

DATE: August 1, 1994

TO: Members and Member Firms

FROM: Department of Market Surveillance

RE: Non-Aggregation of Accounts for Position and Exercise Limit Purposes

The purpose of this memoranda is to generally summarize the provisions of Exchange rules with respect to the aggregation of accounts for position and exercise limit purposes. 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 for position and exercise limit purposes. 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. Control is also presumed a) among all participants of a joint account, b) among all general partners to a partnership account, c) when an individual or entity holds an ownership interest of 10% or more in an entity or shares in 10% or more of profits and/or losses of an account, d) when accounts have common directors or management, and e) where an individual or entity has authority to execute transactions in an account. The presumption of control can be rebutted by proving that control does not exist. The rebuttal proof must be submitted to the Department of Market Surveillance by affidavit and other documentation as may be appropriate. The decision to grant non-aggregation may not be retroactive and is handled on a case-by-case basis.

Please be advised that any individual or entity which has been granted non-aggregation of certain accounts for position and exercise limit purposes must promptly notify the Department of Market Surveillance of any changes made to the structure of such accounts or entities. At that time, the basis for granting non-aggregation will be re-examined and a determination will be made as to whether non-aggregation will continue or be rescinded. Failure to promptly notify the Exchange of such changes may result in a finding to rescind non-aggregation, retroactive to the point in time at which such changes are made, and members may be considered to have retroactively violated position and exercise limit rules.

This memorandum is not intended to be a comprehensive description of all of the rules and requirements relating to the aggregation of accounts for position and exercise limit purposes. For a more detailed description of these rules and requirements members are advised to refer directly to Exchange Rule 4.11 and 4.12. Questions pertaining to this memorandum may be directed to Patricia Cerny at (312) 786-7722 or Karen Charleston at (312) 786-7724.