



March 4, 2005

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

**Re: CBOE Customer Portfolio and Cross Margining Requirements  
File Number SR-CBOE-2002-03, 69 Fed.Reg. 77275 (December 27, 2004)**

**NYSE Customer Portfolio and Cross Margining Requirements  
File Number SR-NYSE-2002-19, 69 Fed.Reg. 77287 (December 27, 2004)**

Dear Mr. Katz:

By letter dated January 14, 2005, the Futures Industry Association (“FIA”)<sup>1</sup> and the Securities Industry Association (“SIA”)<sup>2</sup> (collectively, the “Associations”) requested the Securities and Exchange Commission (“Commission”) to extend for an additional 30 days the period within which comments are required to be filed with respect to the above-referenced exchange rule amendments. Although the Commission was unable to grant a formal extension, we were advised that, to the extent practicable, staff would consider any comments filed prior to making a recommendation to the Commission with respect to the rule amendments. We appreciate the staff’s willingness to accept this letter.

As we noted in our January 14 letter to the Commission, the Associations and their members have consistently supported the adoption of procedures both to permit non-futures position margin and

---

<sup>1</sup> FIA is a principal spokesman for the commodity futures and options industry. FIA’s regular membership is comprised of approximately 40 of the largest futures commission merchants (“FCMs”) in the United States, the majority of which are also registered broker-dealers or have affiliates that are registered broker-dealers. These broker-dealers are members of the New York Stock Exchange (“NYSE”) and the Chicago Board Options Exchange (“CBOE”). As such, they have a significant interest in the proposed rules that would allow broker-dealers to establish portfolio margin and cross margin accounts for their institutional clients.

<sup>2</sup> The Securities Industry Association brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA’s primary mission is to build and maintain public trust and confidence in the securities markets. At its core: Commitment to Clarity, a commitment to openness and understanding as the guiding principles for all interactions between investors and the firms that serve them. SIA members (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. The U.S. securities industry employs 790,600 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the industry generated \$213 billion in domestic revenue and an estimated \$283 billion in global revenues. (More information about SIA is available at: [www.sia.com](http://www.sia.com).)

other property to be held in the customer segregated account and to permit futures margin and other property deposited on behalf of qualified customers to be held outside of a segregated account. Therefore, we generally support the amendments that the NYSE and the CBOE have proposed. In this regard, the Associations understand that amendments to the rules of the Securities Investor Protection Corporation (“SIPC”) and relief from the segregation requirements that are essential to the cross margin program are not necessary to implement the provisions of the proposed amendments that would permit portfolio margining with respect to securities products only. We see no reason to delay implementation of this latter aspect of the exchanges’ programs. We assume that the provisions of the exchange rules relating to cross margin programs could be approved subject to adoption of the SIPC rule amendments and relief from the segregation requirements.

Since our January 14 letter to the Commission, the Associations have had an opportunity to consider the proposed amendments more carefully as well as talk with representatives of the Chicago Board Options Exchange, The Options Clearing Corporation and staff of the Division of Market Regulation. The operational questions that we initially identified relating to the cross margin programs for eligible participants remain a concern. For example, from a systems perspective, it may be difficult to transfer the futures positions that a broker-dealer/futures commission merchant holds in a customer segregated account to a securities account. In addition, it is unclear whether customer assets used to margin the futures positions at the exchange would be permissible under Rule 15c3-3. From a regulatory perspective, it is evident that futures positions could not be transferred to a securities account until appropriate amendments have been made to SIPC’s rules and the Commodity Futures Trading Commission has granted relief from the provisions of section 4d(a)(2) of the Commodity Exchange Act.

We expect that both the amendments to the SIPC rules and any relief that the Commodity Futures Trading Commission may propose to adopt will be published for comment in the *Federal Register*, which will provide us the opportunity to address these matters more fully. In the meantime, we encourage the Commission to take this opportunity to consult with the Commodity Futures Trading Commission and other affected parties to consider whether the procedures for the cross margin programs currently set forth in the proposed exchange rules could be revised to assure greater participation and, consequently, a greater likelihood for success. One issue that might be explored is whether it is possible to build upon the “notice registration” provisions established for the trading of security futures.<sup>3</sup> Certain FIA member firms are not dually registered as broker-dealers, although they have affiliates that are so registered. We believe procedures could be developed that would alleviate any competitive concerns, and permit these firms the opportunity to offer a cross margin program to their eligible customers.<sup>4</sup>

---

<sup>3</sup> Exchange Act Rule 15b11-1.

<sup>4</sup> Separately, we note that the margin deposited in connection with the current cross margin programs for professional traders is held in a customer segregated account. We encourage the Commission to consider whether participants in this expanded program could also choose to hold cross margin positions in a segregated account.

Jonathan G. Katz, Secretary  
March 2, 2005  
Page 3

The Associations appreciate the opportunity to submit these comments on the proposed exchange rule amendments. If you have any questions concerning the matter discussed in this letter, please contact Barbara Wierzynski of FIA at (202) 466-5460, and/or Ira Hammerman of SIA at (202) 216-2045.

Sincerely,

---

Barbara Wierzynski  
Executive Vice President and General Counsel  
Futures Industry Association

---

Ira D. Hammerman  
Senior Vice President and General Counsel  
Securities Industry Association