any two or more Floor Committee members may summarily impose a fine (a “Ring Fine”), and [A] any member of the Floor Committee [or the Executive Floor Committee] may summarily impose a fine, [of not more than five thousand dollars (\$5,000)], for each violation of any Rule regarding decorum or attire or regarding the timely submission of accurate reports, records or other similar matters required for clearing or verifying each day's Transactions as specified in paragraph (b) hereof. Any such fine shall not exceed five thousand dollars (\$5,000), except for violations of paragraph (b)(i)(A)(15), which shall not exceed [unless the violation and] ten thousand dollars (\$10,000), [for a violation of paragraph (b)(i)(A)15; provided however, that] and a fine issued for a violation of paragraph (b)(i)(B) of this Rule shall not be less than two hundred fifty dollars (\$250). No member of the Floor Committee [or Executive Floor Committee] shall issue a fine (including a Ring Fine) in any matter in which that Committee member has a direct financial, personal, or other interest. For purposes of the preceding sentence, a member shall be deemed to have a direct financial, personal or other interest in any matter in which a member with whom he is associated has a direct financial, personal or other interest.

The Caller may summarily impose a fine of not more than one thousand dollars (\$1,000) for each violation of good order of the call.

Any fine issued under this Rule shall be due and payable, and shall be deemed imposed, fifteen (15) calendar days after notice of such action is given to the Member, unless a review of such fines has been requested pursuant to the Rules. The floor fine notice for any fine issued pursuant to this Rule shall identify all the members of the Floor Committee who determined to issue the fine. Any Member who refuses to sign or initial a floor fine notice shall automatically forfeit his right to request review of such fine.

* * *

(c) Request for Review of Floor Fines

A review of any fine imposed for a violation of paragraph (b) of this Rule may be initiated at the request of the Member so fined or by the Chairman of the Executive Floor Committee, provided, however, that if the Member fined initiates the request for a review in accordance with subparagraph (i) hereof, the review shall be conducted pursuant to subparagraph (i) and not subparagraph (ii). The procedures to initiate a review are as follows:

* * *

(ii) If initiated by the Chairman of the Executive Floor Committee, the decision to review shall be made within seven (7) Business Days of the date the fine was imposed. In the event such decision is not made within such seven (7) Business Days, the fine imposed shall become final. In the event a decision to review a fine has been initiated by the Chairman, the fined Member and the Committee member (or the Floor Committee members, in the case of a Ring Fine) who imposed the fine shall be so notified in writing along with a statement setting forth the basis for conducting such review. The Member so fined shall have seven (7) Business Days from receipt of such notice to file an answer or other written statement setting forth the Member’s position regarding the fine; a description of any witnesses that the Member will seek to present; and a statement as to whether the Member will be represented by counsel or other person and the name and address of such counsel or other person.

* * *

(d) *Procedures for Review of Floor Fines*

* * *

(iii) **Sanctions and Decision of Panel:** The Panel may affirm, rescind or modify any such fine imposed in whole or in part, and, based upon the facts as determined by the Panel at hearing, may change the particular subsection of paragraph (b) for which the fine is imposed; provided, however, that if the Panel so changes the subsection for which the fine is imposed, the Member may request a further review of the matter pursuant to paragraph (c) hereof within seven (7) Business Days after receipt of the written decision of the Panel. Any such further review shall be conducted in accordance with the procedures specified in paragraph (d)(ii) of this Rule, except that the same Panel shall be reconvened and the record of the prior proceedings shall constitute evidence in the subsequent review proceeding. In the event such request is not made by the Member within seven (7) Business Days, all further rights to request a review shall be waived and the fine imposed shall become final in accordance with paragraph (d) of this Rule.

[REMAINDER OF RULE UNCHANGED]