

June 27, 2005

## **NOTICE**

### **Simultaneous Buy and Sell Orders For the Same Account**

CBOT Rule 501.00, Fictitious Transactions, prohibits wash sales by stating that it is an offense against the Exchange to give an order for the purchase or sale of futures or options which would involve no change of ownership, or to execute such an order *with knowledge of its character*.

A member firm is thus prohibited from entering simultaneous and offsetting buy and sell orders for the same account (or different accounts having the same ownership), and a floor broker is prohibited from executing such orders, if the parties have knowledge that the customer intends to engage in a wash sale. A wash sale is defined generally as the purchase and sale of a particular futures or options contract at the same (or a similar) price with an intent to negate risk or price competition.

Exchange rules do not require a clearing firm carrying an omnibus account to investigate the trading intent of an individual customer within the omnibus account. Similarly, Exchange rules do not impose upon a floor broker an obligation to investigate or approve a customer's motive or strategy when given acceptable orders. Exchange rules do require that floor brokers execute all orders, including simultaneous buy and sell orders, competitively and without prearrangement, and prohibit firms from prearranging, or facilitating the prearrangement of, transactions.

Floor brokers and member firms should be mindful, however, that CFTC enforcement actions have consistently established that firms and floor brokers receiving simultaneous buy and sell orders for the same account may be found to have engaged in wash sales if they facilitate a wash result without having made sufficient inquiry as to the propriety of such orders.

Given this regulatory position, firms and brokers may choose not to accept simultaneous buy and sell orders for the same account. If such orders are accepted, and assuming the parties have no knowledge of improper customer intent, regulatory risk may be mitigated by ensuring that there is a reasonable interval between the entry/execution of each order. In all circumstances, each order must be competitively executed in the open market without prearrangement.

The principles discussed in this notice also apply in the context of electronic trading. CBOT Regulation 9B.14, Good Faith Bids and Offers, requires that all bids and offers entered into the e-cbot system be entered in good faith for the purpose of executing bona fide transactions.

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