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February 22, 2005

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

Reference File #2534.01  
Rule Certification

Dear Ms. Webb:

Pursuant to Commission Regulation 40.6(a), the Chicago Board of Trade (CBOT<sup>®</sup>) hereby submits the following:

- **Adopt a formal "Office of Investigations and Audits Confidentiality Policy" and amend Regulation 170.02 (additions underlined; deletions bracketed and struck through) per the attached texts.**

The referenced confidentiality policy and related regulation amendments reflect the Exchange's long-standing practice of ensuring that no confidential information is improperly disclosed or inappropriately used.

The Exchange intends to implement these provisions one day after the Commission's receipt of this filing.

There were no opposing views concerning these provisions.

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

Sincerely,

Paul Draths  
Vice President and Secretary

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## Office of Investigations and Audits Confidentiality Policy

The Office of Investigations and Audits (“OIA”) performs the self-regulatory functions of the Chicago Board of Trade (“CBOT®”) under the Commodity Exchange Act and Commodity Futures Trading Commission (“CFTC”) Regulations. Therefore, OIA staff has access to, and reviews, Confidential Information, on a regular basis.

This Confidentiality Policy defines Confidential Information and identifies the limited circumstances under which OIA staff may disclose such information within the CBOT or to third parties. This Policy does not replace the Confidential Information Policy contained in the CBOT Benefits Manual or relevant CBOT Regulations.

Confidential Information, for purposes of this Confidentiality Policy, includes information regarding the market position of an identified individual or firm, or the financial condition of an identified individual or firm, which has been submitted to, or obtained by, the Exchange for regulatory purposes. More specifically, Confidential Information includes:

- (a) The market position of an identified individual or firm obtained from large trader reports.
- (b) Non-public financial records and reports relating to an identified individual or firm, obtained or generated in connection with financial examinations or financial surveillance.
- (c) Source documents for trades, account documents and non-public financial information obtained, and reports generated, in connection with routine market and trade surveillance or investigations of possible rule violations.

Employees of OIA shall not disclose Confidential Information outside of OIA, except as permitted by Exchange Rules and Regulations, upon the specific authorization of senior management of OIA, and, where appropriate, the Legal Department. With such authorization, disclosure may be made to:

- (a) CBOT disciplinary committees, the Hearing Committee, the Appellate Committee, the Regulatory Compliance Committee, or the Board of Directors;
- (b) Respondents in CBOT disciplinary proceedings;
- (c) Parties to arbitration proceedings pursuant to discovery procedures authorized by CBOT Regulations;
- (d) The CBOT’s Legal Department;
- (e) The Clearing House Risk Committee of the Chicago Mercantile Exchange, Inc., the CBOT’s Clearing Services Provider;
- (f) Any other department or committee of the CBOT or its Clearing Services Provider that has a regulatory or risk management need for such information;
- (g) The CFTC, the United States Department of Justice, or any other governmental body that has the authority to request such information;

- (h) Any futures or securities self-regulatory organization with which the CBOT has a regulatory information-sharing agreement or which has the authority to request such information; or
- (i) Pursuant to a valid subpoena or court order.

An employee of OIA shall not use or disclose Confidential Information gained during his/her employment with the CBOT, after he/she is no longer employed by the Exchange.

Each employee of OIA, including any consultant that may be engaged to work with OIA from time to time, will be required to indicate that he/she has read, understands, and agrees to abide by, this Confidentiality Policy by signing a copy of the Policy.

Additions are underlined; deletions are bracketed and struck through.

**170.02 Office of Investigations and Audits** – ~~[All officers, committees and departments of the Association shall be entitled to use and shall make the fullest possible use of the services provided by the Office of Investigations and Audits consistent with their respective responsibilities and special needs, and the President shall work out and establish policies and procedures governing the initiation and handling of needed investigations, audits and Exchange business. All such policies and procedures shall be consistent with and not in conflict with the following declared policies of the Board:]~~

- (a) All information obtained by the Office of Investigations and Audits regarding the market position[s] of an identified individual or firm, or the financial condition of an identified individual or firm, which has been submitted to, or obtained by, the Exchange for regulatory purposes, [and identity of traders] shall be considered confidential, ~~regardless of its source,~~ and except as provided in paragraph (b) below, shall be disclosed only to authorized employees and committees of the Exchange or its Clearing Services Provider for regulatory or risk management purposes, including to [the Chairman or acting Chairman of] the Business Conduct Committee, Floor Governors Committee, and/or the Financial Compliance Committee, [and authorized Exchange employees, and shall be disclosed to the Business Conduct Committee and/or the Financial Compliance Committee sitting as a committee] when [and after] one of the individuals in charge of the Office of Investigations and Audits [or the Chairman or acting Chairman of the Business Conduct Committee and/or the Financial Compliance Committee] shall have reason to believe that such Committee would or should take preventive or disciplinary action if such information were presented to it. This shall not preclude the Business Conduct Committee, Floor Governors Committee, and/or the Financial Compliance Committee from ordering investigations or audits to be made at any time for the special purpose of obtaining information regarding the market position of an identified individual or firm, or the financial condition of an identified individual or firm [and identity of any trader or traders], and in such cases the Office of Investigations and Audits shall report fully and completely to the relevant Committee any and all such information so obtained or in its possession.
- (b) ~~[It shall be considered a breach of trust for any]~~ No employee of the Office of Investigations and Audits or authorized Exchange employee ~~[to]~~ may divulge, or allow or cause to be divulged, to any unauthorized person, any confidential~~;~~ commercially sensitive, or material non-public information, including any information regarding the market position of an identified individual or firm, or the financial condition[s] of an identified individual or firm, [or identity of any trader or firm] or to disclose the name of any customer of one firm to any other firm, except as provided ~~[for]~~ in paragraph (a) above, [hereof] or when required in connection with disciplinary proceedings or other formal proceedings or actions of a duly authorized committee of the ~~[Association]~~ Exchange or the Exchange's Clearing Services Provider, or of the Board, or in response to a duly authorized subpoena or court order, or in response to a request or demand by any administrative or legislative body

of government having jurisdiction of the subject matter and authority to obtain the information requested, or to a self-regulatory organization with which the Exchange has entered into a regulatory information sharing agreement or which has the authority to request such information, or on behalf of the [~~Association~~] Exchange in any proceeding authorized by the Board of Directors. Such information shall not be divulged by any employee of the Office of Investigations and Audits or authorized Exchange employee without the prior approval of one of the individuals responsible for supervision of the Office of Investigations and Audits.