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COMMENT

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September 3, 2002

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington D.C. 20549

Ms. Jean Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: S7-16-01, Final Customer Margin Rules
Related to Security Futures

Dear Mr. Katz and Ms. Webb:

By letter dated December 5, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") together with the Chicago Board Options Exchange, Inc. ("CBOE"), The Options Clearing Corporation ("OCC"), International Securities Exchange, Inc. ("ISE"), The Pacific Exchange, Inc. ("PCX") and the Philadelphia Stock Exchange, Inc. ("Phlx")(the "Coalition Letter")[1] previously commented on the then-proposed rules relating to customer margin for security futures products ("SFPs").[2] In addition, we separately commented by letter dated December 7, 2001,[3] regarding the proper criteria for determining who is a security futures market maker on a screen-based exchange. For the reasons stated in our prior letters, we generally support the final rules, in substantially the form adopted but with the modification set forth below.

The Amex submits this letter for the sole purpose of commenting upon whether the provision entitled *Failure to Satisfy Margin Call* (17 CFR 242.406(a)) is properly deemed consistent to the margin call provisions set forth in Regulation T applicable to comparable exchange-traded security options.[4] Under Regulation T, additional margin is required on any day when such day's transactions create or increase a margin

[1] *See* letter dated December 5, 2001 from Amex, CBOE, OCC, ISE, PCX and Phlx to Jonathan G. Katz, Secretary, SEC and Jean Webb, Secretary, CFTC.
[2] *See* Securities Exchange Act Release No. 44853 (September 26, 2001), 66 FR 50720 (October 4, 2001)[File No. S7-16-01: Customer Margin Rules Relating to Security Futures]("Proposing Release").
[3] *See* letter dated December 7, 2001 from Michael J. Ryan, Jr., Executive Vice President and General Counsel, Amex to Jonathan G. Katz, Secretary, SEC and Jean Webb, Secretary, CFTC.
[4] *See* Section 220.4 of Regulation T.

deficiency in such margin account. The margin call or additional margin deposit is required to be for the amount of the margin deficiency created or increased. The time period required for satisfying the margin call is within one payment period (currently defined as 5 business days) after the deficiency was created or increased.[5] If a customer fails to meet a margin call within the five (5) business day period, the broker is required to liquidate the securities in order to meet the margin call or eliminate any margin deficiency.

The Commodity Futures Modernization Act of 2000 ("CFMA") requires that customer margin rules must be "consistent with the margin rules for comparable option contracts on any [security options] exchange." Furthermore, the CFMA also provides that the rules must ensure that "margin requirements (other than levels of margin), including the type, form and use of collateral" for security futures "are and remain consistent" with those applicable to securities. Although the Final Margin Rules[6] generally are consistent with the mandate of the CFMA and Regulation T, the adoption of 17 CFR 242.406(a) provides a clear point of regulatory divergence between security futures and exchange-traded security options.

With respect to undermargined accounts for security futures, 17 CFR 242.406(a) permits a security futures intermediary to take a capital charge instead of liquidating or closing out the position for failure to satisfy a margin call. Accounts holding a security future that would liquidate to a deficit are required to be promptly and in an orderly fashion liquidated by the security futures intermediary.[7] This is vastly different than the requirements for an exchange-traded security option. As indicated above, the failure to meet a margin call under Regulation T within five (5) business days requires a liquidation of securities to meet such margin deficiency. A margin deficiency means the amount by which the required margin exceeds the equity in the margin account. However, for security futures, the customer is not required to satisfy a margin deficiency. In addition, security future positions will not be liquidated for margin deficiencies as long as the account does not show a liquidating deficit position. Accordingly, the differences in margin regulation would allow a holder of a security future to potentially ignore a margin call placing the burden on the broker to front the capital by taking a capital charge against the position. Only in the case of an account liquidating deficit rather than a margin deficiency would the account be liquidated. We believe that this regulatory disparity is clearly inconsistent with the CFMA.

Under the CFMA, margin requirements are required to be "consistent" with the margin requirements for comparable options contracts traded on any registered national securities exchange. We believe and maintain that consistent is required to mean that there can be no appreciable difference between the rules applicable to exchange-traded options and security futures. The proposed margin rules set forth by the Commission in the Proposing Release clearly would have established set time limits for the collection of margin[8] similar to the requirements of Regulation T for exchange-traded security options.

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[5] Payment period is defined as the number of business days in the standard securities settlement cycle in the United States, as defined in paragraph (a) of SEC Rule 15c6-1 (17 CFR 240.15c6-1(a)), plus two business days. *See* Section 220.2 of Regulation T.

[6] *See* Securities Exchange Act Release No. 46292 (August 1, 2002), 67 FR 53146 (August 14, 2002)[Final Customer Margin Rules Relating to Security Futures].

[7] *See* 17 CFR 242.406(b).

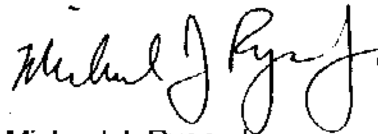
[8] **Proposed § 242.403 Time limits for collection of margin.**

For both initial and maintenance margin the time limit would have been three (3) business days. The removal and replacement of this provision in the final rules with a provision dealing with undermargined accounts that does not require a time limit for the collection of margin is inconsistent with exchange-traded security options, and accordingly, the CFMA.

Accordingly, the Amex requests that the Commissions review this disparity and properly amend this regulation so that margin provisions regarding margin calls/undermargined accounts are comparable for exchange-traded security options and security futures.

If you have any questions, please contact me or Jeffrey P. Burns at (212) 306-1822.

Sincerely,



Michael J. Ryan, Jr.
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(a) Initial margin. The amount of initial margin required or permitted by §242.402 shall be obtained by the creditor as promptly as possible and in any event within three (3) business days after the position is established, or within such shorter time period as may be imposed by applicable regulatory authority rules approved by the Commission in accordance with Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)).
(b) Maintenance margin. The amount of maintenance margin required or permitted by §242.402 shall be obtained by the creditor as promptly as possible and in any event within three (3) business days after the margin deficiency is created or increased, or within such shorter time period as may be imposed by applicable regulatory authority rules approved by the SEC in accordance with Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)).
(c) Extension of time limits. The time limits for collection of initial margin may be extended upon application by the creditor to its examining authority to the extent permitted by applicable regulatory authority rules approved by the Commission in accordance with Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)).