

Via Electronic Submission

October 7, 2019

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F. St. NE
Washington, D.C. 20549

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581

Re: Customer Margin Rules Relating to Security Futures

Dear Ms. Countryman and Mr. Kirkpatrick:

OneChicago, LLC (“OneChicago”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“CFTC”) and the Securities and Exchange Commission’s (“SEC”) (collectively the “Commissions”) proposed rule for Customer Margin Rules Relating to Security Futures. OneChicago is submitting this additional comment letter in response to the comment letter submitted on August 26, 2019 by Cboe Global Markets, Inc. (“Cboe”) and MIAX Exchange Group (“MIAX”) (collectively “option exchanges”) to clarify the following points.

First, the option exchanges claim that a security future is comparable to an options strategy consisting of a long (short) call with a short (long) put on the same underlying.¹ Even setting aside the issue of whether the Commissions can even compare these strategies with SSFs,² the options strategies described are not comparable. This strategy has significant differences from an SSF strategy due to assignment risk, dividend risk, and pin risk.³ The strategy described by the option exchanges is used as part of a reversal-conversion, which is not comparable to SSFs. Only non-taxpayers would use a reversal-conversion, as the tax consequences of such a strategy are significant. STARS[®] (Securities Transfer and Return Spreads), are designed to replicate equity repo and stock loan transactions in a way that does not incur additional tax obligations. A

¹ Option exchange Letter, Page 7-8

² See Thomas McCabe. “Re: Customer margin Rules Relating to Security Futures”. August 26, 2019. Appendix D

³ See Thomas McCabe. “Re: Customer margin Rules Relating to Security Futures”. August 26, 2019. Page 8-11

taxpayer would never use the option strategy described to replicate either stock loan or equity repo because of the tax consequences. They would use a security future. Additionally, when non-taxpayers trade reversal-conversions, the positions are generally held in a portfolio margin account and thus margined at the minimum level. Even comparing (inappropriately) to this type of strategy allows for risk-based margins for dividend-adjusted SSFs and STARS.

Second, the option exchanges claim that lowering security futures margins below 20% is inconsistent with the Commodity Futures Modernization Act.⁴ This is incorrect. Section 7(c)(2)(B) of the Exchange Act of 1934 (“’34 Act”) directs the Commissions to ensure that security future margins are “consistent” with “comparable” option contracts. What the ’34 Act does not do is define what it means margins to be “consistent” or specify which options are “comparable.” As a result, it is within the Commissions’ plenary authority to determine what “consistent” and “comparable” mean with regards to Section 7(c)(2)(B) of the ’34 Act and administer a regime consistent with that interpretation.⁵ The onus is on the Commissions to examine which option contracts are comparable with security futures.⁶

It is OneChicago’s contention that there are no such option contracts. To date, the Commissions have not completed sufficient analysis on what, if any, products are comparable to options. In the 2002 Final Margin Rules, the Commissions determined, that a short option was comparable to a security future.⁷ This is not a reasonable interpretation. As our August 26, 2019 comment letter explains in detail,⁸ there are substantial differences between Single Stock Futures (“SSFs”) and option contracts, justifying a different determination as to which products are comparable. None of the factors discussed in our letter have been considered by the Commission.

Further, at the time the Commission made the determination that security futures are comparable to short options, neither dividend-adjusted security futures nor STARS existed. To meet their statutory obligations, the Commissions need to examine not only whether traditional security futures are comparable to options but also whether the new categories of security futures, dividend-adjusted SSFs and STARS, are comparable as well. There is no option contract comparable to either a dividend-adjusted SSFs or a STARS transaction. Only products which can be transacted interchangeably should be considered comparable, and there are no interchangeable options for either dividend-adjusted SSFs or STARS. The Commission should revisit its determination on what constitutes a “comparable” option.

Finally, the option exchanges claim that changing SSF margins would result in regulatory arbitrage between options and SSFs.⁹ OneChicago would like to re-emphasize the importance of variation margin when determining if initial margin is “consistent”. What the option exchanges

⁴ Angelo Evangelou and Shelly Brown. “Re: Customer margin Rules Relating to Security Futures”. August 26, 2019. (“option exchange letter”). Page 2.

⁵ *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837

⁶ Customer Margin Rules Relating to Security Futures, 84 FR 36434, 36439 (July 26, 2019)

⁷ Customer Margin Rules Relating to Security Futures, 67 FR 53146, 53157 (Aug. 14, 2002). See also Customer Margin Rules Relating to Security Futures. 66 FR 50720 (October 4, 2001).

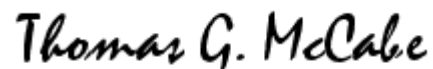
⁸ See Thomas McCabe. “Re: Customer margin Rules Relating to Security Futures”. August 26, 2019. Pg 8-11; Appendix D; Appendix E.

⁹ Option exchange letter, page 8.

miss entirely is that SSFs are held to the daily discipline of mark-to-market whereas options are not. Before the option exchanges can claim that the level of margin is not consistent between SSFs and options because of a difference in initial margin, options would need to be subject to daily variation margin payments. As explained in our comment letter, as long as the protection is the same, the margin level should be considered consistent.¹⁰

OneChicago thanks the SEC and the CFTC for releasing the proposal and giving OneChicago the opportunity to comment. If you have any questions or comments regarding this submission, please feel free to contact me at any time by phone at (312) 883-3430 or through email at tmccabe@onechicago.com.

Sincerely,

Handwritten signature of Thomas G. McCabe in black ink.

Thomas G. McCabe
Chief Regulatory Officer

¹⁰ See Thomas McCabe. “Re: Customer margin Rules Relating to Security Futures”. August 26, 2019. Appendix D