



Regulatory Circular RG04-35

DATE: March 12, 2004

TO: Membership

FROM: Legal Division
Division of Regulatory Services

RE: SEC Approval of Amendments to Exchange Rule 4.6 (False Statements) and Adoption of Exchange Rule 4.22 (Communications to the Exchange or the Clearing Corporation)

On February 13, 2004, the SEC approved amendments to CBOE Rule 4.6 (formerly titled – *False Statements*) and a new Rule 4.22 - *Communications to the Exchange or the Clearing Corporation*. Rule 4.6 is renamed *Misrepresentations or Omissions*. Additionally, the SEC approved amendments to Rule 17.50 – *Imposition of Fines for Minor Rule Violations*, to add a summary fine schedule for violations of Rule 4.22. The text of Rules 4.6, 4.22 and 17.50(g)(11) is attached. Below is a summary of these rule changes.

The purpose of the amendments to Exchange Rule 4.6 and the adoption of Rule 4.22 is to distinguish willful or material misrepresentations (including misstatements and false statements) and omissions from other less serious misrepresentations and omissions, and provide that misrepresentations, omissions and improper option position adjustments that are both non-willful and non-material may be dealt with under the Exchange's minor rule violation fine plan rather than with formal disciplinary action.

Rule 4.6 is amended to limit its scope to willfully made or material misrepresentations (which includes misstatements and false statements) and omissions by members, associated persons of members, or applicants for membership in communications to the Exchange or the Options Clearing Corporation. Thus, Rule 4.6 will continue to be applied in those instances involving a willful or material misrepresentation or omission. Additionally, new Interpretation and Policy .01 to Rule 4.6 makes clear that no member, person associated with a member or applicant for membership shall be considered to be in violation of Rule 4.6 due to misrepresentations or omissions resulting from causes, such as systems malfunctions, which are outside the control of the member, associated person or applicant and could not be avoided by the exercise of due care.

Misrepresentations and omissions of a less serious nature (those that are neither willfully made or of a material fact) are now covered by new Rule 4.22. A violation of Rule 4.22 may be deemed minor in nature and therefore subject to summary fine. Improper option position adjustments are covered by both rules so that the Exchange may charge a violation of Rule 4.6 in those situations involving a serious offense. Exchange Rule 17.50 is amended to add a new fine schedule applicable to violations of Rule 4.22.

Any questions regarding this circular may be directed to Andrew Spiwak at (312) 786-7483 or Jaime Galvan at (312) 786-7058.

CHAPTER IV

Misrepresentations or Omissions

RULE 4.6 No member, person associated with a member or applicant for membership shall make any willful or material misrepresentation, including a misstatement or false statement, or omission, in any application, report or other communication to the Exchange, or to the Clearing Corporation with respect to the reporting or clearance of any Exchange transaction, or willfully or materially adjust any position at the Clearing Corporation in any class of options traded on the Exchange except for the purpose of correcting a bona fide error in recording or of transferring the position to another account.

...Interpretations and Policies:

.01 No member, person associated with a member or applicant for membership shall be considered to be in violation of CBOE Rule 4.6 due to misrepresentations or omissions resulting from causes, such as systems malfunctions, which are outside the control of the member, associated person or applicant and could not be avoided by the exercise of due care.

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Communications to the Exchange or the Clearing Corporation

RULE 4.22 No member, person associated with a member or applicant for membership shall make any misrepresentation or omission in any application, report or other communication to the Exchange, or to the Clearing Corporation with respect to the reporting or clearance of any Exchange transaction, or adjust any position at the Clearing Corporation in any class of options traded on the Exchange except for the purpose of correcting a bona fide error in recording or of transferring the position to another account. Violations of this Rule may be subject to summary fine under Exchange Rule 17.50(g)(11).

...Interpretations and Policies:

.01 The Exchange will distinguish misrepresentations and omissions from willful or material misrepresentations and omissions. Willful or material misrepresentations and omissions may be considered a violation of Exchange Rule 4.6.

CHAPTER XVII - Discipline

RULE 17.50. Imposition of Fines for Minor Rule Violations

(g) (11) Communications to the Exchange or the Clearing Corporation (Rule 4.22)

A fine shall be imposed upon a member, person associated with a member or applicant for membership, as applicable, who violates Rule 4.22. Such fines shall be imposed on the basis of the following schedule:

<i>Number of Offenses in any Rolling Twelve-Month Period</i>	<i>Fine Amount</i>
1 st Offense	\$500
2 nd Offense	\$1,000
3 rd Offense	\$2,500
Subsequent Offenses	Referral to Business Conduct Committee