

Regulatory Circular RG08-59

Date: April 28, 2008

To: Membership

From: Member and Regulatory Services Division

Re: Aggregation as it applies to regulation

The Member and Regulatory Services Division is issuing this circular to clarify the use of the term "aggregation," which can differ depending on the particular rule and context. The purpose of this circular is to describe how the term aggregation is applied to two main areas of regulation: Regulation SHO and Position Limits. Below please find a discussion of how these terms apply to each of these areas.

- A separate analysis of the applicable "aggregation" requirements under each rule is necessary, and satisfying the Regulation SHO independent trading unit analysis requirements does not necessarily mean that you will receive CBOE approval to permit non-aggregation for purposes of CBOE's position limit or vice versa.
- With respect to Regulation SHO, the information below was developed based on consultations with the staff of the SEC. However, the views expressed represent those of the CBOE's Member and Regulatory Services Division.
- Also provided is contact information for each area of regulation. Please contact these individuals with any questions.

Regulation SHO

SEC Rule 200(g) generally requires that a broker-dealer aggregate all of its positions in a particular security to determine whether it has a net long or net short position when marking a sell order "long" or "short". However, the SEC, in Rule 200(f), permits broker-dealers to aggregate their positions within defined trading units and make a net position determination for each trading unit. Pursuant to Rule 200(f), a broker-dealer must meet the following requirements in order to aggregate its positions under separate trading units (and not as a firm as a whole):

- The Firm must have a written plan of organization that identifies each separate aggregation unit, specifies its trading objective(s), and supports its independent identity;
- Each separate aggregation unit within the Firm must determine at the time of each sale its net position for every security that it trades;
- All traders in the aggregation unit must pursue only the trading objectives or strategies of the aggregation unit and not coordinate that strategy with any other aggregation unit; and
- Individual traders may be assigned to only one aggregation unit at any time.

It has come to the Division's attention that member firms are interpreting Rule 200(f) as allowing individual traders to be treated as separate aggregation units. This is permissible provided all of the above requirements are met before any trader is treated as a separate aggregation unit. However, member firms are reminded that individual traders may not coordinate strategies with another or multiple traders within

the firm. These conditions were set out to ensure that in their written plans as well as in actual practice, separately treated traders are independent of all other traders within a firm without the ability or incentive to coordinate.

Questions concerning aggregation units under Regulation SHO may be directed to Jim Adams at (312) 786-7718 or Bob Gardner at (312) 786-7937.

Position Limits

Exchange Rules 4.11 and 4.12 require that positions maintained in accounts directly or indirectly controlled by the same individual or entity be aggregated as a whole for position and exercise limit purposes. Pursuant to Rule 4.11, control exists when an individual or entity makes investment decisions for an account or accounts, or materially influences directly or indirectly the actions of any person who makes investment decisions.

Demonstrating that control does not exist can rebut the presumption of control. The rebuttal proof must be submitted to the Exchange by affidavit and other documentation as may be appropriate, and the Exchange will make a determination whether to grant non-aggregation status for purposes of Rules 4.11 and 4.12. The decision to grant non-aggregation is not retroactive and is handled on a case-by-case basis.

The Exchange has granted non-aggregation between the following accounts for position limit purposes: between a market-maker's individual account and his joint account in which the market maker's participation in the joint account is limited to providing financial backing to the other member of the account; and between affiliated broker-dealers.

In situations involving requests for non-aggregation treatment between (1) affiliated broker-dealers, (2) broker-dealers and their non-broker-dealer affiliates and (3) separate and distinct trading units within the same broker-dealer, the Exchange requires, at a minimum, the broker-dealer(s) to satisfy the following conditions:

- Establish that the trading unit(s) requesting non-aggregation operates independently of other trading units of the broker-dealer, which must include the disclosure of the trading unit's trading objective;
- Create internal firewalls and information barriers to segregate the trading unit(s) receiving non-aggregation treatment from other trading units controlled by the broker-dealer that also have trading accounts;¹
- Maintain all trading activity of each trading unit requesting non-aggregation in a segregated account, which shall be reported to the Exchange as such; and
- Maintain regulatory compliance oversight and internal controls and procedures.

For a more detailed description of these rules and additional requirements, members are advised to refer to Exchange Rules 4.11 and 4.12 and the Interpretations and Policies thereunder and Regulatory Circular RG08-12. Questions pertaining to aggregation of accounts for position and exercise limit purposes may be directed to Timothy MacDonald at (312) 786-7706.

¹ The Exchange will review this category on a case-by-case basis. With respect to physical separation, the presumption of control becomes easier to rebut as the physical separation between the trading units increases. At the minimum, the Exchange will require trading units located on the same floor to be physically isolated from each other to the extent that the Exchange is assured that no communication will take place between individuals staffed in the applicable trading units. In addition, the Exchange will require system firewalls to be in place in order to prevent the flow of information (*e.g.*, trades, positions, trading strategies) between the trading unit(s) that receives non-aggregation treatment and other trading units controlled by the broker-dealer.