



Securities Industry Association



January 10, 2003

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

Re: Proposed Rules Relating to Credit by Brokers and Dealers; Security
Futures,
67 Fed. Reg. 62,214 (October 4, 2002); Docket No. R-1131

Dear Ms. Johnson:

The Steering Committee on Securities Futures of the Futures Industry Association¹ and Securities Industry Association² is pleased to submit its comments in response to the captioned proposed rule amendments to Regulation T ("Reg. T") by the Board of Governors of the Federal Reserve System (the "Board").

The Steering Committee commends the Board and its staff for their effort to harmonize the treatment of "stock futures"³ under Reg. T and the joint margin rules adopted by the Commodity Futures Trading Commission and the Securities and

¹ The Futures Industry Association is a principal spokesman for the commodity futures and options industry. FIA's regular membership is comprised of approximately 50 of the largest futures commission merchants in the United States, the majority of which are registered broker-dealers. Among its associate members are representatives from virtually all other segments of the futures industry, both national and international.

² The Securities Industry Association brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA member firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. Collectively they employ more than 495,000 individuals, representing 97 percent of total employment in securities brokers and dealers. The U.S. securities industry manages the accounts of nearly 93 million investors directly and indirectly through corporate, thrift, and pension plans. In 2001, the industry generated \$280 billion in U.S. revenue and \$383 billion in global revenue. (More information about SIA is available on its home page: <http://www.sia.com>.)

³ For ease of reference, the Steering Committee will use the shorthand "stock futures" used by the Board in the captioned rule release to refer to futures on single stocks and narrow-based stock indices, as well as options on such futures.

Exchange Commission (together, the “Commissions”).⁴ The Steering Committee believes that the proposed amendments to Reg. T will appropriately clarify the treatment of stock futures held by customers at a securities futures intermediary.

The Steering Committee would like to offer the following comments on the Board’s proposed amendments to Reg. T.

1. Clarification Regarding Stock Futures Carried in Futures Account. The Steering Committee supports the Board’s determination to clarify that stock futures carried in a futures account are not subject to the margin account requirements of Reg. T, and therefore may be effected and carried in a good faith account. As noted by the Board, the Commissions’ joint margin rules permit stock futures to be held in either a securities account or a futures account. If such positions are carried in a futures account, they would not be subject to the requirements of Reg. T.⁵

The Steering Committee recommends, however, that the Board’s proposed amendment to Section 220.6(e)(1)(i) of Reg. T be modified to clarify that the good faith account may be used to carry and effect only transactions in stock futures that are held in a *futures account*. This clarification would avoid any confusion about whether stock futures carried in a securities account are still eligible for the good faith account rather than the margin account, and would be consistent with the treatment of stock futures under the Commissions’ joint margin rules.

2. Application of SMA to Stock Futures. The Steering Committee requests the Board’s confirmation that the special memorandum account (the “SMA”) provisions of Reg. T will apply to stock futures in the same manner as other securities. Currently, Section 220.5(b) of Reg. T permits various items to be included in the SMA, including cash deposited to meet a maintenance call (under 220.5(b)(2)), or any margin excess transferred from the margin account (under 220.5(b)(4)). The Steering Committee believes it would be helpful for the Board to confirm that cash deposited to satisfy a margin call in respect of a stock future may be credited to the SMA (since, as made clear by the amendments proposed by the Board, Reg. T does not impose any margin requirements for stock futures). Similarly, any margin excess that may exist from time to time in an account that includes stock futures, including any excess that was generated by the receipt by the customer of variation margin, may be credited to the SMA.

3. Calculation of Margin Excess and Margin Deficiency. The Steering Committee requests that the Board clarify the relationship between calculations of “margin excess” and “margin deficiency” under Reg. T and certain provisions of the joint margin rules.

⁴ 17 C.F.R. §§ 41.42 – .49, 242.400 – .406.

⁵ Under the Commissions’ joint margin rules, stock futures in a securities account are subject to the margin regulations of the relevant self-regulatory organizations (“SROs”) and Reg. T. See 17 C.F.R. § 41.44(a)(1). Conversely, the joint margin rules provide that stock futures carried in a futures account would be subject only to the margin rules of the relevant SROs, and therefore not Reg. T. See 17 C.F.R. § 41.44(a)(2).

Under Reg. T, the margin excess and margin deficiency in a margin account reflect the difference between the “equity” in the account and the “required margin” for the account. The proposed amendment to Section 220.4 would clarify that stock futures are not subject to the margin requirements of Reg. T – in other words, the required margin for stock futures under Reg. T would be zero. Accordingly, in calculating the margin excess or deficiency of an account, the market value of all stock futures would be *included* for purposes of determining the equity of the account, but such positions would have no margin requirement. An account that has only stock futures positions therefore would always have a Reg. T margin excess, and never a Reg. T margin deficiency, even if a margin deficiency exists under the joint margin rules. In addition, an account with both stock futures and other securities positions could have a Reg. T margin excess even if under the joint margin rules the account would have a margin deficiency and be subject to a margin call.

In the Steering Committee’s view, these examples raise questions regarding the relationship between the withdrawal, SMA, and related provisions of Reg. T, which governs all securities transactions in a margin account, and analogous provisions of the joint margin rules, which purport to cover only stock futures and related positions in a margin account. It would seem illogical to construe Reg. T as permitting a withdrawal or transfer to the SMA when there is a margin deficiency under the joint margin rules – a result which would be avoided if the calculations of Reg. T margin excess and deficiency take into account the required margin for stock futures under the joint margin rules. The Steering Committee believes that some confusion may exist, however, regarding the relationship between Reg. T and the joint margin rules as currently drafted, and would appreciate clarification of this matter by the Board.

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Should you have any questions or comments with regard to the matters addressed herein, please do not hesitate to contact the undersigned or Edward J. Rosen (212-225-2820) of Cleary, Gottlieb, Steen & Hamilton, outside counsel to the Steering Committee in this matter.

Very truly yours,

Jonathan Barton, Chairman
FIA/SIA Steering Committee on Security Futures

cc: Scott Holz, Esq.
Thomas Scanlon, Esq.
Board of Governors of the Federal Reserve System