



**BY ELECTRONIC TRANSMISSION**

06-12  
June 16, 2006

Ms. Eileen A. Donovan  
Acting 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

RECEIVED  
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Re: **Amendments to Rules 4.17, 4.19, 4.21 and 4.33  
Submission Pursuant to Section 5c(c)(1) of the Act and Regulation 40.6**

Dear Ms. Donovan:

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 Rules 4.17, 4.19, 4.21 and 4.33, attached as Exhibit A.

**Rule 4.17**

Rule 4.17 prohibits any floor broker from executing trades for an account over which the floor broker has full discretionary authority. The exceptions to the prohibition are those accounts which belong to the executing floor broker, his immediate family or a clearing member. The Rule is a Commission required prohibition [Regulation 155.2(c)]. In order to make the provisions contained in the Rule perfectly clear, clarifying language changes have been made.

**Rule 4.19**

The current Rule allows orders in certain commodity contracts to be filled in a cross trade opposite the account of the executing floor broker (or an account he controls) (a “CTI 4x1 Cross Trade”). Pursuant to Regulation 155.2(e), this is only permitted if the executing floor broker has received the prior written consent of the customer to do so. Periodically the Exchange will request the executing floor broker to provide a copy of the customer’s written consent, to demonstrate compliance with the Rule 4.19.

Where the customer relationship is directly between the executing floor broker and his customer, obtaining the customer’s written consent is not an issue. However, where the broker is acting as agent for an FCM that has the customer relationship, the broker will not even know who the customer is, and therefore, will not be in a position to seek or obtain the customer’s

consent. It has been standard practice, in these circumstances, for the FCM to advise the broker whether or not its customers' orders can be executed in CTI 4x1 Cross Trades. This is done by letter from the FCM to the executing floor broker. In such cases, when the Exchange requests a copy of the customer's written consent, the floor broker must rely on the FCM to produce a copy of the consent granted by the particular customer for whom the order was executed. If the FCM cannot produce the letter, the floor broker is the one who is deemed in violation of the rules, because it is the floor broker who must have the customer's consent in the first place.

The amendments to Rule 4.19, provide that in those cases where an FCM has represented to the floor broker that orders placed by the FCM may be executed in CTI 4x1 Cross Trades, the failure to provide a copy of the customer's written consent to such transactions will be deemed a violation of Rule 4.19 by the FCM, not the floor broker who relied on the FCM's representation to him.

The Exchange adopted a similar approach many years ago to deal with a provision of Rule 4.19 that prohibits the entering of simultaneous orders to buy and sell the same commodity in the same delivery month unless the orders are for different principals. In that case, the Rule allocates responsibility for ascertaining that the orders are for different principals as follows: (i) if the orders are placed with the FCM, which in turn places the orders with a floor broker, then the FCM is responsible, (ii) if the orders are placed with a member firm on the trading floor, which, in turn, hands off the orders for execution or gives the orders to one of its own floor brokers to execute, then the member firm is responsible and (iii) if the orders are placed directly with a floor broker, who either hands off the orders for execution or executes them himself, then the floor broker is responsible.

The amendments use the same approach in the context of who should be responsible for obtaining and holding the customer's written consent to CTI 4x1 Cross Trades.

#### Rule 4.21

In its present form, Rule 4.21 only prohibits floor brokers from withdrawing or withholding executable customer orders for the benefit of another member of the Exchange. The Rule is silent with regard to the withdrawal or withholding of an order by a floor broker for his personal benefit. Thus, there is a gap in the Rule as it is currently written which permits a floor broker to withhold a customer order, to the customer's detriment, for his personal gain. For example, a floor broker could withdraw or withhold an executable customer order to generate a fictitious error so he could execute an error cross-trade for the customer order opposite his personal account. Accordingly, the amendment is intended to close that gap and eliminate the potential for customer order abuse.

#### Rule 4.33

Rule 4.33, which details clerk registration requirements, procedures and trading prohibitions, contains a reference to the Vice President-Member Relations. Since that position does not currently exist, the phrase is deleted and replaced with the phrase "the Managing Director or another officer of the Membership Department".

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 June 15, 2006. No substantive opposing views were expressed by members or others with respect to the amendments. The amendments will become effective twenty-four (24) hours after filing with the Commission on a date set by the President.

If you have any questions or need further information, please contact me at [jfusco@nybot.com](mailto:jfusco@nybot.com) or 212-748-4021.

Sincerely,

Jason V. Fusco  
Compliance 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.)

## EXHIBIT A

### Rule 4.17. Discretionary Account

(a) No Floor Broker shall execute any Transaction for any account [~~of another Person for which buying and/or selling orders can be placed or originated, or for which Transactions can be executed, by such Floor Broker without the prior specific consent of the account owner/Customer, regardless of whether the general authorization for such orders or Transactions is pursuant to a written agreement.~~] over which the Floor Broker has discretionary trading authority to originate orders or execute Transactions. For the purposes of this Rule, discretion only as to time and price of a Transaction shall not be deemed to constitute a discretionary trading authority.

(b) The foregoing requirement shall not apply with respect to orders originated by a Floor Broker on behalf of any one (1) or all of the following:

- (i) members of the Floor Broker's immediate family;
- (ii) ~~Members;~~
- ~~(iii)]~~ the proprietary accounts of Members.

provided that Customers' orders, including orders granting the Floor Broker discretion as to the price, time and contract month [~~discretion orders~~], are executed before the orders referred to in paragraphs (a) and (b).

(c) Orders referred to in paragraphs (a) and (b) may be placed with another Floor Broker for execution [~~in which case the provisions of this Rule shall not apply~~].

### Rule 4.19. Cross Trades

(a) Subject to the conditions set forth in this Rule, a Floor Broker who has in hand at the same time both buying and selling or granting Exchange orders of different Principals for the same Commodity Contract in the same delivery month or Exchange Option series may execute such orders for and directly between such Principals at the market price; provided, however, that:

(i) with respect to Cocoa, Cotton No. 2, Pulp, Index and Financial Futures and Options Contracts, if any one (1) of the accounts listed below in (A) through (D) is opposite a Customer's order, the ~~Floor Broker~~ Member or Member Firm, as specified in subparagraph (ii) below, has the prior written consent of such Customer to cross his order opposite any one (1) of the following accounts:

(A) the Floor Broker's own account or an account in which the Floor Broker has a direct or indirect interest;

(B) an account of another Person for which buying and/or selling orders can be placed or originated, or for which Transactions can be executed, by such Floor Broker without the prior specific consent of the account owner;

(C) the account of an Associated Broker or an account controlled by such Associated Broker; or

(D) the account of any Firm of which the Floor Broker is a partner, officer, or employee or any other affiliate of such Firm, or the account of any partner, officer or employee of such Firm or any other affiliate of such Firm; for purposes of this Rule, the term "affiliate" means any Firm or individual which controls, is controlled by, or is under common control with, another Firm or individual; and for purposes of this Rule, the term "control" means the power to direct or cause the

direction of the management or policies of a Firm or individual, whether through ownership of securities, by contract, or otherwise.

(ii) For the purposes of subparagraph (i) above, a Member or Member Firm which receives an order directly from a Customer shall be deemed to be the Person responsible for knowing whether the Customer has consented to having its orders executed in cross trades, advising any Person to whom or which the order is transmitted in furtherance of execution, as to whether such Customer consent has been granted, obtaining the prior written consent of the Customer evidencing the grant of authority to cross the Customer's orders against the accounts listed in subparagraphs (i)(A)-(D), and providing a copy of the written grant of authority to the Exchange upon request, as follows:

(A) If the order is placed with a Member Firm that is a Futures Commission Merchant ("FCM") or Introducing Broker ("IB"), such FCM or IB shall be responsible;

(B) If the order is placed with a Member Firm operating a brokerage business on the Floor of the Exchange and the Member Firm either hands the order off for execution by another Member or has its own Floor Brokers execute the order, the Member Firm shall be responsible; and

(C) If the order is placed directly with any Floor Broker and the Floor Broker either hands off the order for execution or executes the order himself, the Floor Broker shall be responsible; but the Floor Broker shall not be responsible with respect to any Customer's order received from an FCM or IB.

(iii) with respect to Coffee "C", Ethanol, Sugar No. 11 and Sugar No. 14 Futures and Options Contracts, Transactions described in paragraph (a) of this Rule may be executed as long as neither of the orders is for:

\* \* \*

(i) with respect to FCOJ Futures and Options Contracts, Transactions described in paragraph (a) of this Rule may be executed as long as neither of the orders is for:

[REMAINDER OF RULE UNCHANGED]

#### **Rule 4.21. Withdrawal of Orders**

No Floor Broker shall withhold or withdraw from the market any order or any part of an order for the convenience of himself or another Member.

#### **Rule 4.33. Clerk Qualification Requirements, Registration Procedures, and Trading Prohibitions**

The following Clerk qualification, registration procedures and trading prohibitions apply to all clerical staff of Members or Member Firms trading in Commodity Contracts on the Trading Floor of the Exchange:

(b) Registration Procedure:

\* \* \*

Every Clerk registered with the Exchange shall provide prompt written notice to ~~[the Vice President- Member Relations]~~ the Managing Director or another officer of the Membership Department, if any of the events specified in paragraphs (b)(i) through (v) above occurs.

[REMAINDER OF RULE UNCHANGED]