

Based on the foregoing, the staff of the Division will not recommend enforcement action to the Commission if a broker-dealer, when calculating net capital using a theoretical option pricing model pursuant to Appendix A, treats a U.S.-listed security futures contract on an individual stock as a position in the underlying instrument for purposes of paragraph (b)(1)(ii)(A) of Appendix A. This position is conditioned, however, on the broker-dealer applying the minimum charge specified under paragraph (b)(1)(v)(C)(2) of Appendix A to the security futures contract when such amount exceeds the deduction, if any, required by paragraph (b)(1)(v)(C)(1) of Appendix A.

You should be aware that this is a staff position with respect to enforcement only and does not purport to express any legal conclusions regarding the application of the federal securities laws. This position is based solely on the foregoing description. Factual variations could warrant a different response, and any material change in the facts must be brought to the Division's attention. This position may be withdrawn or modified if the staff determines that such action is necessary for the protection of investors, in the public interest, or otherwise in furtherance of the securities laws.

<http://www.sec.gov/divisions/marketreg/mr-noaction/2012/cboe-finra-050412.pdf>

i think this interpretation is short-sighted and should be revoked by the SEC immediately.

if the option were a share of stock, why wouldn't the buying broker already have exercised the option to buy this stock? the buying broker knew that financial dates were coming up. the buying broker knew the option settlement date. yet the buying broker did not buy the stock to buy in, nor did the buying broker exercise the option in time to be a real share of stock.

options to buy (calls) can be sold by seller A/broker A but counted in broker A's inventory of stock.

however the buyer of the calls by buyer B/broker B also seeks to count the option as a share of stock.

this results in one imaginary share held by buyer B and one real share by seller A, at the time of the financial statements.

further, there is NO ASSURANCE that buyer A will buy the option. if the option should count toward real shares, then the option should be exercised by the date of the financials.

there is also NO ASSURANCE that broker A will produce the share even if buyer B exercises the option.

there is a risk that the option will be used to continue the shortselling and lengthen the settlement date.

there is a risk that one of the brokers will be unable to transact business by the date of the option settlement. this would be more likely if the broker hopes that you would count an option as a physical share of stock because they do not have enough margin to buy in the shorted share and might be more likely to go bankrupt than the average broker. you might want to put the brokers

who requested this on a short list for a site visit soon. they are likely allowing their long customers to fund the shortselling that their shortselling customers and proprietary desk are doing. in fact, i do not see any distinction in this letter about whether the short that is being covered by options are actually proprietary trading (and thus intentional and controlled by the broker) or not.

electronic shares do not equal physical shares issued by the transfer agent.

if the SEC persists in making shortselling convenient and risk-free and double-counting physical shares, some investor will probably sue the SEC for this decision.

has the SEC determined to double-count physical shares of stock, so that brokers do not have to produce real shares of stock in their customers' portfolios? why not let the brokers just say they intended to buy some options the morning after the financials are due?

for that matter, why not let the brokers just continue not to settle trades and let them continue to put a whole bunch of imaginary shares on the market, eat up the demand, and lower the price by increasing the supply suddenly. if the shortselling broker doesn't buy in for a month or two, no big deal, right?

it is quite annoying to me that i have to discover such opinions on the SEC website so that i can express my dissatisfaction.

wasn't there anyone at the SEC that didn't think this was a good idea?

as far as i am concerned, any of the people i have cc'd can feel free to straighten me out about this. i would enjoy hearing from every one of them.

sincerely,
suzanne hamlet shatto

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