

RECEIVED  
C.F.T.C.

2005 SEP 16 AM 11:05

OFF. OF THE SECRETARIAT



World Financial Center

One North End Avenue

New York, New York 10282

**BY ELECTRONIC TRANSMISSION**

05-40

September 16, 2005

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

Re: **Amendments to Chapter 5 -  
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 Chapter 5, attached as Exhibit A.

The amendments conform the Rules to industry practice, consolidate redundant provisions and delete provisions that have become obsolete. All of the main provisions concerning margins, e.g., the hedge and spec formula and the forms of margin that are acceptable, are consolidated into Rule 5.03. The remaining rules and their amendments address special situations, such as codifying the Board's right to change margin requirements or impose separate requirements, the margining of omnibus accounts and restrictions on trading by a floor member whose accounts are in deficit.

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

The amendments were adopted by the Exchange's Board of Governors on September 14, 2005. They will become effective on September 19, 2005. No substantive opposing views were expressed by members or others with respect to the amendments.

If you have any questions or need further information, please contact me at [jfassler@nybot.com](mailto:jfassler@nybot.com) or 212-748-4084.

Sincerely,

Jill S. Fassler  
Vice President  
Associate General Counsel

cc: Riva Adriance  
Thomas Leahy  
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.)

#### **Rule 5.01. Scope of Chapter and Definitions**

This chapter governs the Margins and Premiums required for Exchange Futures and Options Contracts. The following terms are defined for purposes of this chapter only, and do not apply to other Rules.

##### **Current Margin Call**

A bona fide Margin call which has been outstanding a Reasonable Time as defined in this Rule.

##### **Customer**

An account holder trading in any [e]Commodity [futures or options e] Contract, except the holder of a proprietary account as defined by CFTC Regulation [1.3(y)] 17(b)(3), or Non-Customer account as defined by CFTC Regulation 1.17(b)(4).

##### **Hedge Margin Rate**

The rate determined by the Exchange as the rate to be charged as Margin for a Commodity Contract carried in an account that is eligible to be margined at such rate.

##### **Margin Call**

A request for Margin funds to bring an account up to the Original Margin requirement when Margin equity in the account is less than the Maintenance Margin requirement.

##### **Non-Customer**

An account holder trading in any C [e]ommodity [futures or options e]Contract which [is not defined as Customer or proprietary] satisfies the definition in CFTC Regulation 1.17(b)(4).

##### **Omnibus Account**

An account held in the name of an FCM or foreign broker that is utilized for placing and clearing Trades of one (1) or more undisclosed Persons.

##### **Reasonable Time**

Less than three (3) Business Days for Members holding floor trading privileges; less than five (5) Business Days for Customers and less than four (4) Business Days for Non-Customer and Omnibus Accounts. Note: Days are counted from and including the day the account became undermargined.

##### **Risk Reducing Trades**

The establishment or closure of a futures or options Position that reduces the risk of existing Positions in an account.

## Speculative Margin Rate

The rate determined by the Exchange as the rate to be charged as Margin for a Commodity Contract carried in an account that is not eligible to be margined at the Hedge Margin Rate.

### **Rule 5.02. [Margin Requirements] Debit or Deficit in Account of Member with Floor Trading Privileges**

~~[(a) Except as hereinafter provided, no Carrying Member shall carry an open Position in an Exchange Futures or Option Contract for an account unless it collects the Original Margin required pursuant to the Rules within a Reasonable Time, except for good cause.~~

~~(b) Except as hereinafter provided, no Carrying Member shall accept any order for a futures or option contract if the execution of such order would result in an increase in the account's Position, except for Risk Reducing Trades, unless:~~

~~(i) the Original Margin and Premium required for all existing futures and option Positions carried in the account has been deposited in accordance with the Rules (or the rules, if any, of the exchange where such futures or options are traded) or the Carrying Member has issued a call for any Margin or Premium required and such call has not been outstanding more than a Reasonable Time, except for good cause; and~~

~~(ii) the Net Liquidating Value of the account exceeds the Maintenance Level required pursuant to the Rules or the Carrying Member has issued a call for any Margin required and such call has not been outstanding more than a Reasonable Time, except for good cause.~~

~~(c) No Carrying Member shall be required to obtain or call for Original Margin on new positions that are liquidated the same Business Day.~~

~~(d)(i) (a) No Member with floor trading privileges shall execute a Trade or place an order for the purchase or sale of any Exchange Futures Contract or the purchase or grant of any Exchange Option if a debit or a deficit balance exists in the account of such Member or in any account in which such Member directly or indirectly has an interest, except for the liquidation of existing Positions, or with the prior approval of the President. A Member with floor trading privileges shall immediately notify the [Secretary of the Exchange] Vice President of Market Regulation or his Designee if a debit or deficit balance of \$10,000 or more exists in any account or all accounts combined, in which such Member, directly or indirectly, has an interest.~~

~~[(ii)(b) A Carrying Member may not knowingly accept any Trade or order which is violative of paragraph [(d)(i) (a) of this Rule, except for Trades which the Carrying Member is obligated to accept as the Clearing Member guarantor of a Member with floor trading privileges. A Clearing Member guarantor shall immediately advise the Exchange of any Trades which it accepts pursuant to this paragraph.~~

~~[(iii) (c) A Carrying Member shall immediately notify the [Secretary of the Exchange] Vice President of Market Regulation or his Designee if a debit or deficit balance of \$10,000 or more exists in the account of a Member with floor trading privileges or in any account in which such Member, directly or indirectly, has an interest of which the Carrying Member has knowledge.~~

~~(e) No Carrying Member may reduce Margin funds from an account unless funds are in excess of the account's minimum Original Margin requirement.~~

(f) Each Member Firm which carries an account for a Futures Commission Merchant or a foreign broker on an omnibus basis, shall collect the Original Margin and Maintenance Margin required of such account on the basis of the gross Position carried for such account.]

**[Rule 5.03. Premiums for Options Purchase**

[(a) Except as hereinafter provided, no Carrying Member shall accept any order to purchase any Exchange Option for an account unless the Premium has been deposited in accordance with the Rules (or the Carrying Member has issued a call for any Premium required and such call has not been outstanding more than a reasonable period of time not to exceed three (3) Business Days except for good cause); provided, however, that the amount to be paid to purchase and grant Exchange Options in the same class for the same Underlying Futures Contract, on any day, shall be the amount, if any, by which the Premium for the purchased Exchange Option exceeds the Premium for the granted Exchange Option.

(b) The payment required in paragraph (a) of this Rule may be made in any one (1) or more of the following forms:

(i) ~~United States currency or checks payable in United States currency; or~~

(ii) ~~Available Equity.~~

~~Such payment may not be made in any other form, and a Carrying Member may not make loans or otherwise extend credit to pay the Premium for any Exchange Option.~~

(c) ~~No Carrying Member shall be required to obtain the Premium for any Exchange Option purchased on any Business Day which is offset by a closing Transaction on the same Business Day.]~~

**Rule 5.0[4]3. [Original Margin] Margin**

(a) Member Firms shall calculate the amount of Original Margin required to be collected from each Person for which it carries an account holding Exchange Futures and/or Options Contracts using the SPAN™ (Standard Portfolio Analysis of Risk) margining system unless otherwise determined by the Board.

~~(a)~~ (b) The minimum amount of Original Margin which must be obtained by Member Firms from other Persons for any account carrying Exchange Futures and/or Options Contracts shall be as follows:

(i) With respect to Cocoa, Coffee, Cotton, Ethanol, FCOJ and Sugar Futures and Option Contracts and where such other Person is a Member or Member of the Trade, the Original Margin required to be deposited in each such account shall be no less than [100% of the amount determined in accordance with SPAN™;] the Hedge Margin Rate applicable to each such Commodity Contract as published by the Exchange and modified from time to time.

(ii) With respect to Cocoa, Coffee, Cotton, Ethanol, FCOJ and Sugar Futures and Options Contracts and where such other Person is not a Member or Member of the Trade, the Original Margin required to be deposited in each such account shall be [140% of the amount determined in accordance with SPAN;] no less than 140% of the Hedge Margin Rate applicable to each such Commodity Contract as published by the Exchange and modified from time to time.

(iii) With respect to Financial Contracts and where such other Person is not a Member or Member of the Trade, the Original Margin required to be deposited in each such account shall be no less than

[133% of the amount determined in accordance with SPAN;] 133% of the Hedge Margin Rate applicable to each Financial Contract as published by the Exchange and modified from time to time.

(iv) With respect to Index Contracts and where such other Person is not a Member or Member of the Trade, the Original Margin required to be deposited in each such account shall be [100% of the amount determined in accordance with SPAN] no less than 100% of the Hedge Margin Rate applicable to each such Index Contract as published by the Exchange and modified from time to time.

(v) For purposes of margining any account carrying positions in Cotton and FCOJ Futures and Options Contracts, the net liquidating value of each account at the close of trading on any Business Day on which trading ceases because of the application of price limits shall be computed by using as the Settlement Price such synthetic price as the Exchange and/or the Clearing Organization shall determine.

(c) Before the opening of trading on each Business Day, each Carrying Member shall compute, for each account with an open Position in Exchange Futures and Options Contracts, the net liquidating value, the Original Margin and Maintenance Margin Level required (pursuant to these Rules or such greater Margin requirement as may be established by the Carrying Member), the amount of any unpaid Margin Call and the length of time any such Margin Call has been outstanding, all as of the close of trading on the preceding Business Day; provided, however, that such computations shall not be required before the opening of trading if prevented by causes beyond the control of the Carrying Member, including computer malfunction or similar cause, in which case such computations shall be made as soon as possible under the circumstances. Such records shall be kept and shall be open for inspection in accordance with Section 1.31 of the regulations of the CFTC.

(d) The margin level which must be maintained (the "Maintenance Level") by all Carrying Members for each account which has an open Position in Exchange Futures and Options Contracts shall be 100% of the Hedge Margin Rate established by the Exchange with respect to each Commodity Contract.

(e) At the close of trading on any Business Day when the net liquidating value of any account is less than the Maintenance Level, the Carrying Member carrying such account shall require the reinstatement of Original Margin to the full amount required pursuant to the Rules, within a Reasonable Time.

(f) Each Carrying Member which carries an account that is required to reinstate Original Margin shall issue a call for Margin within one (1) Business Day after the account is required to reinstate Original Margin. Each Carrying Member shall maintain written records of all Margin Calls (and any cancellations of Margin Calls). Such records shall be kept and shall be open for inspection in accordance with section 1.31 of the regulations of the CFTC.

(g) A Carrying Firm may liquidate any or all Positions in an account that does not meet a call for Margin as required by these Rules. Any loss or deficiency resulting from such liquidation shall be the liability of the accountholder.

(h) A Carrying Firm shall not accept orders for new Trades for an undermargined account except for Risk Reducing Trades, unless the Carrying Firm has been given assurances by the Person for whom the account is carried that funds to restore the equity in the account to the then prevailing Original Margin requirement are forthcoming and will be received within a Reasonable Time.

(i) A Carrying Firm shall not permit any withdrawal from an account that would cause the net liquidating value of the account to be less than the then prevailing Original Margin requirement.

~~[(b)]~~ (j) ~~[Original]~~ Margin for Exchange Futures and Options Contracts may be deposited or credited in any one (1) or more of the following forms, subject to such terms and conditions as may be established by each Member Firm:

(i) United States currency ~~[or]~~ checks payable in United States currency; or any currency freely convertible to United States currency. If foreign currency is deposited, its U.S. Dollar equivalent calculated at the current rate of exchange must satisfy the Customer's Margin obligation. The Clearing Member's record of calculation shall be kept and shall be open for inspection in accordance with section 1.31 of the regulation of the Commodity Futures Trading Commission.

(ii) Securities issued by the United States Treasury Department; valued at an amount not to exceed market value less applicable haircuts as required by SEC Regulation 240.15c3-1.

(iii) Available Equity;

(iv) Net unrealized market appreciation;

(v) Liquidation of Futures Contracts or closing Transactions for Options carried in the account;

(vi) ~~[e]~~ Electronic warehouse receipts ("EWRs") for Coffee, Cocoa and Cotton certified for delivery in Exchange licensed warehouses and which identify the Carrying Member as the title holder, to be valued at no more than 70% of their value based upon the Settlement Price of the nearby contract for the Commodity (determined in accordance with such procedures as may from time to time be established by the Exchange);

~~[(vii) warehouse receipts for Cocoa certified for delivery in Exchange licensed warehouses and in possession of the Carrying Member, to be valued at no more than 70% of their value based upon the Settlement Price of the nearby contract for the Commodity (determined in accordance with such procedures as may from time to time be established by the Exchange);~~

~~[(viii) EWRs for Cotton certified for delivery in Exchange licensed warehouses which identify the Carrying Member as the title holder;~~

~~[(ix)]~~ (vii) Negotiable warehouse receipts covering FCOJ stored in Exchange licensed warehouses;

~~[(x)]~~ (viii) Negotiable shipping certificates covering FCOJ issued by Exchange licensed tank facilities;

~~[(xi)]~~ (ix) Fully paid equity securities not issued by the Clearing Member's Customer or the Customer's affiliates which are listed ~~[on the]~~ for trading on the New York Stock Exchange, Inc., ~~[or]~~ the American Stock Exchange, Inc., or Nasdaq ~~[which are traded in the over the counter market approved for margin by the Board of Governors of the Federal Reserve Board, provided that]~~. ~~[s]~~ Such equity securities should be ~~[(1) are]~~ free from liens and encumbrances, ~~[(2)]~~ represent no more than 5% of the issued and outstanding shares of any one issuer, ~~[(3)]~~ have a market value of at least \$10 per share and are valued at 75% of the market value. ~~[thereof];~~

~~[(xii) With respect to the Cotton No. 2 and Financial Contracts and consistent with CFTC Regulation 1.49 and local regulations, the currencies of Australia, Canada, the European Union, Japan, and the United Kingdom of Great Britain and Northern Ireland; in addition, Member Firms may only accept the currencies from the following countries to margin Positions in Financial~~

Contracts which are denominated in the respective currency: the Czech Republic, Hungary, New Zealand, Norway, Sweden, Switzerland and South Africa;

~~(xiii)~~ With respect to the Cocoa, Coffee, Ethanol, Sugar No. 11 and Sugar No. 14 Contracts, British pounds to be valued at an amount not to exceed market value less applicable haircuts as required by SEC Regulation 240.15c3-1, provided that each Member Firm may, in its discretion, after twenty-four (24) hours written notice (includes, facsimile telex or other appropriate means) to its Customer, convert such British pounds into U.S. dollars to meet variation Margin Calls;

~~(xiv)~~ (x) Irrevocable letter of credit in favor of the Clearing Member carrying the account; such letter of credit shall comply with the requirements of Rule 505(b) of the Clearing Organization and shall be issued in such form as may be prescribed by the Exchange and by a depository which has been approved by the Clearing Organization for issuance and confirmation of letters of credit in favor of the Clearing Members;

~~(xv)~~ (xi) Credit in the Customer's account arising from a secured loan by the Clearing Member as such term is defined under CFTC Regulation 1.17. ~~[or Member Firm for the collateral value of purchased options; provided, that the amount of credit extended by the Member or Member Firm shall not exceed the collateral value of the purchased options determined in accordance with such procedures as may from time to time be established by the Exchange;]~~ and

~~(xvi)~~(xii) Money market mutual funds allowable under CFTC Regulation 1.25 (to be valued at an amount not to exceed market value less applicable haircuts as required by SEC Regulation 240.15c3-1) and acceptable to the Clearing Organization.

~~[A Carrying Member may not accept as Original Margin any other type of money, securities or other property.~~

~~(e) An Original Margin Call may be met by any one (1) or any combination of the methods listed in paragraph [(b)] (i) hereof, and/or by the liquidation of futures contracts or closing Transactions for options carried in the account, which equals or exceeds the amount of the total Margin Call, subject to such terms and conditions as may be established by each Member.]~~

#### **Rule 5.04[5]. [Maintenance Level] Omnibus Accounts**

Each Member Firm which carries an account for a Futures Commission Merchant or a foreign broker on an omnibus basis, shall collect the Original Margin and Maintenance Margin required of such account on the basis of the gross Position carried for such account. If the Member Firm carrying an open position for another domestic or foreign broker allows a Position to be margined as a spread Position, the carrying Member Firm must obtain and retain for recordkeeping purposes a written representation from the entity for which the omnibus account is being maintained that each such Position is entitled to be so margined. The written representation shall be kept and shall be open for inspection in accordance with section 1.31 of the regulations of the Commodity Futures Trading Commission.

~~(a) The Maintenance Level which must be maintained by all Carrying Members for each account which has an open futures or options Position shall be as follows:~~

~~(i) For Exchange Futures and Options Contracts, 100% of the amount of Original Margin determined in accordance with SPAN and required in accordance with paragraph (a) of Margin Rule 5.04; and~~



(ii) For any other futures contracts and options, the Maintenance Margin required for such futures contracts and options under the rules of the exchange on which such futures contracts and options are traded.

(b) At the close of trading on any Business Day when the Net Liquidating Value of any account is less than the Maintenance Level computed in accordance with paragraph (a) of this Rule, the Carrying Member carrying such account shall require the reinstatement of Original Margin to the full amount required pursuant to the Rules, within a reasonable period of time not to exceed five (5) Business Days except for good cause.

(c) For the purpose of collecting Maintenance Margin for Cotton and FCOJ Futures and Options Contracts as required by paragraph (b) above, the Net Liquidating Value of each account at the close of trading on any Business Day shall be determined by reference to the Settlement Prices established by the Exchange.

(d) The Original Margin in any account may be reinstated by any one (1) or any combination of the following methods which equals or exceeds the amount of the total Margin Call, subject to such terms and conditions as may be established by each Member Firm:

(i) deposit of additional United States currency or checks payable in United States currency;

(ii) net unrealized market appreciation;

(iii) Available Equity;

(iv) liquidation of Futures Contracts or closing Transactions for Options carried in the account;

(v) EWRs for Coffee certified for delivery in Exchange licensed warehouses and which identify the Carrying Member as the title holder, to be valued at no more than 70% of their value based upon the Settlement Price of the nearby contract for the Commodity (determined in accordance with such procedures as may from time to time be established by the Exchange);

(vi) warehouse receipts for Cocoa certified for delivery in Exchange licensed warehouses and in possession of the Carrying Member, to be valued at no more than 70% of their value based upon the Settlement Price of the nearby contract for the Commodity (determined in accordance with such procedures as may from time to time be established by the Exchange);

(vii) EWRs for Cotton certified for delivery in Exchange licensed warehouses which identify the Carrying Member as the title holder;

(viii) negotiable warehouse receipts covering FCOJ stored in Exchange licensed warehouses;

(ix) negotiable shipping certificates issued by Exchange licensed facilities;

(x) securities listed on the New York Stock Exchange, Inc. or the American Stock Exchange, Inc., or which are traded in the over the counter market approved for margin by the Board of Governors of the Federal Reserve Board, provided that such securities (1) are free from liens and encumbrances, (2) represent no more than 5% of the issued and outstanding shares of any one issuer and (3) are valued at 75% of the market value thereof;

~~(xi) securities issued by United States Treasury Department, to be valued at an amount not to exceed market value less applicable haircuts as required by SEC Regulation 240.15c3-1;~~

~~(xii) with respect to Cotton No. 2 and the Financial Contracts, the deposit of additional currencies of Australia, Canada, the European Union, Japan, the United Kingdom of Great Britain and Northern Ireland consistent with CFTC Regulation 1.49 and local regulations; provided, however that the deposit of additional currencies from the following countries may be accepted to margin Positions in Financial Contracts that are denominated in the respective currency: the Czech Republic, Hungary, New Zealand, Norway, Sweden, Switzerland, and South Africa;~~

~~(xiii) with respect to the Cocoa, Coffee, Ethanol, Sugar No. 11 and Sugar No. 14 Contracts, deposit of British pounds to be valued at an amount not to exceed market value less applicable haircuts as required by Regulation 240.15c3-1, provided that each Member Firm may, in its discretion, after 24 hours written notice (includes, facsimile telex or other appropriate means) to its Customer, convert such British pounds into U.S. dollars to meet variation Margin Calls;~~

~~(xiv) irrevocable letter of credit in favor of the Clearing Member carrying the account; such letter of credit shall comply with the requirements of Rule 505(b) of the Clearing Organization and shall be issued in such form as may be prescribed by the Exchange and by a depository which has been approved by the Clearing Organization for issuance and confirmation of letters of credit in favor of the Clearing Members;~~

~~(xv) credit in the Customer's account arising from a loan by the Member or Member Firm for the collateral value of purchased options; provided, that the amount of credit extended by the Member or Member Firm shall not exceed the collateral value of the purchased options determined in accordance with such procedures as may from time to time be established by the Exchange; or~~

~~(xvi) money market mutual funds allowable under CFTC Regulation 1.25 (to be valued at an amount not to exceed market value less applicable haircuts as required by SEC Regulation 240.15c3-1) and acceptable to the Clearing Organization.~~

~~(e) Each Carrying Member which carries an account that is required to reinstate Original Margin as provided in paragraph (b) of this Rule shall issue a call for Margin within one (1) Business Day after the account is required to reinstate Original Margin. Each Carrying Member shall maintain written records of all Margin Calls (and any cancellations of Margin Calls) and shall make such records available on request for inspection by authorized representatives of the Exchange.]~~

#### **Rule 5.05[6]. Change in Margin Requirements**

(a) The Board or, where so delegated, the Margin Committee, as the case may be, may at any time and from time to time change the amounts of the Original Margin requirements or maintenance levels and require that any Carrying Member require additional Original Margin for any account or establish greater Maintenance Levels for any account, with respect to existing Exchange Futures Contract Positions, new Exchange Futures Contract Positions, existing Exchange Options, new Exchange Options, or any combination thereof, on any terms and conditions as the Board or, where so delegated, the Margin Committee, in its discretion may adopt, which terms and conditions may include (but need not be limited to) making any such requirement applicable to:

(i) Exchange Futures Contracts or Exchange Option Positions carried before, on or after the effective date of such changed Margin requirements or Maintenance Levels; and/or

(ii) Exchange Futures Contracts or Exchange Option Positions carried on only one (1) side of the market.

Without limiting the generality of the foregoing, any such requirement may be made to apply differently for different Carrying Members or classes of Carrying Members, different Customers or classes of Customers, different forms of Exchange Futures Contracts, different delivery months of the same Exchange Futures Contract, different types of Exchange Call Options or Exchange Put Options, different Striking Prices or Option months of the same Exchange Call Options or Exchange Put Options, different types of Option Transactions and different types of accounts or positions involving Exchange Futures or Options Contracts.

(b) Notwithstanding the provisions of paragraph (a) of this Rule, at no time shall Margin requirements be less than the minimum Margin required for all Exchange Futures and Options Contracts set by the Clearing Organization; provided, however, that this prohibition shall not apply to Margin requirements established for Arbitrage Positions in Coffee, Sugar and Cocoa Futures and Options Contracts.

(c) Nothing in this Chapter 5 shall prevent any Carrying Member Firm at any time from requiring Original Margins in excess of the amounts prescribed pursuant to these Margin Rules or establishing greater Maintenance Levels for any account, or taking any other action which is not contrary to these Margin Rules or the Rules.

**[Rule 5.07. Margin Computation**

~~Before the opening of trading on each Business Day, each Carrying Member shall compute, for each account with an open Position in Exchange Futures and Options Contracts, the Net Liquidating Value, the Original Margin required (pursuant to these Rules or such greater Maintenance Margin requirement as may be established by the Carrying Member), the Maintenance Level required, the amount of any unpaid Margin Call and the length of time any such Margin Call has been outstanding, all as of the close of trading on the preceding Business Day; provided, however, that such computations shall not be required before the opening of trading if prevented by causes beyond the control of the Carrying Member, including computer malfunction or similar cause, in which case such computations shall be made as soon as possible under the circumstances.]~~