

**Regulatory Circular RG95-22  
(RG92-16, Revised)**

**Date:** February 28, 1995  
**To:** All Members and Member Organizations  
**From:** Department of Market Surveillance  
**Re:** Audit Trail Violations

On January 31, 1995, the SEC approved amendments to Exchange Rule 17.50 which sets forth the Exchange's minor rule violation fine plan. Specifically, among other things, Rule 17.50 has been amended to (i) extend from nine to eighteen months the lookback period for failure to submit accurate trade information in accordance with Exchange Rule 6.51 (i.e., time on ticket violations), (ii) establish an eighteen month lookback period for failure to submit trade information to the price reporter in accordance with Exchange Rule 6.51 (i.e., unreported transaction violations), and (iii) establish a cap on the number of transactions during a particular month with respect to which a member fined more than twice in an eighteen month period for failure to submit accurate trade information or failure to submit trade information to the price reporter may request verification.

The above-referenced amendments are intended to further improve the quality of the Exchange's audit trail, to reduce recidivism, and to reduce the administrative burden associated with processing verification requests which in some cases can involve a large number of transactions. The amendments will become effective on March 21, 1995, the first day of the April, 1995 billing cycle.

Rules 17.50(g)(4) and 17.50(g)(5) are the specific provisions of Rule 17.50 which provide for the imposition of fines under the Exchange's minor rule violation fine plan for failure to submit accurate trade information and for failure to submit trade information to the price reporter. The following guidelines reflect Exchange policy with respect to the application of those Rules (incorporating the amendments to Rule 17.50 which will take effect March 21, 1995).

**A. Rule 17.50(g)(4) - Failure to Submit Accurate Trade Information.**

(1) *The Rule.*

(a) A fine shall be imposed upon a Market-Maker or Floor Broker who executes at least five (5) transactions on each of at least ten (10) different trading days during any month and who submits inaccurate or no transaction times to the Exchange for a significant percentage of transactions executed during such month. Such fines shall be imposed on the basis of the following

schedule:

| <i>Percentage of Inaccurate Times</i> | <i>Fine Amount</i> |
|---------------------------------------|--------------------|
| 20% or more, but less than 30% .....  | \$100              |
| 30% or more, but less than 40% .....  | \$250              |
| 40% or more ....                      | \$500              |

(b) If, in any eighteen (18) calendar month period, a Market-Maker or Floor Broker incurs two (2) fines under subsection (a) hereof, any subsequent fine imposed hereunder for any month during such eighteen (18) month period shall be equal to the sum of (i) the appropriate fine amount under subsection (a) and (ii) an amount equal to the total of all fines incurred under this subsection (b) during such eighteen (18) month period.

(2) ***Definitions.***

(a) “Reasonably probable accurate time” for purposes of this Rule means a time which, based on the facts relating to the relevant transaction, is likely to be an accurate time for such transaction. As a minimum requirement for qualification as a reasonably probable accurate time, the price recorded for a transaction by the member whose related transaction time is in question must be within the market quotations that were in existence at the time reported by such member.

(b) “Valid time” for purposes of this Rule means a time during which trading in the relevant contract was eligible to take place.

(3) ***Accuracy of Times Submitted.***

(a) ***General Rule.*** A time submitted for a transaction shall generally be considered accurate if such time is within five (5) minutes of or is the same time as either or both of: (i) the time for such transaction submitted by the other party to such transaction, or (ii) the time such transaction was disseminated by the Exchange’s price reporter, provided, such times in (i) and/or (ii), as appropriate, are valid times. A time which fails to meet the above test shall be considered an inaccurate time. Failure to submit any time for a transaction shall be treated as an inaccurate time for purposes of this Rule.

(b) ***Exceptions.***

(i) In the event no valid time is submitted by the other party to the transaction and the transaction is not disseminated by the price reporter, the time submitted by a Market-Maker or Floor Broker may be deemed accurate if the time submitted by such Market-Maker or Floor Broker is a reasonably probable accurate time.

(ii) In the event a transaction is not disseminated by the price reporter and the time submitted by the other party to the transaction is shown to be a reasonably probable inaccurate time, the time submitted by a Market-Maker or Floor Broker may be deemed accurate if the time submitted by such Market-Maker or Floor Broker is a reasonably probable accurate time.

(4) ***Inadequacies of System Are No Defense.*** The fact that the test for judging whether or not a time is accurate is an imprecise test shall be no defense to the imposition of a fine under this Rule. Such imprecision has been counterbalanced by the allowance of up to a five (5) minute differential and by the requirement that a minimum percentage of transaction times must be inaccurate before a fine is incurred. The benefits of a complete and accurate audit trail justify this policy.

**B. Interaction Between Rule 17.50(g)(4) and Rule 2.30.**

Pursuant to Exchange Rule 2.30, any Market-Maker who fails to submit in a timely manner the trade information required by Rule 6.51 for a stated percentage of such Market-Maker's daily transactions shall incur a transaction fee in accordance with the provisions of Rule 2.30. Please be advised that failure to include the accurate transaction time, or any transaction time, constitutes late submission under Rule 2.30, and will be counted toward the stated percentages contained in Rule 2.30, as well as the stated percentages contained in Rule 17.50(g)(4). Consequently, a Market-Maker who repeatedly fails to include the accurate transaction time, or any transaction time, may be subject to a transaction fee under Rule 2.30 and a fine pursuant to Rule 17.50(g)(4). For further information, Market-Makers are advised to review the provisions of Rules 2.30 and 17.50(g)(4).

**C. Rule 17.50(g)(5) - Failure to Submit Trade Information to the Price Reporter.**

(1) ***The Rule.***

(a) A Market-Maker or Floor Broker who executes at least twenty-five (25) sale transactions during any month and who fails to submit required information to the price reporter for a significant percentage of transactions executed during such month shall be subject to the following fines:

| <i>Percentage of Sale Transactions for<br/>Applicable Month That Were Not<br/>Submitted to Price Reporting</i> |             |
|--|-------------|
| <i>Per Market Data Retrieval Reports</i>   | <i>Fine</i> |
| 30% or more, but less than 40% .....   | \$300       |
| 40% or more, but less than 50% .....   | \$500       |
| 50% or more ....   | \$1,000     |

(b) If, in any eighteen (18) calendar month period, a Market-Maker or Floor Broker incurs two (2) fines under subsection (a) hereof, any subsequent fine imposed hereunder for any month during such eighteen (18) month period shall be equal to the sum of (i) the appropriate fine amount under subsection (a) and (ii) an amount equal to the total of all fines incurred under this subsection (b) during such eighteen (18) month period.

(2) ***Errors and Omissions by Price Reporter Are No Defense.*** The fact that certain trade information may have been lost in the price reporting system, that a price reporter may have

failed to enter trade information actually submitted or may have incorrectly keypunched such information, or that some other reason may have caused particular trade information which was actually submitted by a Market-Maker or Floor Broker for price reporting not to have been correctly reported, shall be no defense to the imposition of a fine under this Rule. The possibility that a small, but significant, percentage of trade information, actually submitted for price reporting, may not be accurately entered into the price reporting system is counterbalanced by the percentage of transactions which must not be reported before a fine is incurred. However, proof that trade information for specifically identified transactions was actually submitted to the price reporter but was not correctly disseminated shall be taken into account in the determination of whether a fine should be imposed under this Rule.

**D. Right to Contest.**

(a) **Verification Request.** Any member against whom a fine is imposed pursuant to Rule 17.50(g)(4) or Rule 17.50(g)(5) may request verification of the fine pursuant to Interpretation and Policy .03 to Rule 17.50. However, please be advised that beginning with the April, 1995 billing cycle there shall be a cap on the number of transactions during a particular month with respect to which a member fined pursuant to Rule 17.50(g)(4) or Rule 17.50(g)(5) may request verification. Such cap shall be imposed pursuant to the following schedule:

| <i>Number of Violations<br/>Within an Eighteen Month Period</i> | <i>Maximum Number of<br/>Transactions During a<br/>Particular Month With Respect<br/>to Which Verification May Be<br/>Requested</i>   |
|---|---|
| 1-2 .....   | No Limit  |
| 3+ .....  | The greater of (i) 50<br>transactions or (ii) 10% of the<br>number of transactions deemed<br>not to be in compliance with<br>Rule 17.50(g)(4) or<br>Rule 17.50(g)(5), as applicable |

The foregoing cap shall apply separately to fines imposed pursuant to Rule 17.50(g)(4) and to fines imposed pursuant to Rule 17.50(g)(5).

(b) **Appeal.** In addition to the right to request verification, any member against whom a fine is imposed pursuant to Rule 17.50(g)(4) or Rule 17.50(g)(5) may contest the fine before the Exchange's Business Conduct Committee in accordance with the provisions of Rule 17.50(c).

(c) **Verification Request and Appeal Procedures.** Please be advised that members wishing to request verification of, and/or contest, fines imposed pursuant to Rule 17.50(g)(4) or Rule 17.50(g)(5) must comply with the deadlines and all of the other procedural requirements set forth, respectively, in Interpretation and Policy .03 to Rule 17.50 and Rule 17.50(c). In connection therewith, members who wish to request verification of, and/or contest, fines imposed pursuant to

Rule 17.50(g)(4) or Rule 17.50(g)(5) are advised to consult the specific provisions of Interpretation and Policy .03 to Rule 17.50 and Rule 17.50(c).

Members who believe that they will be affected by the amendments to Rule 17.50 concerning audit trail which will take effect on March 21, 1995 are invited to contact either Joanne Heenan (312-786-7786) or Pat Cerny (312-786-7722) of the Department of Market Surveillance to discuss their situation. Any questions in connection with this circular should also be directed to above-named individuals.

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