



**CME Group**

A CME/Chicago Board of Trade/NYMEX Company

C.F.T.C.  
OFFICE OF THE SECRETARIAT

2009 SEP 10 AM 11 56

September 9, 2009

Mr. David Stawick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

**RE: CME Group Market Regulation Advisory Notice RA0909-5  
CME/CBOT/NYMEX Submission No. 09-198**

Dear Mr. Stawick:

Chicago Mercantile Exchange Inc. ("CME"), The Board of Trade of the City of Chicago, Inc. ("CBOT") and The New York Mercantile Exchange, Inc. ("NYMEX") (collectively, "the Exchanges") hereby notify the Commodity Futures Trading Commission that they will issue CME Group Market Regulation Advisory Notice RA0909-5 on September 11, 2009, concerning the adoption of substantially harmonized rules 443 ("Position Limit Violations"), 559 ("Position Limits and Exemptions") and 560 ("Position Accountability") across the exchanges on September 14, 2009, based on the harmonization of NYMEX and COMEX trade practice rules with the rules of CME. Additional information on the changes to the trade practice rules is included in prior NYMEX Submission No. 09-169 and CME/CBOT Submission No. 09-151, both from August 21, 2009.

A copy of the Advisory Notice is included with this submission.

The Exchanges certify that the Advisory Notice complies with the Commodity Exchange Act and regulations thereunder.

If you have any questions regarding the Advisory Notice, please contact Robert Sniegowski, Market Regulation, at 312.341.5991 or me at 312.648.5422. Please reference CME/CBOT/NYMEX Submission No. 09-198 in any related correspondence.

Sincerely,

/s/ Stephen M. Szarmack  
Director and Associate General Counsel

## MARKET REGULATION ADVISORY NOTICE

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<b>Exchange</b>	<b>CME, CBOT, NYMEX &amp; COMEX</b>
<b>Subject</b>	<b>Position Limits, Exemptions and Position Accountability</b>
<b>Rule References</b>	<b>Rules 443, 559 &amp; 560</b>
<b>Advisory Date</b>	<b>September 11, 2009</b>
<b>Advisory Number</b>	<b>CME Group RA0909-5</b>
<b>Effective Date</b>	<b>September 14, 2009</b>

Effective September 14, 2009, CME, CBOT, NYMEX and COMEX will adopt substantially harmonized rule language with respect to Rule 443 ("Position Limit Violations"), Rule 559 ("Position Limits and Exemptions") and Rule 560 ("Position Accountability"). A table detailing the specific position limits, position accountability levels and reportable position levels for each exchange is located at the conclusion of Chapter 5 in each of the exchange's rulebooks, and may be accessed via the following link: <http://www.cmegroup.com/market-regulation/position-limits/index.html>

### **Rule 443 ("Position Limit Violations")**

Rule 443 provides that a position which, at any time, is in excess of the specified position limits shall be deemed a position limit violation.

Position limits apply on both an interday and intraday basis, and market participants must be cognizant of the position limits in the products they trade. Market participants should be particularly mindful of the dates on which position limits decrease for spot month contracts.

Additionally, market participants are reminded that it is a violation of Rule 443 to bid or offer a quantity that, if accepted, would cause the person to exceed the applicable position limit. For the purposes of this element of the rule, bids or offers for accounts that are aggregated for position limit purposes are also aggregated to determine compliance with this rule.

A position that exceeds applicable limits when evaluated using the delta factors as of that day's close of trading, but does not exceed the limits when evaluated using the previous day's delta factors, will not constitute a rule violation. Additionally, if an options assignment results in a position exceeding the applicable limit, the person is allowed one business day to liquidate the excess positions without being in violation of the position limit rules.

A clearing member that carries positions for its customer in excess of the applicable limit is not considered to be in violation of position limit rules provided that the excess positions are liquidated within a reasonable period of time, generally one business day, or the position is eligible for and receives an exemption (see Rule 559.F.). Notwithstanding the foregoing, the clearing member and the associated person responsible for an account will be in violation of the position limit rule if they accept an order that they know, or should know, would result in the customer exceeding the applicable position limit.

Clearing members and market participants also should be aware that a customer who exceeds

position limits as a result of maintaining positions at more than one clearing member is deemed to have waived confidentiality regarding his position and the identity of the clearing members at which they are maintained.

Violations of position limits are subject to an automatic fine schedule; however, repeated or egregious violations may instead be referred to the Probable Cause Committee at the discretion of Market Regulation.

#### **Rule 559 (“Position Limits and Exemptions”)**

Rule 559 details the requirements that a person seeking an exemption from position limits must satisfy in order to obtain the exemption and the agreements upon which the exemption is conditioned, including:

- Agreement to promptly provide, upon request, information regarding the position, trading strategy, nature of the hedge or financial condition;
- Agreement to comply with all terms, conditions or limitations imposed with respect to the exemption;
- Agreement that, for cause, the exemption may be modified or revoked at any time by Market Regulation;
- Agreement to initiate and liquidate positions in an orderly manner;
- Agreement to comply with all Exchange rules;
- Agreement to promptly update the exemption application whenever there is a material change.

The rule also describes the various types of exemptions that may be sought, as well as the requirements with respect to aggregation of positions.

All exemptions are required to be updated not later than one year following the approval date of the most recent application. The failure to file an updated exemption application will result in the expiration of the exemption.

#### **Rule 560 (“Position Accountability”)**

Rule 560 specifies that Market Regulation may, at any time, require a person who owns or controls positions that are subject to position limit or accountability rules to provide information related to the position. Market Regulation may also order any person who owns or controls positions in excess of specified position accountability levels or in excess of position limits pursuant to an approved exemption to 1) not further increase the position, 2) comply with any prospective limit that exceeds the size of the current position, or 3) reduce any open position that exceeds position accountability or position limit levels if the Chief Regulatory Officer or his designee determines, in his sole discretion, that the action is necessary to maintain an orderly market.

The text of the three rules is presented below and clearing firms and market participants are strongly encouraged to familiarize themselves with these rules and the position limits and position accountability levels of the products they trade.

Questions regarding this advisory may be directed to the following individuals in Market Surveillance in Chicago and New York:

Bill Lange, Associate Director, Agricultural Surveillance, 312.341.7757  
Jerry O'Connor, Associate Director, Financial Surveillance, 312.341.7048  
Chris Reinhardt, Supervisor, Market Surveillance 212.299.2884

## Text of Rule 443

### 443. POSITION LIMIT VIOLATIONS

The Market Regulation Department and the BCC shall have the authority to enforce the position limit rules of the Exchange. For purposes of this rule, any positions in excess of those permitted under the rules of the Exchange shall be deemed position limit violations. Additionally, any person making a bid or offer that would, if accepted, cause such person to exceed the applicable position limits shall be in violation of this rule.

If a position exceeds position limits as a result of an option assignment, the person who owns or controls such position shall be allowed one business day to liquidate the excess position without being considered in violation of the limits. Additionally, if, at the close of trading, a position that includes options exceeds position limits when evaluated using the delta factors as of that day's close of trading, but does not exceed the limits when evaluated using the previous day's delta factors, then the position shall not constitute a position limit violation.

A clearing member shall not be in violation of this rule if it carries positions for its customers in excess of the applicable position limits for such reasonable period of time as the firm may require to discover and liquidate the excess positions. For the purposes of this rule, a reasonable period of time shall generally not exceed one business day.

A customer who exceeds the position limits as a result of maintaining positions at more than one clearing member shall be deemed to have waived confidentiality regarding his positions and the identity of the clearing members at which they are maintained. A clearing member carrying such positions shall not be in violation of this rule if, upon notification by the Market Regulation Department, it liquidates its pro-rata share of the position in excess of the limits or otherwise ensures the customer is in compliance with the limits within a reasonable period of time.

#### 443.A. First Violation

The first occurrence of a position limit violation shall result in a warning letter issued by the Market Regulation Department to the party in violation of the limit, with a copy provided to the carrying clearing member(s). In circumstances where the carrying clearing member has also committed a position limit violation as set forth in this rule by carrying such positions, a warning letter will be issued to the clearing member(s).

#### 443.B. Second Violation, Sanctions and Appeals

A second position limit violation by a nonmember customer within 24 months of the issuance of a warning letter shall result in the imposition of an automatic fine by the Market Regulation Department to the nonmember customer as set forth below. Such fines will be assessed against and payable to the Exchange by the clearing member(s) carrying the nonmember customer's account(s).

A second position limit violation by a member or member firm within 24 months of the issuance of a warning letter shall result in the imposition of an automatic fine by the Market Regulation Department to the member or member firm as set forth below and the issuance of a cease and desist order.

The automatic fine for a position exceeding the applicable limit by up to 25% shall be \$5,000. The automatic fine for a position exceeding the applicable limit by more than 25% shall be \$15,000.

Parties may, within 10 business days of being provided notice of sanctions issued pursuant to this section, request an appeal to a Panel of the Business Conduct Committee ("BCC Panel").

Upon receiving a written request for appeal, the Chairman of the BCC Panel shall determine whether there is a reasonable basis to conclude that the appellant might be able to meet one of the standards identified below that would permit the BCC Panel to set aside, modify or amend the appealed decision. The BCC Chairman's determination shall be based solely upon the written request for appeal and any written response of the Market Regulation Department. The BCC Chairman's determination of whether to hold a hearing on an appeal shall be final. If the BCC Chairman grants the appellant's request for a hearing, the chairman shall allow the filing of briefs

in connection with the appeal.

The BCC Panel hearing the appeal shall not set aside, modify or amend the appealed decision unless it determines by a majority vote that the decision was:

- A. Arbitrary, capricious, or an abuse of the Market Regulation Department's discretion;
- B. In excess of the Market Regulation Department's authority or jurisdiction; or
- C. Based on a clearly erroneous application or interpretation of Exchange rules.

The BCC Panel shall issue a written decision which shall include a statement of findings with respect to the decision from which the appeal was taken and the Panel's determination that such initial decision is affirmed, set aside, modified or amended in whole or in part and, with respect to any initial decision that is not affirmed in whole, the BCC Panel's determination of the order or penalty to be imposed, if any, and the effective date. The decision of the BCC Panel shall be final and may not be appealed.

#### **443.C. Referral to the Probable Cause Committee**

Any third or subsequent position limit violation within 24 months of the issuance of a warning letter shall be referred by the Market Regulation Department to the PCC for consideration of the issuance of charges. Additionally, notwithstanding Sections A. and B. of this rule, the Market Regulation Department, in its sole discretion, may refer any position limit violation it deems egregious to the PCC for consideration of the issuance of charges.

### **Text of Rule 559**

#### **559. POSITION LIMITS AND EXEMPTIONS**

The position limit levels applicable to those contracts with position limits are set forth in the Position Limit, Position Accountability and Reportable Level Table ("Table") in the Interpretations Section at the end of Chapter 5.

A person seeking an exemption from position limits must apply to the Market Regulation Department on forms provided by the Exchange. In order to obtain an exemption from position limits, a person must:

1. Provide a description of the exemption sought, including whether the exemption is for bona fide hedging positions as defined in CFTC Regulation §1.3(z)(1), risk management positions or arbitrage/spread positions;
2. Provide a complete and accurate explanation of the underlying exposure related to the exemption request;
3. Agree to promptly provide, upon request by the Market Regulation Department, information or documentation regarding the person's financial condition;
4. Affirm that the requested exemption complies with any applicable CFTC requirements and, for those contracts with Federal limits, that the exemption request has been approved by the CFTC; *(Number 4 is exclusive to CBOT Rule 559 and shows Reserved in CME and NYMEX Rule 559.)*
5. Agree to comply with all terms, conditions or limitations imposed by the Market Regulation Department with respect to the exemption;
6. Agree that the Market Regulation Department may, for cause, modify or revoke the exemption at any time;
7. Agree to initiate and liquidate positions in an orderly manner;
8. Agree to comply with all Exchange rules; and
9. Agree to promptly submit a supplemental statement to the Market Regulation Department whenever there is a material change to the information provided in the most recent application.

A person intending to exceed position limits, including limits established pursuant to a previously approved exemption, must file the required application and receive approval from the Market

Regulation Department prior to exceeding such limits. However, a person who establishes an exemption-eligible position in excess of position limits and files the required application not more than five (5) days after assuming the position, or any lesser period mandated by Market Regulation, shall not be in violation of this rule. In the event the positions in excess of the limits are not deemed to be exemption-eligible, the applicant and clearing firm will be in violation of speculative limits for the period of time in which the excess positions remained open.

The Market Regulation Department shall, on the basis of the application and any requested supplemental information, determine whether an exemption from position limits shall be granted. The Market Regulation Department may approve, deny, condition or limit any exemption request based on factors deemed by the Department to be relevant, including, but not limited to, the applicant's business needs and financial status, as well as whether the positions can be established and liquidated in an orderly manner given characteristics of the market for which the exemption is sought.

Nothing in this rule shall in any way limit (i) the authority of the Exchange to take emergency action; or (ii) the authority of the Market Regulation Department to review at any time the positions owned or controlled by any person and to direct that such position be reduced to the position limit provided for in the Table.

A person who has received written authorization from the Market Regulation Department to exceed position limits must annually file an updated application not later than one year following the approval date of the most recent application. Failure to file an updated application will result in expiration of the exemption.

#### **559.A. Bona Fide Hedging Positions**

The Market Regulation Department may grant exemptions from position limits for bona fide hedge positions as defined by CFTC Regulation §1.3(z)(1).

Approved bona fide hedgers may be exempted from emergency orders that reduce position limits or restrict trading.

#### **559.B. Risk Management Positions**

The Market Regulation Department may grant exemptions from the position limits for risk management positions. For the purposes of this rule, risk management positions are defined as futures and options positions which are held by or on behalf of an entity or an affiliate of an entity which typically buys, sells or holds positions in the underlying cash market, a related cash market, or a related over-the-counter market and for which the underlying market has a high degree of demonstrated liquidity relative to the size of the positions and where there exist opportunities for arbitrage which provide a close linkage between the futures or options market and the underlying market in question. Exemptions related to indexed positions in the over-the-counter market may include corresponding commodity index-based futures and options and/or individual commodity futures and options used as components in replicating an index.

#### **559.C. Arbitrage and Spread Positions**

The Market Regulation Department may grant exemptions from the position limits for arbitrage, intracommodity spread, intercommodity spread, and eligible option/option or option/futures spread positions.

Spread and arbitrage exemptions from position limits for Corn, Oats, Soybean, Wheat, Soybean Oil and Soybean Meal futures and options contracts traded on the Exchange shall be governed by CFTC Regulation §150.3(a)(3). *(This paragraph is exclusive to CBOT Rule 559.)*

#### **559.D. Aggregation of Positions**

1. Positions to be Aggregated - The position limits in the Table shall apply to all positions in accounts for which a person by power of attorney or otherwise directly or indirectly owns the positions or controls the trading of the positions. The position limits in the Table shall also apply to positions held by two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading of the positions was done by, a single person.

2. Ownership of Accounts – Except as set forth in Section E. below, any person holding positions in more than one account, or holding accounts or positions in which the person by power of attorney or otherwise directly or indirectly has a 10% or greater ownership or equity interest, must aggregate all such accounts or positions unless such person is a limited partner, shareholder, member of a limited liability company, beneficiary of a trust or similar type of pool participant in a commodity pool. The foregoing exception for pool participants shall not apply if the person is a commodity pool operator, controls the commodity pool's trading decisions, or has an ownership or equity interest of 25% or more in a commodity pool whose operator is exempt from registration with the CFTC.

#### **559.E. Limited Exceptions to Aggregation for Independently Controlled Positions**

##### ***CME and CBOT Paragraph 1***

Positions carried for an eligible entity as defined in CFTC Regulation §150.1(d) in the separate account or accounts of independent account controllers as defined in CFTC Regulation §150.1(e) shall not be aggregated for position limit purposes provided that the positions are not held in the spot month during such time that a spot month position limit is applicable. If an independent account controller is affiliated with the eligible entity or another independent account controller, each of the affiliated entities must comply with the requirements set forth in CFTC Regulation §150.3(4)(i)(A-D).

##### ***NYMEX Paragraph 1***

Positions carried for an eligible entity as defined in CFTC Regulation §150.1(d) in the separate account or accounts of independent account controllers as defined in CFTC Regulation §150.1(e) shall not be aggregated for position limit purposes. If an independent account controller is affiliated with the eligible entity or another independent account controller, each of the affiliated entities must comply with the requirements set forth in CFTC Regulation §150.3(4)(i)(A-D).

Treasury futures positions carried in independently controlled accounts owned by different legal entities, irrespective of whether the entities qualify as eligible entities, shall not be aggregated for position limit purposes provided that affiliated legal entities must comply with the requirements set forth in CFTC Regulation §150.3(4)(i)(A-D). *(This paragraph is exclusive to CBOT Rule 559.)*

Positions held by futures commission merchants or their separately organized affiliates in customer discretionary accounts or in guided account programs shall not be aggregated for position limit purposes provided that the accounts are controlled by independent traders and meet the standards set forth in CFTC Regulation §150.4(d).

Any person claiming an exemption from position limits under this Section must, upon request by the Market Regulation Department, provide any information deemed necessary to support the exemption.

#### **559.F. Violations**

Violations of position limits and approved exemption limits are subject to the provisions of Rule 443.

### **Text of Rule 560**

#### **560. POSITION ACCOUNTABILITY**

The Market Regulation Department may, at any time, require a person who owns or controls positions in contracts traded on or cleared by the Exchange and which are subject to position limit or position accountability rules to provide information relating to such person's position. For purposes of this rule, all positions in accounts for which a person, by power of attorney or otherwise, directly or indirectly holds positions or controls trading shall be included with the positions held by such person. Additionally, positions held by two or more persons acting pursuant to an expressed or implied agreement or understanding shall be treated the same as if the positions were held by a single person.

Upon request by the Market Regulation Department, such person shall provide information

relating to the positions owned or controlled by that person including, but not limited to, the nature and size of the position, the trading strategy employed with respect to the position, and hedging information, if applicable. If the person from whom such information is requested fails to provide the information as directed, the Market Regulation Department may order the reduction of such position.

A person who exceeds position accountability or position limit levels as a result of maintaining positions at more than one clearing firm shall be deemed to have waived confidentiality regarding his position and the identity of the clearing members at which the positions are maintained.

A person who holds or controls aggregate positions in excess of specified position accountability levels or in excess of position limits pursuant to an approved exemption shall be deemed to have consented, when so ordered by the Market Regulation Department, not to further increase the positions, to comply with any prospective limit which exceeds the size of the position owned or controlled, or to reduce any open position which exceeds position accountability or position limit levels. Any order to reduce an open position shall be issued by the Chief Regulatory Officer or his designee, if he determines in his sole discretion, that such action is necessary to maintain an orderly market.

A clearing member that carries positions for another person shall be responsible for taking reasonable and diligent actions to effect the timely compliance with any order issued pursuant to this rule upon notification of such order by the Market Regulation Department.

All positions must be initiated and liquidated in an orderly manner.