

July 24, 2002

Mr. Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street NW
Washington DC 20549-0609

**Re: Confirmation Requirements for Transactions in Securities Futures Products
Effectuated in Futures Accounts, SEC File No. S7-19-02,
67 Fed.Reg. 39647**

Dear Mr. Katz:

The Steering Committee on Securities Futures of the Futures Industry Association¹ and Securities Industry Association² (collectively, the “Associations”) welcomes this opportunity to submit these comments on the Securities and Exchange Commission’s (“Commission’s” or “SEC’s”) proposed amendments to Securities Exchange Act Rule 10b-10. The proposed amendments would establish confirmation disclosure requirements for transactions in securities futures products that are effected in a futures account.

The Associations believe that the proposed rules strike an appropriate balance between the more prescriptive confirmation disclosure requirements set forth in Rule 10b-10 for securities transactions effected in customer securities accounts and the disclosure requirements set forth Commodity Futures Trading Commission Rule 1.33(b), as supplemented by certain exchange rules, for futures transactions effected in customer futures accounts. The Associations, therefore, support adoption of proposed Rule 10b-10(e) as published for comment, subject to two minor clarifications described below.³ We also wish to respond to two questions on which the SEC requested comment.

Proposed Rule 10b-10(e)(1)(i). Proposed Rule 10b-10(e)(1)(i) provides that a broker-dealer must include on the confirmation, among other information, (1) “the identity of the single security or narrow-based index underlying the contract for the security futures product” and (2) “the number of shares or units (or principal amount) of such security futures product purchased or

¹ The Futures Industry Association (“FIA”) 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 (“FCMs”) in the United States, the majority of which are also 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’s (“SIA’s”) members include more than 740 securities firms (including investment banks, broker-dealers and mutual fund companies) that are active in all US and foreign markets and in all phases of corporate and public finance. The US securities industry manages the accounts of more than 80 million investors directly and indirectly through corporate, thrift and pension plans.

³ The Associations also support the adoption of proposed Rule 11d2-1 as published for comment.

sold.” The Associations interpret the term “units” to mean “contracts”. That is, the confirmation should disclose the number of contracts of a particular single security futures or narrow-based index the customer has purchased or sold, not the aggregate number of shares that underlie each contract purchased or sold. This interpretation is consistent with the information that currently is provided to customers in connection with other futures transactions, as well as transactions in exchange-traded equity options. In adopting a final rule, the Associations request the Commission to confirm that this interpretation is accurate.

Proposed Rule 10b-10(e)(2)(i). Paragraph (e)(2)(i) states that broker-dealers are not required to include in the confirmation the disclosures prescribed in proposed rule 10b-10(e)(1)(iii) until June 1, 2003, provided that, “if the broker-dealer receives a written request from a customer for the information paragraph (e)(1)(iii) requires the broker-dealer to disclose upon a customer’s written request, the broker-dealer makes the information available to the customer.” Paragraph (e)(1)(iii), in turn, provides that the confirmation must disclose to the customer:

The fact that information about the time of the execution of the transaction, the identity of the other party to the contract, and whether the broker or dealer is acting as agent for such customer, as agent for some other person, as agent for both such customer and some other person, or as principal for its own account, and if the broker is acting as principal, whether it is engaging in a block transaction or an exchange of security futures products for physical securities, will be available to the customer upon request.

The Associations found the terms of the transitional provision unclear. To assure that we are interpreting paragraph (e)(2)(i) correctly, we ask the Commission to confirm that the following restatement accurately reflects the SEC’s intent. First, all broker-dealers will have until June 1, 2003 to amend their confirmations to provide the written disclosure required under paragraph (e)(1)(iii). Second, notwithstanding the delayed effective date of the written disclosure requirement, if a customer, without benefit of the written disclosure, nonetheless requests the information described in paragraph (e)(1)(iii) prior to June 1, 2003, the broker-dealer is required to provide the information to the customer.

SIPC Disclosure. The Commission asks whether notice registered broker-dealers should be required to notify customers “on a transaction-by-transaction basis” that they are not members of SIPC. The Commission further asks whether all broker-dealers that effect transactions in security futures products in a futures account should be required to inform customers “on a transaction-by-transaction basis” that the transactions will not be covered by SIPC. We strongly believe that the answer to each question is “no”.

As the Commission itself notes, all broker-dealers will be required to provide each customer that trades in security futures products a disclosure statement that the National Association of Securities Dealers and the National Futures Association are currently preparing. Among other things, this document will advise customers that funds and positions carried in a futures customer segregated account will not receive the protections afforded by SIPC. The Associations believe that this disclosure statement should be more than sufficient to assure that customers receive adequate information concerning the protection of customer funds under the different regulatory regimes.

Mr. Jonathan G. Katz, Secretary
July 24, 2002
Page 3

Exemption for Institutional Customers. Separately, the Commission asks whether broker-dealers executing transactions in security futures products in futures accounts for certain sophisticated institutional customers should be exempt from the provisions of Rule 10b-10 entirely. Under such an exemption, broker-dealers effecting trades for these customers would be subject only to the requirements of Commodity Futures Trading Commission Rule 1.33(b) and applicable exchange rules.

The Associations believe that any exemption of this type would be of little value. From an operational standpoint, it would be extremely expensive, if not impossible, to provide different types of confirmation statements depending on the nature of the sophistication of the customer.

Conclusion

The Associations appreciate the opportunity to present their views to the Commission on the proposed amendments to the Commission's confirmation disclosure requirements. If any member of the staff would like to discuss the issues addressed in this letter in more detail, please contact Barbara Wierzynski, of FIA, at (202) 466-5460, or Jerry Quinn, of SIA, at (212) 618-0507.

Very truly yours,

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

cc: Catherine McGuire, Chief Counsel
Division of Market Regulation